

HOUSE AMENDMENTS TO HOUSE BILL 2710

By COMMITTEE ON JUDICIARY

April 12

1 On page 1 of the printed bill, line 2, after “2.560,” insert “2.565,” and after “9.576,” insert
2 “9.820,”.

3 In line 3, after “18.999,” insert “20.190,”.

4 In line 4, after “46.570,” insert “51.080, 51.310,” and after “55.011,” insert “55.095,”.

5 In line 6, after “130.400,” insert “133.055,”.

6 In line 9, delete “9.820,”.

7 In line 16, delete “FEES” and insert “CIVIL REVENUES”.

8 Delete lines 18 through 31 and insert:

9 **“SECTION 1. Court Civil Revenues Account. (1) The Court Civil Revenues Account is**
10 **established in the General Fund of the State Treasury. Except as provided in this section,**
11 **all moneys in the account are continuously appropriated to the Department of Revenue to**
12 **be distributed by the Department of Revenue as provided in this section. The Department**
13 **of Revenue shall keep a record of moneys transferred into and out of the account. Interest**
14 **earned by the account shall be credited to the General Fund.**

15 **“(2) Each month, the Department of Revenue shall distribute to the Oregon State Bar**
16 **the greater of 14 percent of the amounts deposited in the Court Civil Revenues Account in**
17 **the previous month, or the amount necessary to ensure that at least \$12.1 million is dis-**
18 **tributed to the Oregon State Bar during a biennium. Amounts distributed to the Oregon**
19 **State Bar under this subsection may be used only for the funding of the Legal Services**
20 **Program established under ORS 9.572.**

21 **“(3) Each month, the Department of Revenue shall distribute to counties 70 percent of**
22 **the amounts deposited in the Court Civil Revenues Account in the previous month that are**
23 **attributable to filing fees paid under section 11 of this 2011 Act, and 10 percent of all other**
24 **amounts deposited in the account in the previous month. Distributions to counties under this**
25 **subsection shall be made based on revenues received from case filings in the circuit court**
26 **for each county. Amounts distributed to counties under this subsection may be used only for**
27 **the funding of county law libraries, for the construction, operation and maintenance of cir-**
28 **cuit court facilities and for the funding of services described in section 109 of this 2011 Act.**
29 **The governing body of each county may determine the amount to be spent on each of the**
30 **three uses authorized by this subsection.**

31 **“(4) Each biennium, the Department of Revenue shall distribute from the Court Civil**
32 **Revenues Account:**

33 **“(a) \$2.4 million to the Oregon University System. Amounts distributed to the Oregon**
34 **University System under this paragraph may be used only to fund the programs and expenses**
35 **of the Mark O. Hatfield School of Government and the University of Oregon School of Law**

1 under ORS 36.100 to 36.238 and 183.502.

2 “(b) \$470,000 to the Housing and Community Services Department Low Income Rental
3 Housing Fund established under ORS 458.350. Amounts distributed to the Housing and Com-
4 munity Services Department Low Income Rental Housing Fund under this paragraph may
5 be used only for the purposes specified in ORS 458.360.

6 “(c) \$330,000 to the Domestic Violence Clinical Legal Education Account created under
7 ORS 352.655. Amounts distributed to the Domestic Violence Clinical Legal Education Account
8 under this paragraph may be used only for the purposes specified in ORS 352.655.

9 “(d) \$222,622 to the Legislative Counsel Committee. Amounts distributed to the Legisla-
10 tive Counsel Committee under this paragraph may be used only for the funding of the Oregon
11 Law Commission.

12 “(e) \$150,000 to the State Department of Agriculture. Amounts distributed to the State
13 Department of Agriculture under this paragraph may be used only for the purpose of funding
14 mediation programs established by the department, other than individual farm credit medi-
15 ations.

16 “(f) \$51,400 to the State Court Administrator. Amounts distributed to the State Court
17 Administrator under this paragraph may be used only for the funding of the Council on Court
18 Procedures.

