

# Enrolled House Bill 3447

Sponsored by Representative RAYFIELD

CHAPTER .....

AN ACT

Relating to courts; creating new provisions; amending ORS 18.999, 20.190, 21.135, 21.145, 21.155, 21.160, 21.170, 21.180, 21.200, 21.205, 21.215, 21.225, 21.235, 24.115, 24.135, 36.425, 46.570, 105.130, 106.120 and 205.320; declaring an emergency; and providing for revenue raising that requires approval by a three-fifths majority.

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

### FILING FEES

**SECTION 1.** ORS 21.135 is amended to read:

21.135. (1) Unless a specific fee is provided by subsection (3) of this section or other law for a proceeding, a circuit court shall collect a filing fee of [~~\$265~~] **\$281** when a complaint or other document is filed for the purpose of commencing an action or other civil proceeding and when an answer or other first appearance is filed in the proceeding.

(2) The filing fee established by subsection (1) of this section applies to:

- (a) Proceedings in which only equitable remedies are sought.
- (b) Appeals from a conviction of a violation in justice or municipal courts as provided in ORS 21.285.
- (c) Interpleader actions.
- (d) Actions relating to a trust.
- (e) Proceedings for judicial review of an agency order.
- (f) Declaratory judgment actions.

(g) Any other action or proceeding that is statutorily made subject to the fee established by this section and any other civil proceeding for which a specific filing fee is not provided.

(3)(a) The circuit court shall collect a filing fee of [~~\$255~~] **\$263** in adoption cases under ORS chapter 109, excluding readoptions under ORS 109.385, when a petition is filed for the purpose of commencing an adoption proceeding or when any other document or other first appearance is filed in the proceeding. The fee shall include the cost of issuing one or more certificates of adoption under ORS 109.410.

(b) When separate petitions for adoption of multiple minor children are concurrently filed under ORS 109.309 by the same petitioner, one filing fee shall be charged for the first petition filed and the filing fees for concurrently filed petitions shall not be charged.

**SECTION 2.** ORS 21.145 is amended to read:

21.145. In the following proceedings, a circuit court shall collect a filing fee of [~~\$117~~] **\$124** when a complaint or other document is filed for the purpose of commencing an action or other proceeding and at the time of filing an answer or other first appearance in the proceeding:

(1) Applications for change of name under ORS 33.410.

(2) Applications for a legal change of sex under ORS 33.460.

(3) Guardianship proceedings under ORS chapter 125.

(4) Any other action or proceeding that is statutorily made subject to the fee established by this section.

**SECTION 3.** ORS 21.155 is amended to read:

21.155. A circuit court shall collect a filing fee of [~~\$287~~] **\$301** when a complaint or other document is filed for the purpose of commencing one of the following proceedings and when an answer or other first appearance is filed in the proceeding:

(1) Proceedings for dissolution of marriage, annulment of marriage or separation.

(2) Filiation proceedings under ORS 109.124 to 109.230.

(3) Proceedings under ORS 108.110, 109.100 and 109.103.

**SECTION 4.** ORS 21.160 is amended to read:

21.160. (1) A circuit court shall collect the following filing fees when a complaint or other document is filed for the purpose of commencing an action or other civil proceeding based on a tort or contract and when an answer or other first appearance is filed in the proceeding:

(a) If the amount claimed is \$10,000 or less, the court shall collect a filing fee of [~~\$165~~] **\$170**.

(b) If the amount claimed is more than \$10,000 and less than \$50,000, the court shall collect a filing fee of [~~\$267~~] **\$283**.

(c) If the amount claimed is \$50,000 or more, and less than \$1 million, the court shall collect a filing fee of [~~\$560~~] **\$594**.

(d) If the amount claimed is \$1 million or more and less than \$10 million, the court shall collect a fee of [~~\$834~~] **\$884**.

(e) If the amount claimed is \$10 million or more, the court shall collect a filing fee of [~~\$1,111~~] **\$1,178**.

(2) The filing fees provided by this section apply to proceedings for the foreclosure of a mortgage, lien or other security interest. For the purposes of such proceedings, the amount claimed is the amount of the debt secured by the mortgage, lien or other security interest that is owing as of the date that the proceeding is filed.

(3) The filing fees provided by this section apply to proceedings for specific performance of a contract. For the purposes of such proceedings, the amount claimed is the amount owing under the contract on the date that the proceeding is filed.

(4) A court shall collect the filing fees provided by this section when an appeal from a justice court is filed under ORS 53.005 to 53.125 or a case is transferred from a justice court under ORS 52.320.

(5) For purposes of this section, the amount claimed in a proceeding does not include any amount claimed as attorney fees or as costs and disbursements.

(6) For purposes of this section, the amount claimed in a proceeding includes any penalty or forfeiture provided by statute or arising out of contract.

**SECTION 5.** ORS 21.170 is amended to read:

21.170. (1) Except as provided in ORS 114.515, a probate court shall collect the following filing fees for the filing of a petition for the appointment of personal representative:

(a) If the value of the estate is less than \$50,000, [~~\$265~~] **\$278**.

(b) If the value of the estate is \$50,000 or more, but less than \$1 million, [~~\$558~~] **\$591**.

