

SB 307 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 2/28, 3/7

WHAT THE MEASURE DOES:

Specifies that a party who objects only to the costs or fees awarded in a court-annexed arbitration must raise any claims or defenses relating to offers of judgment at the time the party files those objections. Applies to arbitrations commenced after the effective date.

REVENUE: No revenue impact

FISCAL: No fiscal impact

ISSUES DISCUSSED:

- Housekeeping proposal by executive committee of the Consumer Law Section of the Oregon State Bar
- Conflict between court-annexed arbitration statute and ORCP 54E
- Uncertainty about when to raise offer of judgment issue in court-annexed arbitrations

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Parties who file civil actions in Circuit Court sometimes arbitrate the claims through court-annexed arbitration, either because they have agreed to do so or because the court requires arbitration for claims under \$50,000. The arbitrator issues a decision on the merits and may at the same time award costs and attorney fees if permitted or required by contract or statute. A party who must pay the costs or attorney fees may choose to object to only those costs and fees awarded, if the party chooses not to appeal the entire decision. Objections to the costs or fees can be about the amount awarded or the legal grounds for the award.

Oregon Rule of Civil Procedure (ORCP) 54 E governs the award of attorney fees when a defending party to a claim has made an offer to allow judgment, but the party making the claim did not accept the offer, and then did not beat the offer at trial. The decision-maker is not aware of the offer of judgment before making a decision on the merits of the claim. For claims tried to the court or a jury, the court can conduct a separate hearing, after the decision and judgment on the merits, to determine whether and how much costs and attorney fees to award. The defending party may argue at that point that ORCP 54 E limits the plaintiff's attorney fees and provides costs to the defendant, and a court can issue a supplemental judgment for the costs or fees. Litigants are uncertain about when to raise offer of judgment issues in court-annexed arbitration, because there is no analogous process for a supplemental judgment on costs and fees in those proceedings, when the party is not appealing the arbitrator's decision on the merits of the claim.

Senate Bill 307 clarifies that a party who objects only to the costs or fees awarded in a court-annexed arbitration must raise any ORCP 54 E claims or defenses when the party files the objections.