19 “(g) \$30,000 to the Department of Human Services. Amounts distributed to the Depart-
20 ment of Human Services under this paragraph may be used only for the funding of the Office
21 of Children’s Advocate.

22 “(5) The amounts specified by subsection (4) of this section shall be distributed on a
23 monthly basis. The Department of Revenue shall distribute one-twenty-fourth of the
24 amounts specified in subsection (4) of this section at the end of each month.

25 “(6) The Department of Revenue shall deposit in the General Fund all moneys remaining
26 in the Court Civil Revenues Account after the distributions required by subsections (2) to (4)
27 of this section have been made.

28 “(7) The Department of Revenue shall establish by rule a process for the distribution of
29 moneys in the Court Civil Revenues Account in the manner required by this section.”.

30 On page 2, delete lines 1 through 32.

31 In line 33, delete “Fees” and insert “Civil Revenues”.

32 In line 35, delete “Fees” and insert “Civil Revenues”.

33 On page 3, after line 40, insert:

34 “(g) Declaratory judgment actions.”.

35 In line 41, delete “(g)” and insert “(h)”.

36 On page 4, line 5, delete “\$250” and insert “\$300”.

37 Delete line 35 and insert:

38 “(a) If the amount claimed is \$10,000 or less, the court shall collect a filing fee of \$140.

39 “(b) If the amount claimed is more than \$10,000 and less than \$50,000, the court shall collect a
40 filing fee of \$250.”.

41 In line 36, delete “(b)” and insert “(c)” and delete “more than \$50,000,” and insert “\$50,000 or
42 more”.

43 In line 38, delete “(c)” and insert “(d)”.

44 In line 40, delete “(d)” and insert “(e)”.

45 On page 10, line 32, delete “8” and insert “13”.

1 On page 11, line 13, delete “8” and insert “13”.

2 On page 15, delete lines 33 through 45.

3 Delete pages 16 through 18.

4 On page 19, delete lines 1 through 31 and insert:

5 “**SECTION 46.** ORS 46.405 is amended to read:

6 “46.405. (1) Except as provided in subsection (6) of this section, each circuit court shall have a
7 small claims department.

8 “(2) Except as provided in this section, all actions for the recovery of money, damages, specific
9 personal property, or any penalty or forfeiture must be commenced and prosecuted in the small
10 claims department if the amount or value claimed in the action does not exceed \$750.

11 “(3) Except as provided in this section [*and ORS 46.455 (2)(c)*], an action for the recovery of
12 money, damages, specific personal property, or any penalty or forfeiture may be commenced and
13 prosecuted in the small claims department if the amount or value claimed in the action does not
14 exceed [~~\$7,500~~] **\$10,000**.

15 “(4) Class actions may not be commenced and prosecuted in the small claims department.

16 “(5) Actions providing for statutory attorney fees in which the amount or value claimed does
17 not exceed \$750 may be commenced and prosecuted in the small claims department or may be com-
18 menced and prosecuted in the regular department of the circuit court. This subsection does not
19 apply to an action based on contract for which attorney fees are authorized under ORS 20.082.

20 “(6) If a circuit court is located in the same city as a justice court, the circuit court need not
21 have a small claims department if the circuit court and the justice court enter into an intergovern-
22 mental agreement that provides that only the justice court will operate a small claims department.
23 If an intergovernmental agreement is entered into under this subsection, the agreement must es-
24 tablish appropriate procedures for referring small claims cases to the justice court.

25 “**SECTION 47.** ORS 46.425 is amended to read:

26 “46.425. (1) An action in the small claims department shall be commenced by the plaintiff’s filing
27 with the clerk of the court a verified claim in the form prescribed by the court[, *and by paying the*
28 *fee prescribed by ORS 46.570 (1)(a) for each action filed*].

29 “(2) The claim shall contain the name and address of the plaintiff and of the defendant, followed
30 by a plain and simple statement of the claim, including the amount and the date the claim allegedly
31 accrued. The claim shall include an affidavit signed by the plaintiff and stating that the plaintiff
32 made a bona fide effort to collect the claim from the defendant before filing the claim with the clerk.

