

Enrolled
House Bill 4168

Sponsored by JOINT COMMITTEE ON WAYS AND MEANS

CHAPTER

AN ACT

Relating to courts; creating new provisions; amending ORS 2.560, 19.370, 21.007, 21.160, 21.165, 181.820, 181.833, 305.490 and 305.501 and ORCP 65 A; and declaring an emergency.

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

FILING FEES GENERALLY

SECTION 1. (1) If a civil action or proceeding was filed before October 1, 2011, and an answer or other first appearance is not filed in the proceeding until on or after the effective date of this 2012 Act, 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 and 21.180, as in effect on the effective date of this 2012 Act.

(2) Notwithstanding ORS 21.105 and 21.160, if an action or proceeding based on a tort or contract was filed before October 1, 2011, and the complaint or any other pleading filed in the proceeding is amended on or after the effective date of this 2012 Act 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.

(3) Notwithstanding ORS 21.105 and 21.160, if a petition for the appointment of a personal representative, or the initial documents for a conservatorship proceeding, was filed before October 1, 2011, and the inventory filed in the proceeding is amended to increase the value of the estate on or after the effective date of this 2012 Act, 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.

(4) The amount of any fee collected in a circuit court for an answer or other first appearance, or for any amended pleading, that was filed on or after October 1, 2011, and before the effective date of this 2012 Act, is validated.

FILING FEES FOR CONTRACT AND TORT ACTIONS

SECTION 2. 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 \$150.

(b) If the amount claimed is more than \$10,000 and less than \$50,000, the court shall collect a filing fee of \$240.

(c) If the amount claimed is [*more than*] \$50,000 **or more**, and less than \$1 million, the court shall collect a filing fee of \$505.

(d) If the amount claimed is \$1 million or more and less than \$10 million, the court shall collect a fee of \$755.

(e) If the amount claimed is \$10 million or more, the court shall collect a filing fee of \$1,005.

(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 3. The amount of any fee collected in a circuit court pursuant to ORS 21.160, as in effect immediately before the effective date of this 2012 Act, for an action in tort or contract in which the amount claimed was \$50,000, is validated.

THIRD PARTY DEFENDANTS

SECTION 4. ORS 21.165 is amended to read:

21.165. (1) When a person files a third-party complaint in a civil action or proceeding in circuit court and the complaint names a defendant who has not already appeared in the proceeding, the clerk of the court shall collect from the third-party plaintiff the same filing fee that would be required of a plaintiff filing the same complaint in an original action.

(2) When a third-party defendant files an appearance in a civil action or proceeding in circuit court, **and defendant has not already appeared in the action or proceeding**, the clerk of the court shall collect the same filing fee that would be required of a defendant filing the same appearance in an original action.

APPELLATE SETTLEMENT PROGRAM

SECTION 5. ORS 2.560 is amended to read:

2.560. (1) The Court of Appeals shall sit primarily in Salem, but also may sit in other locations designated under ORS 1.085 (2).

(2) The Court of Appeals may make and enforce all rules necessary for the prompt and orderly dispatch of the business of the court, and the remanding of causes to the lower courts, and not inconsistent with applicable rules made or orders issued by the Chief Justice of the Supreme Court or the Chief Judge of the Court of Appeals.

(3) The Court of Appeals shall establish an appellate [*mediation*] **settlement** program and [*make*] **adopt** and enforce all rules necessary for the prompt and orderly dispatch of the business of the program. [*The parties to the appeal must pay the following fees for the mediator:*]

[*(a) \$150 for an appeal related to workers' compensation under ORS chapter 656; and*]

[*(b) \$350 for all other appeals.*]

(4) Rules adopted by the Court of Appeals under subsection (3) of this section shall establish fees payable for services provided under the program.

SECTION 6. The amount of any fee collected under ORS 2.560, as in effect immediately before the effective date of this 2012 Act, for a case assigned to the appellate conference program before the effective date of this 2012 Act, is validated.