(c) If the value of the estate is \$1 million or more, but less than \$10 million, [~~\$832~~] **\$882**.

(d) If the value of the estate is \$10 million or more, [~~\$1,109~~] **\$1,176**.

(2) A probate court shall collect the following fees for an annual or final accounting filed in a probate proceeding:

(a) If the value of the estate is less than \$50,000, [~~\$33~~] **\$35**.

- (b) If the value of the estate is \$50,000 or more, but less than \$1 million, [~~281~~] **\$298**.
- (c) If the value of the estate is \$1 million or more, but less than \$10 million, [~~558~~] **\$591**.
- (d) If the value of the estate is \$10 million or more, [~~1,109~~] **\$1,176**.

(3) For the purpose of determining the value of the estate under this section, the amount of a settlement in a wrongful death action brought for the benefit of the decedent's surviving spouse or dependents is not part of the estate.

(4) A person filing an appearance in a probate proceeding must pay the fee established under ORS 21.135.

(5) The fees established under this section apply to county courts exercising probate jurisdiction.

**SECTION 6.** ORS 21.180 is amended to read:

21.180. (1) The court shall collect the following filing fees for the filing of the initial documents in a conservatorship proceeding:

- (a) If the value of the estate is less than \$50,000, [~~265~~] **\$278**.
- (b) If the value of the estate is \$50,000 or more, but less than \$1 million, [~~558~~] **\$591**.
- (c) If the value of the estate is \$1 million or more, but less than \$10 million, [~~832~~] **\$882**.
- (d) If the value of the estate is \$10 million or more, [~~1,109~~] **\$1,176**.

(2) The court shall collect the following fees for an annual or final accounting filed in a conservatorship proceeding:

- (a) If the value of the estate is less than \$50,000, [~~33~~] **\$35**.
- (b) If the value of the estate is \$50,000 or more, but less than \$1 million, [~~281~~] **\$298**.
- (c) If the value of the estate is \$1 million or more, but less than \$10 million, [~~558~~] **\$591**.
- (d) If the value of the estate is \$10 million or more, [~~1,109~~] **\$1,176**.

(3) For the purpose of determining the value of the estate under this section, the amount of a settlement in a wrongful death action brought for the benefit of the decedent's surviving spouse or dependents is not part of the estate.

(4) Except as provided in subsection (1) of this section, at the time of filing an appearance in a conservatorship proceeding the party filing the appearance must pay the filing fee established under ORS 21.135.

(5) The fees established by this section apply to county courts exercising probate jurisdiction.

**SECTION 7.** ORS 24.115 is amended to read:

24.115. (1) A copy of any foreign judgment authenticated in accordance with the Act of Congress or the statutes of this state may be filed in the office of the clerk of any circuit court of any county of this state. Except as otherwise provided by law, the person filing the copy of the foreign judgment must pay [~~the filing fee established under ORS 21.135~~] **a filing fee of \$190**. The clerk shall treat the foreign judgment in the same manner as a judgment of the circuit court.

(2) A certified copy of any foreign judgment authenticated in accordance with the Act of Congress or the statutes of this state shall be recorded in the County Clerk Lien Record of any county other than the county in which the judgment is originally filed, in order to become a lien upon the real property of the judgment debtor in that county as provided in ORS 18.152.

(3) A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of the circuit court in which the foreign judgment is filed, and may be enforced or satisfied in like manner.

(4) A foreign judgment of a tribal court of a federally recognized Indian tribe that is filed in a circuit court under this section, and that otherwise complies with 26 U.S.C. 414(p) as a domestic relations order as defined in 26 U.S.C. 414(p), is a domestic relations order made pursuant to the domestic relations laws of this state for the purposes of 26 U.S.C. 414(p).

**SECTION 8.** ORS 24.135 is amended to read:

24.135. (1) If the judgment debtor shows the court of any county that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(2) If the judgment debtor shows the court of any county any ground upon which enforcement of a judgment of any court of any county of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

(3) Any person making an appearance in proceedings related to foreign judgments filed under ORS 24.115, including a judgment debtor filing a proceeding seeking a stay of judgment under this section or otherwise seeking relief from enforcement of the judgment, must pay *[the filing fee established under ORS 21.160 (1)(a)]* **a filing fee of \$190.**

**SECTION 9.** ORS 46.570 is amended to read:

46.570. The small claims department of a circuit court shall collect the following filing fees from the plaintiff when a claim is filed in the court, and from the defendant when the defendant demands a hearing:

(1) ~~[\$55]~~ **\$57**, when the amount claimed is \$2,500 or less; and

(2) ~~[\$99]~~ **\$102**, when the amount is more than \$2,500.

**SECTION 10.** ORS 105.130 is amended to read:

105.130. (1) Except as provided in this section and ORS 105.135, 105.137 and 105.140 to 105.161, an action pursuant to ORS 105.110 shall be conducted in all respects as other actions in courts of this state.

(2) Upon filing a complaint in the case of a dwelling unit to which ORS chapter 90 applies, the clerk shall:

(a) Collect a filing fee of ~~[\$83]~~ **\$88**;

(b) Collect any other fee authorized by law or ordinance; and

(c) With the assistance of the plaintiff or an agent of the plaintiff, complete the applicable summons and provide to the plaintiff or an agent of the plaintiff sufficient copies of the summons and complaint for service.