33 “(3) Except in actions arising under ORS chapter 90, the plaintiff must include in a claim all
34 amounts claimed from the defendant arising out of a single transaction or occurrence. Any plaintiff
35 alleging damages on a transaction requiring installment payments need only claim the installment
36 payments due and owing as of the date of filing of the claim, and need not accelerate the remaining
37 payments. The plaintiff may include in a claim all amounts claimed from a defendant on more than
38 one transaction or occurrence if the total amount of the claim does not exceed [~~\$7,500~~] **\$10,000**.

39 “(4) Notwithstanding subsection (3) of this section, a plaintiff bringing an action on assigned
40 claims:

41 “(a) Need bring an action only on those claims that have been assigned as of the date the action
42 is filed; and

43 “(b) May bring separate actions for each person assigning claims to the plaintiff.

44 “**SECTION 48.** ORS 46.455 is amended to read:

45 “46.455. Within 14 days after the date of service of the notice and claim upon the defendant as

1 provided in ORS 46.445:

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

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

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

8 “(2) If the defendant denies the claim, the defendant:

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

11 “(b) When demanding a hearing, may assert a counterclaim in the form provided by the court[;
12 *or*].

13 “[*c*] (3) If the amount or value claimed exceeds \$750, **the defendant** has a constitutional right
14 to a jury trial and may claim that right in a written request to the clerk in the form prescribed by
15 the court, accompanied by payment of the [*appearance*] **filing** fee required [*from defendants in circuit*
16 *court actions together with the amount of the circuit court jury trial fee for the first day of trial*] **by**
17 **section 15 of this 2011 Act**. The request shall designate a mailing address to which a summons
18 and copy of the complaint may be served by mail. Thereafter, the plaintiff’s claim will not be limited
19 to the amount stated in the claim, though it must involve the same controversy.

20 “**SECTION 49.** ORS 46.461 is amended to read:

21 “46.461. (1) The defendant in an action in the small claims department may assert as a
22 counterclaim any claim that, on the date of issuance of notice pursuant to ORS 46.445, the defendant
23 may have against the plaintiff and that arises out of the same transaction or occurrence that is the
24 subject matter of the claim filed by the plaintiff.

25 “(2) If the amount or value of the counterclaim exceeds [*\$7,500*] **\$10,000**, the court shall strike
26 the counterclaim and proceed to hear and dispose of the case as though the counterclaim had not
27 been asserted unless the defendant files with the counterclaim a motion requesting that the case be
28 transferred from the small claims department to the circuit court. After the transfer the plaintiff’s
29 claim will not be limited to the amount stated in the claim filed with the small claims department,
30 though it must involve the same controversy.

31 “(3)(a) If the amount or value of the counterclaim exceeds that specified in subsection (2) of this
32 section, and the defendant files a motion requesting transfer as provided in subsection (2) of this
33 section, the case shall be transferred to the circuit court. The clerk of the court shall notify the
34 plaintiff and defendant, by mail, of the transfer. The notice to the plaintiff shall contain a copy of
35 the counterclaim and shall instruct the plaintiff to file with the court and serve by mail on the de-
36 fendant, within 20 days following the mailing of the notice, a reply to the counterclaim and, if the
37 plaintiff proposes to increase the amount of the claim originally filed with the small claims depart-
38 ment, an amended claim for the increased amount. Proof of service on the defendant of the
39 plaintiff’s reply and amended claim may be made by certificate of the plaintiff or plaintiff’s attorney
40 attached to the reply and amended claim filed with the court. The defendant is not required to an-
41 swer an amended claim of the plaintiff.

