

# House Bill 2612

Sponsored by Representative KENNEMER (at the request of Bennett Johnson) (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires mass transit districts to resolve through binding arbitration certain disputes about fault.

Prohibits public body from requesting jury trial in small claims action in which amount claimed is less than \$5,000.

Increases time within which person must provide notice of claim against public body under Oregon Tort Claims Act to one year for all claims.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to claims against public bodies; creating new provisions; amending ORS 30.275, 46.455,  
3 326.554 and 659.860; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. A mass transit district established under ORS 267.010 to 267.390 shall resolve**  
6 **disputes about fault in accidents involving vehicles used by the district through binding ar-**  
7 **bitration.**

8 **SECTION 2.** ORS 46.455 is amended to read:

9 46.455. Within 14 days after the date of service of the notice and claim upon the defendant as  
10 provided in ORS 46.445:

11 (1) If the defendant admits the claim, the defendant may settle it by:

12 (a) Paying to the plaintiff the amount of the claim plus the amount of all filing fees and service  
13 expenses paid by the plaintiff and mailing proof of that payment to the court.

14 (b) If the claim is for recovery of specific personal property, delivering the property to the  
15 plaintiff and paying to the plaintiff the amount of all filing fees and service expenses paid by the  
16 plaintiff and mailing proof of that delivery and payment to the court.

17 (2) If the defendant denies the claim, the defendant:

18 (a) May demand a hearing in the small claims department in a written request to the clerk in  
19 the form prescribed by the court, accompanied by payment of the defendant's fee prescribed; and

20 (b) When demanding a hearing, may assert a counterclaim in the form provided by the court.

21 (3) **Except as provided in subsection (4) of this section**, if the amount or value claimed ex-  
22 ceeds \$750, the defendant has a constitutional right to a jury trial and may claim that right in a  
23 written request to the clerk in the form prescribed by the court, accompanied by payment of the  
24 appearance fee required from defendants under ORS 21.160. The request shall designate a mailing  
25 address to which a summons and copy of the complaint may be served by mail. Thereafter, the  
26 plaintiff's claim will not be limited to the amount stated in the claim, though it must involve the  
27 same controversy.

28 (4) **If the defendant is a public body, as defined in ORS 174.109, and the amount claimed**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 **is less than \$5,000, the defendant may not request a jury trial.**

2 **SECTION 3. The amendments to ORS 46.455 by section 2 of this 2015 Act apply only to**  
3 **small claims actions commenced on or after the effective date of this 2015 Act.**

4 **SECTION 4.** ORS 30.275 is amended to read:

5 30.275. (1) No action arising from any act or omission of a public body or an officer, employee  
6 or agent of a public body within the scope of ORS 30.260 to 30.300 shall be maintained unless notice  
7 of claim is given as required by this section.

8 (2) Notice of claim shall be given within the [*following applicable period of time*] **365 days after**  
9 **the alleged loss or injury**, not including the period, not exceeding 90 days, during which the person  
10 injured is unable to give the notice because of the injury or because of minority, incompetency or  
11 other incapacity.[.]

12 [*(a) For wrongful death, within one year after the alleged loss or injury.*]

13 [*(b) For all other claims, within 180 days after the alleged loss or injury.*]

14 (3) Notice of claim required by this section is satisfied by:

15 (a) Formal notice of claim as provided in subsections (4) and (5) of this section;

16 (b) Actual notice of claim as provided in subsection (6) of this section;

17 (c) Commencement of an action on the claim by or on behalf of the claimant within the appli-  
18 cable period of time provided in subsection (2) of this section; or

19 (d) Payment of all or any part of the claim by or on behalf of the public body at any time.

20 (4) Formal notice of claim is a written communication from a claimant or representative of a  
21 claimant containing:

22 (a) A statement that a claim for damages is or will be asserted against the public body or an  
23 officer, employee or agent of the public body;

24 (b) A description of the time, place and circumstances giving rise to the claim, so far as known  
25 to the claimant; and

26 (c) The name of the claimant and the mailing address to which correspondence concerning the  
27 claim may be sent.

28 (5) Formal notice of claim shall be given by mail or personal delivery:

29 (a) If the claim is against the state or an officer, employee or agent thereof, to the office of the  
30 Director of the Oregon Department of Administrative Services.

31 (b) If the claim is against a local public body or an officer, employee or agent thereof, to the  
32 public body at its principal administrative office, to any member of the governing body of the public  
33 body, or to an attorney designated by the governing body as its general counsel.

34 (6) Actual notice of claim is any communication by which any individual to whom notice may  
35 be given as provided in subsection (5) of this section or any person responsible for administering tort  
36 claims on behalf of the public body acquires actual knowledge of the time, place and circumstances  
37 giving rise to the claim, where the communication is such that a reasonable person would conclude  
38 that a particular person intends to assert a claim against the public body or an officer, employee  
39 or agent of the public body. A person responsible for administering tort claims on behalf of a public  
40 body is a person who, acting within the scope of the person's responsibility, as an officer, employee  
41 or agent of a public body or as an employee or agent of an insurance carrier insuring the public  
42 body for risks within the scope of ORS 30.260 to 30.300, engages in investigation, negotiation, ad-  
43 justment or defense of claims within the scope of ORS 30.260 to 30.300, or in furnishing or accepting  
44 forms for claimants to provide claim information, or in supervising any of those activities.

45 (7) In an action arising from any act or omission of a public body or an officer, employee or

1 agent of a public body within the scope of ORS 30.260 to 30.300, the plaintiff has the burden of  
 2 proving that notice of claim was given as required by this section.