(3) The court shall collect a filing fee of ~~[\$83]~~ **\$88** from a defendant that demands a trial under this section.

(4) An action pursuant to ORS 105.110 shall be brought in the name of a person entitled to possession as plaintiff. The plaintiff may appear in person or through an attorney. In an action to which ORS chapter 90 applies, the plaintiff may also appear through a nonattorney who is an agent or employee of the plaintiff or an agent or employee of an agent of the plaintiff.

(5) Notwithstanding ORS 9.160, 9.320 and ORS chapter 180, a state agency may appear in an action brought pursuant to ORS 105.110 through an officer or employee of the agency if:

(a) The Attorney General consents to the representation of the agency by an officer or employee in the particular action or in the class of actions that includes the particular action; and

(b) The agency, by rule, authorizes an officer or employee to appear on its behalf in the particular type of action being conducted.

(6) An action brought under ORS 105.110 by a person entitled to possession of premises on the basis of circumstances described in ORS 105.115 (1)(d), (e) or (f) is subject to the filing fees and other court or sheriff fees applicable to an action concerning a dwelling unit that is subject to ORS chapter 90. The procedure under ORS 105.105 to 105.168 that is applicable to an action concerning a dwelling unit subject to ORS chapter 90 shall also apply to an action brought under ORS 105.115 (1)(d), (e) or (f), except that the complaint must be in the form prescribed in ORS 105.126.

**SECTION 11.** (1) **The amendments to ORS 21.135, 21.145, 21.155, 21.160, 21.170, 21.180, 24.115, 24.135, 46.570 and 105.130 by sections 1 to 10 of this 2019 Act apply to filings made on or after October 1, 2019.**

(2) **If a civil action or proceeding is filed before October 1, 2019, and an answer or other first appearance is not filed in the proceeding until on or after October 1, 2019, the person filing the answer or other first appearance must pay the appropriate fee prescribed in ORS 21.135, 21.145, 21.155, 21.160, 21.165, 21.170, 21.175, 21.180, 24.115, 24.135, 46.570 and 105.130, as in effect on October 1, 2019.**

(3) Notwithstanding ORS 21.105 and 21.160, if an action or proceeding based on a tort or contract is filed before October 1, 2019, and the complaint or any other pleading filed in the proceeding is amended on or after October 1, 2019, to increase the amount claimed, the person filing the amended pleading must pay an additional filing fee if the filing fee under ORS 21.160 is greater than the filing fee previously paid. The amount of the additional filing fee is equal to the difference between the filing fee previously paid and the filing fee provided by ORS 21.160 for the amount claimed.

(4) Notwithstanding ORS 21.105, 21.170 and 21.180, if a petition for the appointment of a personal representative or the initial documents for a conservatorship proceeding are filed before October 1, 2019, and the inventory filed in the proceeding is amended to increase the value of the estate on or after October 1, 2019, the person filing the amended pleading must pay an additional filing fee that is equal to the difference between the filing fee that was paid by the party when the original pleading was filed and the filing fee that would have been collected under ORS 21.170 or 21.180 if the amount had been pleaded in the original pleading.

### MOTION FEES

**SECTION 12.** ORS 21.200 is amended to read:

21.200. (1) In any action or other proceeding subject to a fee under ORS 21.135, 21.145 or 21.160, a [§105] **\$111** fee must be paid by the party filing one of the following motions and by the party responding to the motion:

- (a) A motion for summary judgment under ORCP 47.
- (b) A motion for judgment notwithstanding the verdict under ORCP 63.
- (c) A motion for new trial under ORCP 64.
- (d) A motion for relief from judgment under ORCP 71.
- (e) A motion for preliminary injunction under ORCP 79.
- (f) A motion seeking remedies for contempt of court.

(2) The fees provided for in this section may not be collected from the state, a county, a city or a school district.

(3) The fees provided for in this section may not be collected for motions made to an arbitrator or mediator in an arbitration or mediation required or offered by a court, or to any motion relating to an arbitration or mediation required or offered by a court.

(4) The clerk shall file a motion or response that is subject to a fee under this section only if the fee required by this section is paid when the motion or response is submitted for filing.

**SECTION 13.** ORS 21.205 is amended to read:

21.205. (1) In any action or other proceeding subject to a fee under ORS 21.155, a [§158] **\$167** fee must be paid by the party filing a motion that seeks entry of a supplemental judgment and by a party responding to the motion.

(2) The fee provided for in subsection (1) of this section does not apply to any motion under ORCP 68, 69 or 71.

(3) In any action or other proceeding subject to a fee under ORS 21.155, a [§53] **\$56** fee must be paid by the party filing one of the following motions and by a party responding to the motion:

- (a) A motion filed under ORS 107.434; and
- (b) A motion seeking remedies for contempt of court.

(4) Only the fees specified by subsection (1) of this section may be collected if a party concurrently files a motion that seeks entry of a supplemental judgment and a motion seeking remedies for contempt of court.

**SECTION 14.** The amendments to ORS 21.200 and 21.205 by sections 12 and 13 of this 2019 Act apply to motions filed on or after October 1, 2019.