42 “(b) Upon filing the motion requesting transfer, the defendant shall pay to the clerk of the court
43 [*the transfer fee required by ORS 46.570 (1)(c) and*] an amount equal to the difference between the
44 fee paid by the defendant as required by ORS 46.570 [(1)(a)] and the **filing** fee required of a defend-
45 ant [*by ORS 21.110*] **under section 15 of this 2011 Act**. Upon filing a reply to the counterclaim, the

1 plaintiff shall pay to the clerk of the court an amount equal to the difference between the fee paid
2 by the plaintiff as required by ORS 46.570 [(1)(a)] and the **filing** fee required of a plaintiff [by ORS
3 21.110] **under section 15 of this 2011 Act.**

4 “**SECTION 50.** ORS 46.465 is amended to read:

5 “46.465. (1) If the defendant demands a hearing in the small claims department, under the di-
6 rection of the court the clerk shall fix a day and time for the hearing and shall mail to the parties
7 a notice of the hearing time in the form prescribed by the court, instructing them to bring witnesses,
8 documents and other evidence pertinent to the controversy.

9 “(2) If the defendant asserts a counterclaim, the notice of the hearing time shall contain a copy
10 of the counterclaim.

11 “(3)(a) If the defendant claims the right to a jury trial, the clerk shall notify the plaintiff by mail
12 of the requirements of this paragraph. Within 20 days after the mailing of the notice, the plaintiff
13 must file a formal complaint with the court and serve by mail a summons and copy of the complaint
14 on the defendant at the designated address of the defendant. Proof of service must be filed by the
15 plaintiff with the court. Proof of service may be made by filing a certificate of the plaintiff or the
16 plaintiff’s attorney with the complaint.

17 “(b) The plaintiff’s claim in the formal complaint filed pursuant to this subsection is not limited
18 to the amount stated in the claim filed in the small claims department, but the claim in the formal
19 complaint must relate to the same controversy.

20 “(c) The defendant must file an appearance in the matter within 10 days after the date on which
21 the summons and copy of the complaint would be delivered to the defendant in due course of mail.
22 Thereafter the cause shall proceed as other causes in the court, and costs and disbursements shall
23 be allowed and taxed. Fees not previously paid shall be charged and collected as provided for other
24 cases tried in the circuit court, except that the [appearance] **filing** fee for the plaintiff shall be an
25 amount equal to the difference between the **filing** fee paid by the plaintiff as required by ORS 46.570
26 and the **filing** fee required of the plaintiff under [ORS 21.110] **section 15 of this 2011 Act.**

27 “(4)(a) If the defendant claims the right to a jury trial and does not prevail in the action, the
28 court shall award to the plaintiff reasonable attorney fees incurred by the plaintiff in the action.
29 Unless attorney fees are otherwise provided for in the action by contract or statutory provision,
30 attorney fees awarded under this paragraph may not exceed \$1,000.

31 “(b) If the defendant asserts a counterclaim that requires transfer of the matter under the pro-
32 visions of ORS 46.461, and the defendant does not prevail in the action, the court shall award to the
33 plaintiff reasonable attorney fees incurred by the plaintiff in the action.

34 “**SECTION 51.** ORS 46.475 is amended to read:

35 “46.475. (1) Upon written request, the court may extend to the parties additional time within
36 which to make formal appearances required in the small claims department of a circuit court.

37 “(2) If the defendant fails to pay the claim, demand a hearing, or demand a jury trial and comply
38 with ORS 46.465 (3)(c), upon written request from the plaintiff the clerk shall enter a judgment
39 against the defendant for the relief claimed plus the amount of the small claims filing fees and ser-
40 vice expenses paid by the plaintiff and the prevailing party fee provided by ORS 20.190.

41 “(3) If the plaintiff fails within the time provided to file a formal complaint pursuant to ORS
42 46.465 (3)(a), the clerk shall[:]

43 “[a)] dismiss the case without prejudice.[: and]

44 “[b) If the defendant applies therefor in writing to the clerk not later than 30 days after the expi-
45 ration of the time provided for the plaintiff to file a formal complaint, refund to the defendant the

1 amount of the jury trial fee paid by the defendant under ORS 46.455 (2)(c).]