SECTION 7. ORS 19.370 is amended to read:

19.370. (1) If a transcript is prepared from audio records by a person other than the reporter, then the reporter shall certify the audio records and the transcript shall be certified by the person preparing it. In all other cases the transcript shall be certified by the reporter or the trial judge.

(2) Except as provided in subsection (3) of this section, the person preparing the transcript shall file the transcript with the trial court administrator within 30 days after the filing of the notice of appeal. The person preparing the transcript shall give immediate notice in writing to the parties that the transcript has been filed. Except as provided in subsection (4) of this section, the person preparing the transcript shall serve the respondent with a copy of the transcript and shall, at the time of filing the original transcript, file proof of such service with the trial court administrator, and with the State Court Administrator.

(3) If an appeal is referred to [*mediation under the rules of*] the appellate [*mediation*] **settlement** program established by the Court of Appeals pursuant to ORS 2.560, the transcript must be filed within 30 days after expiration of the period of time specified in the rules during which the appeal is held in abeyance, or within 30 days after the court directs that the appeal no longer be held in abeyance, whichever occurs first.

(4) If there are two or more parties in addition to the appellant who have appeared in the trial court and who are represented by different attorneys, the person preparing the transcript shall at the time of filing the original transcript deposit a copy thereof with the trial court administrator for use by all such other parties. The person preparing the transcript shall serve notice of such deposit upon all such parties and file proof of such service with the trial court administrator and with the State Court Administrator.

(5) Except as provided in subsection (6) of this section, within 15 days after the transcript is filed, any party may move the trial court for an order to correct any errors appearing in the transcript or, where the interests of justice require, to have additional parts of the proceedings included in the transcript. If two or more persons are preparing parts of the transcript, the motion must be filed within 15 days after the last part of the transcript is filed. A copy of any such motion shall be filed with the court to which the appeal is made. The trial court shall direct the making of such corrections and the adding of such matter as may be appropriate and shall fix the time within which such corrections or additions shall be made.

(6) If an appeal is referred to [*mediation under the rules of*] the appellate [*mediation*] **settlement** program established by the Court of Appeals pursuant to ORS 2.560, and the transcript is filed during any period of time specified in the rules during which the appeal is held in abeyance, a motion under subsection (5) of this section must be filed within 15 days after expiration of the period of time the appeal is held in abeyance, or within 15 days after the court directs that the appeal no longer be held in abeyance, whichever occurs first.

(7) Upon the denial of a motion to correct or add to the transcript under subsection (5) of this section, or upon the making of such corrections or additions as may be ordered, whichever last occurs, the trial court shall enter an order settling the transcript and send copies thereof to each of the parties or their attorneys and to the State Court Administrator. In the absence of a motion to correct or add to the transcript, the transcript shall be deemed automatically settled 15 days after it is filed.

SECTION 8. ORS 21.007 is amended to read:

21.007. It is the intent of the Legislative Assembly that funding be provided to the following entities by appropriations each biennium to fund programs, services and activities that were funded through court fees before the 2011-2013 biennium:

(1) To the counties of this state for the purposes of funding mediation services, conciliation services and other services in domestic relations cases.

(2) To the counties of this state for the purposes of funding the operation of law libraries or of providing law library services.

(3) To the Oregon University System to fund the programs and expenses of the Mark O. Hatfield School of Government and the University of Oregon School of Law under ORS 36.100 to 36.238 and 183.502.

(4) To the Housing and Community Services Department for the purpose of funding programs that defray the cost of rent for dwelling units for very low income households.

(5) To the Oregon University System to fund clinical legal education programs at accredited institutions of higher education that provide civil legal services to victims of domestic violence, stalking or sexual assault.

(6) To the State Department of Agriculture for the purpose of funding mediation programs established by the department, other than individual farm credit mediations.

(7) To the Judicial Department for the purposes of funding the appellate [*mediation*] **settlement** program established under ORS 2.560.

(8) To the Department of Human Services for the funding of the Office of Children's Advocate.