### SETTLEMENT CONFERENCE FEES

**SECTION 15.** ORS 21.215 is amended to read:

21.215. (1) In any civil proceeding subject to a fee under ORS 21.155 in which the parties request a settlement conference before a judge, or in which a settlement conference before a judge is required by law or by the court, each party participating in the conference shall pay a [~~\$105~~] **\$111** fee to the court for each day or partial day during which the conference is conducted.

(2) Notwithstanding ORS 3.428 (3), the fee required under subsection (1) of this section must be paid when parties request a settlement conference through a family law facilitation program.

(3) In civil proceedings other than those described in subsection (1) of this section, if the parties request a settlement conference before a judge, or a settlement conference before a judge is required by law or by the court, each party participating in the conference shall pay a [~~\$210~~] **\$223** fee to the court for each day or partial day during which the conference is conducted.

(4) The fees required by this section shall be collected in advance, and are due and payable on the first day of the settlement conference.

**SECTION 16. The amendments to ORS 21.215 by section 15 of this 2019 Act apply to settlement conferences conducted on or after October 1, 2019.**

### TRIAL FEES

**SECTION 17.** ORS 21.225 is amended to read:

21.225. (1) In any civil action, suit or proceeding in the circuit court, other than a protective proceeding under ORS chapter 125 or a probate, adoption or change of name proceeding, trial fees shall be collected as provided in this section.

(2) The clerk of the circuit court shall collect from the plaintiff, appellant or moving party, for a trial on the merits without a jury, a trial fee of [~~\$131~~] **\$139** for each full or partial day of the trial. The amount of the fee for the first day of trial shall be collected in advance and is due and payable when the action, suit or proceeding is set for trial. The amount of the fee for subsequent days of trial shall be collected on the day the trial concludes.

(3)(a) The clerk shall collect from the plaintiff or appellant, for a trial by a jury of more than six persons, a jury trial fee of [~~\$236~~] **\$250** for each full or partial day of the trial. The clerk shall collect from the plaintiff or appellant, for a trial by a jury of six persons, a jury trial fee of [~~\$158~~] **\$167** for each full or partial day of the trial. The amount of the fee for the first day of trial shall be collected in advance and is due and payable when the action, suit or proceeding is set for trial by jury. The amount of the fee for subsequent days of trial shall be collected on the day the trial concludes.

(b) If the plaintiff or appellant waives a trial by jury, and the defendant or respondent desires a trial by jury, the clerk shall collect the jury trial fee from the defendant or respondent, and not from the plaintiff or appellant.

(c) A case in which the jury trial fee for the first day of trial has not been paid shall be tried by the court without a jury, unless the court otherwise orders. If a case in which the jury trial fee for the first day of trial has not been paid is tried by a jury, the clerk shall tax against the losing party the total amount of the jury trial fee. The jury trial fee constitutes a monetary obligation payable to the court, and may be made part of the judgment in the case by the clerk without further notice to the debtor or further order of the court.

(4) If a counterclaim, cross-claim or third party claim is tried on any day other than a day on which the claim of the plaintiff is tried, the clerk shall collect from the party asserting the counterclaim, cross-claim or third party claim the trial fee or jury trial fee, whichever is applicable, for that day, and shall not collect the applicable fee for that day from the plaintiff. If the party asserting a counterclaim, cross-claim or third party claim waives a trial by jury on the claim, and the party defending against the claim desires a trial by jury on the claim, the clerk shall collect the jury trial fee from the defending party and not from the asserting party.

(5) The fees provided for in this section include any reporting of the trial proceedings, but not the preparation of transcripts of a report.

(6) Except as otherwise provided in subsection (3)(c) of this section, the fees provided for in this section that are paid by a party shall be considered costs and disbursements and may be taxed and collected as other costs and disbursements by the prevailing party.

(7) A court shall order that a trial fee paid under the provisions of this section be refunded to the party that paid the fee if all claims in the action or proceeding are decided without the commencement of a trial and the party that paid the fee files a motion and affidavit requesting refund of the fee not more than 15 days after entry of judgment disposing of the action or proceeding.

**SECTION 18. The amendments to ORS 21.225 by section 17 of this 2019 Act apply to trials commenced on or after October 1, 2019.**

## DOCUMENT FEES

**SECTION 19.** ORS 18.999, as amended by section 10, chapter 98, Oregon Laws 2018, is amended to read:

18.999. This section establishes the right of a plaintiff to recover [*certain moneys the plaintiff has expended*] **amounts related to a plaintiff's attempts** to recover a debt under ORS 18.854 or to enforce a judgment and establishes procedures for that recovery. The following apply to this section:

(1) When a plaintiff receives moneys under a garnishment, attachment or payment, the plaintiff may proceed as follows:

(a) Before crediting the total amount of moneys received against the judgment or debt, the plaintiff may recover and keep from the total amount received under the garnishment, attachment or payment any moneys allowed to be recovered under this section.

(b) After recovering moneys as allowed under paragraph (a) of this subsection, the plaintiff shall credit the remainder of the moneys received against the judgment or debt as provided by law.

(2) Moneys recovered under subsection (1)(a) of this section shall not be considered moneys paid on and to be credited against the original judgment or debt sought to be enforced. No additional judgment is necessary to recover moneys in the manner provided in subsection (1)(a) of this section.