2 “(4) If the defendant appears at the time set for hearing but no appearance is made by the
3 plaintiff, the claim shall be dismissed with prejudice. If neither party appears, the claim shall be
4 dismissed without prejudice.

5 “(5) Upon good cause shown within 60 days, the court may set aside a default judgment or dis-
6 missal and reset the claim for hearing.

7 “**SECTION 52.** ORS 46.570 is amended to read:

8 “46.570. [(1) In the small claims department of circuit court there shall be charged and collected
9 in civil cases by the clerk of the court the following fees for the following purposes and services:]

10 “[*(a)(A) Plaintiff filing a claim, \$26 when the amount or value claimed does not exceed \$1,500, and*
11 *\$55 when the amount or value claimed exceeds \$1,500; and]*

12 “[*(B) Defendant demanding a hearing, \$24 when the amount or value claimed by plaintiff does not*
13 *exceed \$1,500, and \$50 when the amount or value claimed by plaintiff exceeds \$1,500.]*

14 “[*(b) Transcription of judgment from small claims department, \$7.]*

15 “[*(c) Transfer of cause to circuit court on counterclaim, \$12.]*

16 “[*(2) Except as otherwise provided in subsection (1) of this section, fees provided for in this section*
17 *shall be collected in advance. A pleading or other document shall be filed by the clerk only if the re-*
18 *quired fee is paid or if a request for a fee waiver or deferral is granted by the court. Fees provided for*
19 *in this section may not be refunded.]*

20 “**The small claims department of a circuit court shall collect the following filing fees from**
21 **the plaintiff when a claim is filed in the court, and from the defendant when the defendant**
22 **demand a hearing:**

23 “**(1) \$50, when the amount claimed is \$2,500 or less; and**

24 “**(2) \$90, when the amount is more than \$2,500.**

25 “**SECTION 52a.** ORS 51.080 is amended to read:

26 “51.080. (1) A justice court has jurisdiction, but not exclusive, of the following actions:

27 “(a) For the recovery of money or damages only, when the amount claimed does not exceed
28 ~~[\$7,500]~~ **\$10,000.**

29 “(b) For the recovery of specific personal property, when the value of the property claimed and
30 the damages for the detention do not exceed ~~[\$7,500]~~ **\$10,000.**

31 “(c) For the recovery of any penalty or forfeiture, whether given by statute or arising out of
32 contract, not exceeding ~~[\$7,500]~~ **\$10,000.**

33 “(d) To give judgment without action, upon the confession of the defendant for any of the causes
34 specified in this section, except for a penalty or forfeiture imposed by statute.

35 “(2) For purposes of this section, the amount claimed, value of property, damages or any amount
36 in controversy does not include any amount claimed as costs and disbursements or attorney fees as
37 defined by ORCP 68 A.

38 “**SECTION 52b.** ORS 51.310 is amended to read:

39 “51.310. (1) Except as provided in ORS 105.130, the justice of the peace shall collect, in advance
40 except in criminal cases, and issue receipts for, the following fees:

41 “(a) For the first appearance of the plaintiff, ~~[\$30]~~ **\$40.**

42 “(b) For the first appearance of the defendant, ~~[\$22.50]~~ **\$40.**

43 “(c) In the small claims department, for a plaintiff filing a claim, ~~[\$22.50]~~ **\$28**; and for a defendant
44 requesting a hearing, ~~[\$15]~~ **\$28.**

45 “(d) For transcript of judgment, \$6.