3 (8) The requirement that a notice of claim be given under subsections (1) to (7) of this section  
 4 does not apply if:

5 (a)(A) The claimant was under the age of 18 years when the acts or omissions giving rise to a  
 6 claim occurred;

7 (B) The claim is against the Department of Human Services or the Oregon Youth Authority; and

8 (C) The claimant was in the custody of the Department of Human Services pursuant to an order  
 9 of a juvenile court under ORS 419B.150, 419B.185, 419B.337 or 419B.527, or was in the custody of  
 10 the Oregon Youth Authority under the provisions of ORS 419C.478, 420.011 or 420A.040, when the  
 11 acts or omissions giving rise to a claim occurred.

12 (b) The claim is against a private, nonprofit organization that provides public transportation  
 13 services described under ORS 30.260 (4)(d).

14 (9) Except as provided in ORS 12.120, 12.135 and 659A.875, but notwithstanding any other pro-  
 15 vision of ORS chapter 12 or other statute providing a limitation on the commencement of an action,  
 16 an action arising from any act or omission of a public body or an officer, employee or agent of a  
 17 public body within the scope of ORS 30.260 to 30.300 shall be commenced within two years after the  
 18 alleged loss or injury.

19 **SECTION 5.** ORS 326.554 is amended to read:

20 326.554. (1) Any person claiming to be aggrieved by a violation of ORS 326.551 may file a civil  
 21 action in circuit court for equitable relief or, subject to the terms and conditions of ORS 30.265 to  
 22 30.300, damages, or both. The court may order such other relief as may be appropriate. Damages  
 23 shall be \$200 or actual damages, whichever is greater.

24 (2) The action authorized by this section shall be filed within one year of the filing of a griev-  
 25 ance.

26 (3) An action under this section may not be filed unless, within 180 days of the alleged violation,  
 27 a grievance has been filed with the governing body of the educational institution against which the  
 28 violation is alleged.

29 (4) An action under this section may not be filed until 90 days after filing a grievance unless  
 30 only injunctive relief is sought pursuant to ORCP 79. The right to temporary or preliminary  
 31 injunctive relief shall be independent of the right to pursue any administrative remedy available to  
 32 complainants.

33 (5) An action under this section may not be filed if the governing body of the educational in-  
 34 stitution has obtained a conciliation agreement with the person filing the grievance or if a final  
 35 determination of the grievance has been made except as provided in ORS 183.480.

36 (6) Notwithstanding the filing of a grievance pursuant to subsection (3) of this section, a person  
 37 seeking to maintain an action under this section against a public educational institution shall also  
 38 file a notice of claim within [180] **365** days of the alleged violation in the manner provided by ORS  
 39 30.275.

40 (7) The court shall award reasonable attorney fees to a prevailing plaintiff in any action under  
 41 this section. The court may award reasonable attorney fees and expert witness fees incurred by a  
 42 defendant who prevails in the action if the court determines that the plaintiff had no objectively  
 43 reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse  
 44 decision of a trial court.

45 **SECTION 6.** ORS 659.860 is amended to read:

1 659.860. (1) Any person claiming to be aggrieved by unlawful discrimination as prohibited by  
 2 ORS 659.850 may file a civil action in circuit court for equitable relief or, subject to the terms and  
 3 conditions of ORS 30.265 to 30.300, damages, or both. The court may order such other relief as may  
 4 be appropriate. Damages shall be \$200 or actual damages, whichever is greater.

5 (2) The action authorized by this section shall be filed within one year of the filing of a griev-  
 6 ance.

7 (3) An action may not be filed unless, within 180 days of the alleged discrimination, a grievance  
 8 has been filed with the school district board, public charter school governing body, community col-  
 9 lege board of education, governing board of a public university with a governing board listed in ORS  
 10 352.054 or State Board of Higher Education.

11 (4) An action may not be filed until 90 days after filing a grievance unless only injunctive relief  
 12 is sought pursuant to ORCP 79. The right to temporary or preliminary injunctive relief shall be in-  
 13 dependent of the right to pursue any administrative remedy available to complainants pursuant to  
 14 ORS 659.850.

15 (5) An action may not be filed if the school district board, public charter school governing body,  
 16 community college board of education, governing board of a public university with a governing  
 17 board listed in ORS 352.054 or State Board of Higher Education has obtained a conciliation agree-  
 18 ment with the person filing the grievance or if a final determination of a grievance has been made  
 19 except as provided in ORS 183.480.

20 (6) Notwithstanding the filing of a grievance, pursuant to subsection (3) of this section, any  
 21 person seeking to maintain an action under this section shall also file a notice of claim within  
 22 [180] **365** days of the alleged discrimination as required by ORS 30.275.

23 (7) The court shall award reasonable attorney fees to a prevailing plaintiff in any action under  
 24 this section. The court may award reasonable attorney fees and expert witness fees incurred by a  
 25 defendant who prevails in the action if the court determines that the plaintiff had no objectively  
 26 reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse  
 27 decision of a trial court.

28 (8) Nothing in this section is intended to reduce the obligations of the education agencies under  
 29 this section and ORS 659.850 and 659.855.

30 **SECTION 7. (1) Except as provided in subsection (2) of this section, the amendments to**  
 31 **ORS 30.275, 326.554 and 659.860 by sections 4 to 6 of this 2015 Act apply to any claim subject**  
 32 **to ORS 30.260 to 30.300, 326.554 or 659.860, whether arising before, on or after the effective**  
 33 **date of this 2015 Act.**

34 **(2) The amendments to ORS 30.275, 326.554 and 659.860 by sections 4 to 6 of this 2015 Act**  
 35 **do not apply to any claim under ORS 30.260 to 30.300, 326.554 or 659.860 for which a judgment**  
 36 **has been entered before the effective date of this 2015 Act.**

37 **SECTION 8. This 2015 Act being necessary for the immediate preservation of the public**  
 38 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**  
 39 **on its passage.**