(3) The only moneys a plaintiff may recover under subsection (1)(a) of this section are those described in subsection (4) of this section that [*the plaintiff has paid to enforce*] **arise out of the enforcement of** the existing specific judgment or debt that the specific garnishment or attachment was issued to enforce or upon which the payment was received. Moneys recoverable under subsection (1)(a) of this section remain recoverable and, except as provided under subsection (8) of this section, may be recovered from moneys received by the plaintiff under subsequent garnishments, attachments or payments on the same specific judgment or debt.

(4) This section allows the recovery only of the following:

(a) Statutorily established moneys that meet the requirements under subsection (3) of this section, as follows:

(A) Garnishee's search fees under ORS 18.790.

(B) Fees for delivery of writs of garnishment under ORS 18.652.

(C) Circuit court fees as provided under ORS 21.235 and 21.258.

(D) County court fees as provided under ORS 5.125.

(E) County clerk recording fees as provided in ORS 205.320.

(F) Actual fees or disbursements made under ORS 21.300.

(G) Costs of execution as provided in ORS 105.112.

[*(H) Fees paid to an attorney for issuing a garnishment in an amount not to exceed \$45 for each garnishment.*]

**(H) An issuance fee in the amount of \$47 for each writ issued by an attorney under ORS 18.635 (3).**

(I) Costs of an execution sale as described in ORS 18.950 (2).

(J) Fees paid under ORS 21.200 for motions and responses to motions filed after entry of a judgment.

(K) Amounts paid to a sheriff for the fees and expenses of executing a warrant under ORS 105.510.

(b) Interest on the amounts specified in paragraph (a) of this subsection at the rate provided for judgments in ORS 82.010 for the period of time beginning with the expenditure of the amount and ending upon recovery of the amount under this section.

(5) The plaintiff shall be responsible for doing all of the following:

(a) Maintaining a precise accounting of moneys recovered under subsection (1)(a) of this section and making the accounting available for any proceeding relating to that judgment or debt.

(b) Providing reasonable notice to the defendant of moneys the plaintiff recovers under subsection (1)(a) of this section.

(6) Moneys recovered under subsection (1)(a) of this section remain subject to all other provisions of law relating to payments, or garnished or attached moneys including, but not limited to, those relating to exemption, claim of exemption, overpayment and holding periods.

(7) Nothing in this section limits the right of a plaintiff to recover moneys described in this section or other moneys in any manner otherwise allowed by law.

(8) A writ of garnishment or attachment is not valid if issued solely to recover moneys recoverable under subsection (1)(a) of this section unless the right to collect the moneys is first reduced to a judgment or to a debt enforceable under ORS 18.854.

**SECTION 20.** ORS 21.235 is amended to read:

21.235. (1) A circuit court shall collect a fee of [~~\$17~~] **\$18** for:

(a) Making or entering a transcript of a judgment.

(b) Preparing a certified copy of a satisfaction document under ORS 18.225 (5).

(c) Issuing notices of restitution as provided in ORS 105.151.

(d) Any other service that is statutorily made subject to the fee established in this section.

(2) A circuit court shall collect a fee of [~~\$45~~] **\$47** for issuing a writ of execution or a writ of garnishment.

**SECTION 21.** (1) **The amendments to ORS 18.999 and 21.235 (2) by sections 19 and 20 of this 2019 Act apply to writs of garnishment issued on or after October 1, 2019.**

**(2) The amendments to ORS 21.235 (1) by section 20 of this 2019 Act apply to services described in ORS 21.235 that are rendered on or after October 1, 2019.**

## MARRIAGE SOLEMNIZATION

**SECTION 22.** ORS 106.120 is amended to read:

106.120. (1) As used in this section:

(a) "Judicial officer" means:

(A) A judicial officer of this state as that term is defined in ORS 1.210 and includes but is not limited to a judge of a municipal court and a justice of the peace.

(B) An active judge of a federal court.

(C) An active United States magistrate judge.

(b) "Secular organization" means an organization that occupies a place in the lives of the organization's members parallel to that filled by a church or particular religious authority.

(2) Marriages may be solemnized by:

(a) A judicial officer;

(b) A county clerk;

(c) Religious congregations or organizations as indicated in ORS 106.150 (2);

(d) A clergyperson of any religious congregation or organization who is authorized by the religious congregation or organization to solemnize marriages;

(e) Secular organizations as indicated in ORS 106.150 (2); or

(f) A celebrant or officiant of any secular organization described in paragraph (e) of this subsection who is authorized by the secular organization to solemnize marriages.

(3) A person authorized to solemnize marriages under subsection (2) of this section may solemnize a marriage anywhere in this state.

(4)(a) When a marriage is solemnized by a tax, appellate or circuit judge of this state, the clerk of the court or the county clerk shall collect a fee of ~~[\$110]~~ **\$117** and deposit the fee in the Judicial Department Operating Account established in ORS 1.009.

(b) When a marriage is solemnized by a county clerk, the county clerk shall collect a fee of ~~[\$110]~~ **\$117**, as provided in ORS 205.320.