1 “(e) For transcript of judgment from the small claims department, [~~\$5~~] **\$6**.
2 “(f) For certified copy of judgment, [~~\$3.50~~] **\$6**.
3 “(g) For issuing writs of execution or writs of garnishment, [~~\$5~~] **\$6** for each writ.
4 “(h) For taking an affidavit of a private party, \$1.
5 “(i) For taking depositions, for each folio, 70 cents.
6 “(j) For supplying to private parties copies of records and files, the same fees as provided or
7 established for the county clerk under ORS 205.320.
8 “(k) For each official certificate, \$1.
9 “(L) For taking and certifying for a private party an acknowledgment of proof of any instrument,
10 \$3.
11 “(m) Costs in criminal cases, where there has been a conviction, or upon forfeiture of security,
12 \$5.
13 “(2) Not later than the last day of the month immediately following the month in which fees set
14 forth in subsection (1) of this section are collected, the justice of the peace shall pay all such fees,
15 other than those for performing marriage ceremonies, over to the county treasurer of the county
16 wherein the justice of the peace was elected or appointed, for crediting to the general fund of the
17 county, and shall take the receipt of the treasurer therefor.
18 “**SECTION 52c.** ORS 55.011 is amended to read:
19 “55.011. (1) Except as provided in subsection (8) of this section, in each justice court created
20 under any law of this state there shall be a small claims department.
21 “(2) Except as provided in this section, all actions for the recovery of money, damages, specific
22 personal property, or any penalty or forfeiture must be commenced and prosecuted in the small
23 claims department if the amount or value claimed in the action does not exceed \$750.
24 “(3) Except as provided in this section [*and ORS 46.455 (2)(c)*], an action for the recovery of
25 money, damages, specific personal property, or any penalty or forfeiture may be commenced and
26 prosecuted in the small claims department if the amount or value claimed in the action does not
27 exceed [~~\$7,500~~] **\$10,000**.
28 “(4) Class actions may not be commenced and prosecuted in the small claims department.
29 “(5) Actions providing for statutory attorney fees in which the amount or value claimed does
30 not exceed \$750 may be commenced and prosecuted in the small claims department or may be com-
31 menced and prosecuted in the regular department of the justice court. This subsection does not
32 apply to an action based on contract for which attorney fees are authorized under ORS 20.082.
33 “(6) Jurisdiction of the person of the defendant in an action commenced in the small claims de-
34 partment shall be deemed acquired as of the time of service of the notice and claim.
35 “(7) Except as provided in ORS 55.065 (2)(c), the provisions of ORS 55.020 to 55.140 shall apply
36 with regard to proceedings in the small claims department of any justice court.
37 “(8) If a justice court is located in the same city as a circuit court, the justice court need not
38 have a small claims department if the justice court and the circuit court enter into an intergovern-
39 mental agreement that provides that only the circuit court will operate a small claims department.
40 If an intergovernmental agreement is entered into under this subsection, the agreement must es-
41 tablish appropriate procedures for referring small claims cases to the circuit court.
42 “**SECTION 52d.** ORS 55.095 is amended to read:
43 “55.095. (1) The defendant in an action in the small claims department may assert as a
44 counterclaim any claim that, on the date of issuance of notice pursuant to ORS 55.045, the defendant
45 may have against the plaintiff and that arises out of the same transaction or occurrence that is the

1 subject matter of the claim filed by the plaintiff.

2 “(2) If the amount of the counterclaim asserted by the defendant exceeds [~~\$7,500~~] **\$10,000**, the
3 justice of the peace shall strike the counterclaim and proceed to hear and dispose of the case as
4 though the counterclaim had not been asserted unless the defendant files with the counterclaim a
5 motion requesting that the case be transferred from the small claims department to a court of ap-
6 propriate jurisdiction and an amount to pay the costs of the transfer. After the transfer the
7 plaintiff’s claim will not be limited to the amount stated in the claim filed with the justice of the
8 peace, though it must involve the same controversy.

9 “(3)(a) If the amount or value of the counterclaim exceeds the jurisdictional limit of the justice
10 court for a counterclaim and the defendant files a motion requesting transfer and an amount to pay
11 the costs of transfer as provided in subsection (2) of this section, the case shall be transferred to
12 the circuit court for the county in which the justice court is located and be governed as provided
13 in ORS 52.320 for transfers to the circuit court. The justice court shall notify the plaintiff and de-
14 fendant, by mail within 10 days following the order of transfer, of the transfer. The notice to the
15 plaintiff shall contain a copy of the counterclaim and shall inform the plaintiff as to further pleading
16 by the plaintiff in the court of appropriate jurisdiction.