SEX OFFENDER REPORTING

SECTION 9. ORS 181.820 is amended to read:

181.820. (1)(a) No sooner than 10 years after termination of supervision on probation, conditional release, parole or post-prison supervision, a person required to report under ORS 181.595, 181.596 or 181.597 may file a petition in circuit court for an order relieving the person of the duty to report. **The person must pay the filing fee established under ORS 21.135. A petition may be filed under this section only if:**

(A) The person has only one conviction for a sex crime;

(B) The sex crime was a misdemeanor or Class C felony or, if committed in another state, would have been a misdemeanor or Class C felony if committed in this state; and

(C) The person has not been determined to be a predatory sex offender as described in ORS 181.585.

(b)(A) Except as otherwise provided in this paragraph, the petition must be filed in the circuit court of the county in which the person was convicted of the sex crime.

(B) If the person was convicted of the sex crime in another state, the petition must be filed in the circuit court of the county in which the person resides.

(c) The district attorney of the county in which the petition is filed shall be named and served as the respondent in the petition.

(2) The court shall hold a hearing on the petition. In determining whether to grant the relief requested, the court shall consider:

(a) The nature of the offense that required reporting;

(b) The age and number of victims;

(c) The degree of violence involved in the offense;

(d) Other criminal and relevant noncriminal behavior of the petitioner both before and after the conviction that required reporting;

(e) The period of time during which the petitioner has not reoffended;

(f) Whether the petitioner has successfully completed a court-approved sex offender treatment program; and

(g) Any other relevant factors.

(3) If the court is satisfied by clear and convincing evidence that the petitioner is rehabilitated and that the petitioner does not pose a threat to the safety of the public, the court shall enter an order relieving the petitioner of the duty to report. When the court enters an order under this subsection, the petitioner shall send a certified copy of the court order to the Department of State Police.

SECTION 10. ORS 181.833 is amended to read:

181.833. (1) A person who meets the criteria described in ORS 181.830 and seeks relief from the requirement to report under ORS 181.595, 181.596 or 181.597 shall:

(a) If the person was convicted in this state of the offense or adjudicated in this state for the act giving rise to the obligation to report, file a motion for relief from the requirement to report and an affidavit of eligibility with the circuit court of the county in which the person was convicted or adjudicated and serve a copy of the motion and affidavit on the district attorney for that county.

(b) If the person was convicted in another United States court of the offense or adjudicated in another United States court for the act giving rise to the obligation to report, file a petition for relief from the requirement to report and an affidavit of eligibility with the circuit court of the county in which the person resides and serve a copy of the petition and affidavit on the district attorney for that county.

(2) **A person filing a motion or petition under subsection (1) of this section must pay the filing fee established under ORS 21.135.** The court shall schedule a hearing more than 90 days from the date of the filing *[described in subsection (1) of this section]*. The court shall notify the person and the district attorney of the date of the hearing.

(3)(a) Upon receipt of the affidavit described in subsection (1) of this section, the district attorney shall determine whether the district attorney contests the request for relief.

(b) If the district attorney does not contest the request for relief, the district attorney shall submit an order to the court relieving the person of the reporting requirements described in ORS 181.595, 181.596 or 181.597. The court shall enter the order.

(c) If the district attorney contests the request for relief, the district attorney shall notify the person of that determination within 90 days after receipt of the affidavit.

(4) At the hearing, the person has the burden of proving that the person meets the eligibility requirements described in ORS 181.830.

(5)(a) At the hearing, the victim of the offense or act giving rise to the obligation to report:

(A) May testify voluntarily upon request.

(B) May be compelled by the person to testify only if the court issues an order allowing a subpoena upon the motion of the person.

(b) A copy of the motion for a subpoena under this subsection must be served on the district attorney.

(c) The court may not issue an order allowing a subpoena under this subsection unless the person can demonstrate good cause by showing that the victim's testimony is material and favorable to the person's request for relief.

(d) If the court grants an order allowing a subpoena under this subsection, the court may allow the victim to appear by telephone or other communication device approved by the court.

(6)(a) If the court finds, by a preponderance of the evidence, that the person meets the eligibility requirements described in ORS 181.830, the court shall enter an order granting the request for relief from the requirement to report.