(c) The fee described in this subsection may be collected only if:

(A) The marriage is solemnized during normal working hours, excluding holidays;

(B) The marriage is solemnized in court facilities or a county clerk's office; or

(C) More than a minimal amount of staff time or other court or county clerk's office resources are used in connection with the solemnization.

(d) The Chief Justice of the Supreme Court or the county clerk may establish a written procedure for waiver of the fee required under this subsection in exigent circumstances, including but not limited to indigency of the parties to the marriage.

(5) In addition to any fee collected under subsection (4) of this section, a judicial officer of this state and a county clerk may charge and accept an agreed upon personal payment not to exceed \$100 plus actual costs for the solemnization of a marriage if that solemnization is performed:

(a) At a place other than the courthouse where the judicial officer or county clerk serves; or

(b) Outside of the judicial officer's or county clerk's normal working hours.

(6) The charging and accepting of a personal payment by a judicial officer of this state or a county clerk under subsection (5) of this section does not constitute a violation of any of the provisions of ORS chapter 244.

(7) The amount of actual costs charged by a judicial officer of this state or a county clerk under subsection (5) of this section may not exceed:

(a) Actual expenses for food and lodging as verified by receipts.

(b) If travel is made by personal vehicle, the actual number of round-trip miles from the judicial officer's or county clerk's home or office, whichever is greater, compensated at the rate of reimbursement then provided by the State of Oregon to its employees or, if travel is made by a commercial carrier, reimbursement shall be made of the actual costs thereof, verified by receipts.

(8) A judicial officer of this state or a county clerk shall maintain records of the amount of personal payments received for performing marriages, of actual costs and the supporting documentation related thereto for a period of four years.

(9) The parties to a marriage solemnized by a tax, appellate or circuit judge of this state shall show to the judge proof of payment of the fee required under subsection (4)(a) of this section before solemnization. Except as provided in subsection (4)(d) of this section, the judge may not solemnize a marriage without proof of payment of the fee.

**SECTION 23.** ORS 205.320 is amended to read:

205.320. (1) In every county there shall be charged and collected in advance by the county clerk, for the benefit of the county, the following fees, and no more, for the following purposes and services:

(a) For filing and making entry when required by law of any instrument required or permitted by law to be filed, when it is not recorded, \$5 for each page.

(b) For filing and making entry of the assignment or satisfaction of any filed, but not recorded, instrument, \$5 for each page.

(c) For each official certificate, \$3.75.

(d)(A) For recording any instrument required or permitted by law to be recorded, \$5 for each page, but the minimum fee shall not be less than \$5. As used in this subparagraph, "page" means one side of a sheet 14 inches, or less, long and 8-1/2 inches, or less, wide.

(B) For supplying to private parties copies of records or files, not more than \$3.75 for locating a record requested by the party and 25 cents for each page. As used in this subparagraph, "page" means one side of a sheet 14 inches, or less, long and 8-1/2 inches, or less, wide.

(C) For each official certificate, \$3.75.

(e) For taking an affidavit for and making and issuing a marriage license and registering the return of the license, or for taking an affidavit for and registering a Declaration of Domestic Partnership, \$25.

(f) For solemnizing a marriage under ORS 106.120, [§110] **\$117**. This paragraph does not require that the county clerk charge a fee for solemnizing a marriage after normal working hours or on Saturdays or legal holidays. This paragraph does not prohibit a county clerk from charging and accepting a personal payment for solemnizing a marriage if otherwise authorized by ORS 106.120.

(g) For taking and certifying acknowledgment or proof of execution of any instrument, the fee established in the schedule adopted by the Secretary of State under ORS 194.400.

(h) For issuing any license required by law, other than a marriage or liquor license, and for which no fee is otherwise provided by law, \$5.

(i) For any service the clerk may be required or authorized to perform and for which no fee is provided by law, such fees as may favorably compare with those established by this section for similar services and as may be established by order or rule of the county court or board of county commissioners.

(j) For recording any instrument under ORS 205.130 (2), as required by ordinance pursuant to ORS 203.148.

(k) In addition to and not in lieu of the fees charged under paragraph (d) of this subsection, for each additional municipal assessment lien recorded under ORS 93.643, \$5.

(L) In addition to and not in lieu of the fees charged under paragraph (d) of this subsection, for each additional assignment, release or satisfaction of any recorded instrument, \$5.

(m) In addition to and not in lieu of the fees charged under paragraph (d) of this subsection, for each additional transaction described under ORS 205.236, \$5.

(n) In addition to and not in lieu of the fees charged under paragraph (d) of this subsection, for each additional lien recorded under ORS 311.675, \$5.

(o) For preparing and recording the certificate under ORS 517.280, \$20 or such other fee that is established by the county governing body.

(p) In addition to and not in lieu of the fees charged under paragraph (d) of this subsection, for each additional claim listed on an affidavit of annual compliance under ORS 517.210, \$5.

(q) In addition to and not in lieu of the fees charged under paragraph (d) of this subsection, for each additional name listed on a cooperative contract under ORS 62.360 (2) or for recording the termination of a cooperative contract under ORS 62.360 (4), \$5.

(2) Notwithstanding any other law, five percent of any fee or tax that is not collected for the benefit of the county clerk shall be deducted from the fee or tax. The moneys deducted shall be expended for acquiring storage and retrieval systems, payment of expenses incurred in collecting the fee or tax and maintaining and restoring records as authorized by the county clerk. Moneys collected under this subsection shall be deposited in a county clerk records fund established by the county governing body. No moneys shall be deducted under this subsection from:

(a) Fees collected for the Domestic Violence Fund under ORS 106.045.

(b) Fees collected for conciliation services under ORS 107.615.

(c) Real estate transfer taxes enacted prior to January 1, 1998.

(d) Fees collected under ORS 205.323 for the Oregon Land Information System Fund.

(e) Fees collected under ORS 205.323 (1)(c) for the housing-related programs listed in ORS 294.187 (2)(b).

**SECTION 24. The amendments to ORS 106.120 and 205.320 by sections 22 and 23 of this 2019 Act apply to marriages solemnized on or after October 1, 2019.**

## APPEAL OF ARBITRATION DECISION AND AWARD

**SECTION 25.** ORS 36.425 is amended to read:

36.425. (1) At the conclusion of arbitration under ORS 36.400 to 36.425 of a civil action, the arbitrator shall file the decision and award with the clerk of the court that referred the action to arbitration, together with proof of service of a copy of the decision and award upon each party. If the decision and award require the payment of money, including payment of costs or attorney fees, the decision and award must be substantially in the form prescribed by ORS 18.042.

(2)(a) Within 20 days after the filing of a decision and award with the clerk of the court under subsection (1) of this section, a party against whom relief is granted by the decision and award or a party whose claim for relief was greater than the relief granted to the party by the decision and award, but no other party, may file with the clerk a written notice of appeal and request for a trial de novo of the action in the court on all issues of law and fact. A copy of the notice of appeal and request for a trial de novo must be served on all other parties to the proceeding. After the filing of the written notice a trial de novo of the action shall be held. If the action is triable by right to a jury and a jury is demanded by a party having the right of trial by jury, the trial de novo shall include a jury.

(b) If a party files a written notice under paragraph (a) of this subsection, a trial fee or jury trial fee, as applicable, shall be collected as provided in ORS 21.225.

(c) A party filing a written notice under paragraph (a) of this subsection shall deposit with the clerk of the court the sum of [~~\$150~~] **\$159**. If the position under the arbitration decision and award of the party filing the written notice is not improved as a result of a judgment in the action on the trial de novo, the clerk shall dispose of the sum deposited in the same manner as a fee collected by the clerk. If the position of the party is improved as a result of a judgment, the clerk shall return the sum deposited to the party. If the court finds that the party filing the written notice is then unable to pay all or any part of the sum to be deposited, the court may waive in whole or in part, defer in whole or in part, or both, the sum. If the sum or any part thereof is so deferred and the position of the party is not improved as a result of a judgment, the deferred amount shall be paid by the party according to the terms of the deferral.

(3) If a written notice is not filed under subsection (2)(a) of this section within the 20 days prescribed, the court shall cause to be prepared and entered a judgment based on the arbitration decision and award. A judgment entered under this subsection may not be appealed.

(4) Notwithstanding any other provision of law or the Oregon Rules of Civil Procedure:

(a) If a party requests a trial de novo under the provisions of this section, the action is subject to arbitration under the provisions of ORS 36.405 (1)(a), the party is entitled to attorney fees by law or contract, and the position of the party is not improved after judgment on the trial de novo, the party shall not be entitled to an award of attorney fees or costs and disbursements incurred by the party before the filing of the decision and award of the arbitrator, and shall be taxed the reasonable attorney fees and costs and disbursements incurred by the other parties to the action on the trial de novo after the filing of the decision and award of the arbitrator.

(b) If a party requests a trial de novo under the provisions of this section, the action is subject to arbitration under ORS 36.405 (1)(a), the party is not entitled to attorney fees by law or contract, and the position of the party is not improved after judgment on the trial de novo, pursuant to subsection (5) of this section the party shall be taxed the reasonable attorney fees and costs and disbursements of the other parties to the action on the trial de novo incurred by the other parties after the filing of the decision and award of the arbitrator.

(c) If a party requests a trial de novo under the provisions of this section, the action is subject to arbitration under ORS 36.405 (1)(b), and the position of the party is not improved after judgment on the trial de novo, the party shall not be entitled to an award of attorney fees or costs and disbursements and shall be taxed the costs and disbursements incurred by the other parties after the filing of the decision and award of the arbitrator.

(5) If a party is entitled to an award of attorney fees under subsection (4) of this section, but is also entitled to an award of attorney fees under contract or another provision of law, the court shall award reasonable attorney fees pursuant to the contract or other provision of law. If a party

is entitled to an award of attorney fees solely by reason of subsection (4) of this section, the court shall award reasonable attorney fees not to exceed the following amounts:

(a) Twenty percent of the judgment, if the defendant requests the trial de novo but the position of the defendant is not improved after the trial de novo; or

(b) Ten percent of the amount claimed in the complaint, if the plaintiff requests the trial de novo but the position of the plaintiff is not improved after the trial de novo.