(b) If the court does not make the finding described in paragraph (a) of this subsection, the court shall enter an order denying the request for relief.

(7)(a) If the court relieves the person from the requirement to report, the person shall send a certified copy of the court order to the Department of State Police.

(b) Upon receipt of the order, the Department of State Police shall remove from the Law Enforcement Data System the sex offender information obtained from the sex offender registration form submitted under ORS 181.595, 181.596 or 181.597.

(8) The order entered under subsection (6) of this section is not subject to appeal.

(9) The Oregon Evidence Code and the Oregon Rules of Civil Procedure do not apply to the hearing described in subsection (2) of this section.

FEES CHARGEABLE TO PUBLIC BODIES

SECTION 11. The fees prescribed in ORS 21.235, and the fees established or authorized by the Chief Justice of the Supreme Court under ORS 21.258, may not be collected from the state, from the county in which the court is located or from a city in the county in which the court is located.

FEES IN OREGON TAX COURT

SECTION 12. ORS 305.490 is amended to read:

305.490. (1)(a) Plaintiffs or petitioners filing a complaint or petition in the tax court shall pay the filing fee established under ORS 21.135 at the time of filing for each complaint or petition.

(b) In addition to the fee imposed under paragraph (a) of this subsection, plaintiffs or petitioners filing a complaint under ORS 305.501 (5) shall pay the filing fee established under ORS 21.135 at the time of filing the complaint.

(2) Neither the State of Oregon, nor any county, school district, municipal corporation or other public corporation therein, nor any officer of any such public political division or corporation, appearing in the representative capacity of the officer of any public political division or corporation, shall be required to pay the fee prescribed under this section. The party entitled to costs and disbursements on such appeal shall recover from the opponent of the party the amount so paid upon order of the court, as in equity suits in the circuit court.

(3)(a) If, in any proceeding before the tax court judge involving taxes upon or measured by net income in which an individual taxpayer is a party, or involving inheritance or estate taxes, the court grants a refund claimed by the executor or taxpayer or denies in part or wholly an additional assessment of taxes claimed by the Department of Revenue to be due from the estate or taxpayer, the court may allow the taxpayer, in addition to costs and disbursements, the following:

(A) Reasonable attorney fees for the proceeding under this subsection and for the prior proceeding in the matter, if any, before the magistrate; and

(B) Reasonable expenses as determined by the court. Expenses include accountant fees and fees of other experts incurred by the executor or individual taxpayer in preparing for and conducting the proceeding before the tax court judge and the prior proceeding in the matter, if any, before the magistrate.

(b) Payment of attorney fees or reasonable expenses under this subsection shall be made by the Department of Revenue in the manner provided by ORS 305.790.

(4)(a) If, in any proceeding before the tax court judge involving ad valorem property taxation, exemptions, special assessments or omitted property, the court finds in favor of the taxpayer, the court may allow the taxpayer, in addition to costs and disbursements, the following:

(A) Reasonable attorney fees for the proceeding under this subsection and for the prior proceeding in the matter, if any, before the magistrate; and

(B) Reasonable expenses as determined by the court. Expenses include fees of experts incurred by the individual taxpayer in preparing for and conducting the proceeding before the tax court judge and the prior proceeding in the matter, if any, before the magistrate.

(b) Payment of attorney fees or reasonable expenses under this subsection shall be made by the Department of Revenue in the manner provided by ORS 305.790.

(5) All fees and other moneys received or collected by the clerk by virtue of the office of the clerk shall be paid over to the State Treasurer and shall be held by the clerk in the General Fund as miscellaneous receipts.

SECTION 13. ORS 305.501 is amended to read:

305.501. (1) Except as provided in subsection (2) of this section, an appeal to the tax court shall be heard by a tax court magistrate unless specially designated by the tax court judge for hearing in the regular division. In any matter arising under the property tax laws and involving a county or county assessor that is designated for hearing in the regular division, the Department of Revenue shall be substituted for the county as a party. **The plaintiff or petitioner in the appeal is not required to pay any additional filing fee if the proceeding is specially designated by the tax court judge for hearing in the regular division.**

(2) A party to the appeal may request mediation, or the tax court on its own motion may assign the matter to mediation. If the mediation does not result in an agreed settlement within 60 days after the end of the mediation session, the appeal shall, absent a showing of good cause for a continuance, be assigned to a magistrate for hearing.

(3) The tax court, with the assistance of the State Court Administrator, shall establish procedures for magistrate division hearings and mediation.

(4)(a) Subject to the rules of practice and procedure established by the tax court, a magistrate is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, and may conduct the hearing in any manner that will achieve substantial justice. A hearing may be conducted in person or by telephone. Magistrates may confer with each other in order to reach a decision on any matter.

(b) All written magistrate decisions shall be mailed to the parties to the appeal and to the Department of Revenue within five days after the date of entry of the written decision.

(5)(a) Any party dissatisfied with a written decision of a magistrate may appeal the decision to the judge of the tax court by filing a complaint in the regular division of the tax court within 60 days after the date of entry of the written decision.

(b) If a decision of a magistrate involves any matter arising under the property tax laws and a county was a party to the proceeding before the magistrate, the Department of Revenue may file a notice of appeal whether or not the department had intervened in the proceeding before the magistrate. In such cases, the department shall appear before the tax court judge in any proceeding on appeal.

(c) If a decision of a magistrate involves any matter arising under the property tax laws and a party other than a county appeals the decision to the tax court judge, the Department of Revenue shall be the defendant.

(d) Appeal to the judge of the tax court is the sole and exclusive remedy for review of a written decision of a magistrate.

(6) Appeal of a final decision of a magistrate before the judge of the tax court shall be as provided in ORS 305.425 (1) and 305.570.

(7) If no appeal is taken to the tax court judge within 60 days, the decision of the magistrate shall become final. The tax court shall enter a judgment enforcing all final decisions of the magistrate, which judgment shall be binding upon all parties. ORS 305.440 (2) applies to the final determination of any property tax matter.

REFEREE FEES

SECTION 14. ORCP 65 A is amended to read:

A In general.

A(1) Appointment. A court in which an action is pending may appoint a referee who shall have such qualifications as the court deems appropriate.

A(2) Compensation. The fees to be allowed to a referee shall be *[fixed by the court and shall be charged upon the parties or paid out of any fund or subject matter of the action which is in the custody and control of the court, as the court may direct]* **as provided in ORS 21.400.**

A(3) Delinquent fees. The referee *[shall]* **may** not retain the referee's report as security for compensation. *[If a party ordered to pay the fee allowed by the court does not pay it after notice and*

within the time prescribed by the court, the referee is entitled to a writ of execution against the delinquent party.]

FUNDING FOR PROGRAMS FORMERLY PAID FOR THROUGH COURT FEES

SECTION 15. The State Court Administrator shall conduct a study of the historical funding that the programs and entities identified in ORS 21.007 received from court fees before October 1, 2011. The study must identify whether the distributions to individual counties under ORS 21.007 (1) and (2) are consistent with the historical funding received by those counties from court fees before October 1, 2011, for the purposes identified in ORS 21.007 (1) and (2). The State Court Administrator shall make a report to the Legislative Assembly in the manner provided by ORS 192.245 not later than December 31, 2012, that includes the results of the study and that reflects:

(1) The difference between the historical funding from court fees of the programs and entities identified in ORS 21.007 and the funding provided for the programs and entities through appropriations for the 2011-2013 biennium pursuant to ORS 21.007; and

(2) The difference between the historical funding of individual counties from court fees for the purposes identified in ORS 21.007 (1) and (2) and the funding provided to each of those counties through appropriations for the 2011-2013 biennium pursuant to ORS 21.007.

CAPTIONS

SECTION 16. The unit captions used in this 2012 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 2012 Act.

EMERGENCY CLAUSE

SECTION 17. This 2012 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect on its passage.

Passed by House February 24, 2012

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate February 29, 2012

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2012

Approved:

.....M,....., 2012

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2012

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Kate Brown, Secretary of State