(6) Within seven days after the filing of a decision and award under subsection (1) of this section, a party may file with the court and serve on the other parties to the arbitration written exceptions directed solely to the award or denial of attorney fees or costs. Exceptions under this subsection may be directed to the legal grounds for an award or denial of attorney fees or costs, or to the amount of the award. Any party opposing the exceptions must file a written response with the court and serve a copy of the response on the party filing the exceptions. Filing and service of the response must be made within seven days after the service of the exceptions on the responding party. A judge of the court shall decide the issue and enter a decision on the award of attorney fees and costs. If the judge fails to enter a decision on the award within 20 days after the filing of the exceptions, the award of attorney fees and costs shall be considered affirmed. The filing of exceptions under this subsection does not constitute an appeal under subsection (2) of this section and does not affect the finality of the award in any way other than as specifically provided in this subsection.

(7) For the purpose of determining whether the position of a party has improved after a trial de novo under the provisions of this section, the court shall not consider any money award or other relief granted on claims asserted by amendments to the pleadings made after the filing of the decision and award of the arbitrator.

**SECTION 26. The amendments to ORS 36.425 by section 25 of this 2019 Act apply to notices filed under ORS 36.425 (2)(a) on or after October 1, 2019.**

#### **PREVAILING PARTY FEES**

**SECTION 27.** ORS 20.190 is amended to read:

20.190. (1) Except as provided in subsections (2) to (5) of this section, a prevailing party in a civil action or proceeding who has a right to recover costs and disbursements in the following cases also has a right to recover, as a part of the costs and disbursements, the following additional amounts:

(a) In the Supreme Court or Court of Appeals, on an appeal, \$100.

(b) In a circuit court:

(A) When judgment is given without trial of an issue of law or fact or on an appeal, \$85; or

(B) When judgment is given after trial of an issue of law or fact, \$105.

(c) In a small claims department, a county court or justice court:

(A) When judgment is given without trial of an issue of law or fact or on an appeal, \$50; or

(B) When judgment is given after trial of an issue of law or fact, \$60.

(2) In lieu of the prevailing party fee provided for in subsection (1) of this section, in any civil action or proceeding in which recovery of money or damages is sought, a prevailing party who has a right to recover costs and disbursements also has a right to recover, as a part of the costs and disbursements, the following additional amounts:

(a) In a circuit court:

(A) When judgment is given without trial of an issue of law or fact, [~~\$325~~] **\$345**; or

(B) When judgment is given after trial of an issue of law or fact, [~~\$600~~] **\$640**.

(b) In a small claims department, a county court or justice court:

(A) When judgment is given without trial of an issue of law or fact, [~~\$110~~] **\$117**; or

(B) When judgment is given after trial of an issue of law or fact, [~~\$125~~] **\$135**.

(3) In addition to the amounts provided for in subsection (2) of this section, in any civil action or proceeding in a circuit court in which recovery of money or damages is sought, the court may

award to the prevailing party up to an additional \$5,000 as a prevailing party fee. The court shall consider the following factors in making an award under the provisions of this subsection:

(a) The conduct of the parties in the transactions or occurrences that gave rise to the litigation, including any conduct of a party that was reckless, willful, malicious, in bad faith or illegal.

(b) The objective reasonableness of the claims and defenses asserted by the parties.

(c) The extent to which an award of a larger prevailing party fee in the case would deter others from asserting good faith claims or defenses in similar cases.

(d) The extent to which an award of a larger prevailing party fee in the case would deter others from asserting meritless claims and defenses.

(e) The objective reasonableness of the parties and the diligence of the parties and their attorneys during the proceedings.

(f) The objective reasonableness of the parties and the diligence of the parties in pursuing settlement of the dispute.

(g) Any award of attorney fees made to the prevailing party as part of the judgment.

(h) Such other factors as the court may consider appropriate under the circumstances of the case.

(4) Nonprevailing parties are jointly liable for the prevailing party fees provided for in this section. A court may not award more than one prevailing party fee to a prevailing party under this section, or more than one prevailing party fee against a nonprevailing party regardless of the number of parties in the action, and, upon being paid the amount of the award, the prevailing party may not seek recovery of any additional amounts under the provisions of this section from any other nonprevailing party.

(5) In any appeal from the award or denial of a prevailing party fee under subsection (2) of this section, the court reviewing the award may not modify the decision of the court in making or denying an award, or the decision of the court as to the amount of the award, except upon a finding of an abuse of discretion.

(6) The prevailing party fees provided for in this section may not be awarded in the following proceedings:

(a) A class action proceeding under ORCP 32.

(b) A condemnation proceeding.

(c) Proceedings under the provisions of ORS chapters 25, 107, 108, 109 and 110.

(7) Mandatory arbitration under ORS 36.400 to 36.425 does not constitute a trial of an issue of law or fact for the purposes of this section.

**SECTION 28. The amendments to ORS 20.190 by section 27 of this 2019 Act apply to actions commenced on or after October 1, 2019.**

#### CAPTIONS

**SECTION 29. The unit captions used in this 2019 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2019 Act.**

#### EMERGENCY CLAUSE

**SECTION 30. This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.**

**Passed by House June 25, 2019**

.....  
Timothy G. Sekerak, Chief Clerk of House

.....  
Tina Kotek, Speaker of House

**Passed by Senate June 29, 2019**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2019

**Approved:**

.....M,....., 2019

.....  
Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2019

.....  
Bev Clarno, Secretary of State