17 “(b) Upon filing the motion requesting transfer, the defendant shall pay to the court of appro-
18 priate jurisdiction an amount equal to the difference between the fee paid by the defendant as re-
19 quired by ORS 51.310 (1)(c) and the appearance fee for a defendant in the court of appropriate
20 jurisdiction.

21 “**SECTION 53.** ORS 133.055 is amended to read:

22 “133.055. (1) A peace officer may issue a criminal citation to a person if the peace officer has
23 probable cause to believe that the person has committed a misdemeanor or has committed any felony
24 that is subject to misdemeanor treatment under ORS 161.705. The peace officer shall deliver a copy
25 of the criminal citation to the person. The criminal citation shall require the person to appear at
26 the court of the magistrate before whom the person would be taken pursuant to ORS 133.450 if the
27 person were arrested for the offense.

28 “(2)(a) Notwithstanding the provisions of subsection (1) of this section, when a peace officer re-
29 sponds to an incident of domestic disturbance and has probable cause to believe that an assault has
30 occurred between family or household members, as defined in ORS 107.705, or to believe that one
31 such person has placed the other in fear of imminent serious physical injury, the officer shall arrest
32 and take into custody the alleged assailant or potential assailant.

33 “(b) When the peace officer makes an arrest under paragraph (a) of this subsection, the peace
34 officer is not required to arrest both persons.

35 “(c) When a peace officer makes an arrest under paragraph (a) of this subsection, the peace of-
36 ficer shall make every effort to determine who is the assailant or potential assailant by considering,
37 among other factors:

38 “(A) The comparative extent of the injuries inflicted or the seriousness of threats creating a fear
39 of physical injury;

40 “(B) If reasonably ascertainable, the history of domestic violence between the persons involved;

41 “(C) Whether any alleged crime was committed in self-defense; and

42 “(D) The potential for future assaults.

43 “(3) Whenever any peace officer has reason to believe that a family or household member, as
44 defined in ORS 107.705, has been abused as defined in ORS 107.705 or that an elderly person or a
45 person with a disability has been abused as defined in ORS 124.005, that officer shall use all rea-

1 sonable means to prevent further abuse, including advising each person of the availability of a
2 shelter or other services in the community and giving each person immediate notice of the legal
3 rights and remedies available. The notice shall consist of handing each person a copy of the fol-
4 lowing statement:

5 “

6
7 IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE OR ABUSE, you can ask the district
8 attorney to file a criminal complaint. You also have the right to go to the circuit court and file a
9 petition requesting any of the following orders for relief: (a) An order restraining your attacker from
10 abusing you; (b) an order directing your attacker to leave your household; (c) an order preventing
11 your attacker from entering your residence, school, business or place of employment; (d) an order
12 awarding you or the other parent custody of or parenting time with a minor child or children; (e)
13 an order restraining your attacker from molesting or interfering with minor children in your cus-
14 tody; (f) an order awarding you other relief the court considers necessary to provide for your or
15 your children’s safety, including emergency monetary assistance. Such orders are enforceable in
16 every state.

17 You may also request an order awarding support for minor children in your care or for your
18 support if the other party has a legal obligation to support you or your children.

19 You also have the right to sue for losses suffered as a result of the abuse, including medical and
20 moving expenses, loss of earnings or support, and other out-of-pocket expenses for injuries sustained
21 and damage to your property. This can be done without an attorney in the small claims department
22 of a court if the total amount claimed is under [\$7,500] **\$10,000**.

23 Similar relief may also be available in tribal courts.

24 For further information you may contact: _____.

25 “

26
27 **“SECTION 54. The amendments to ORS 46.405, 46.425, 46.455, 46.461, 46.465, 46.475, 46.570,**
28 **51.080, 51.310, 55.011, 55.095 and 133.055 by sections 46 to 53 of this 2011 Act apply only to**
29 **proceedings commenced on or after the effective date of this 2011 Act.”.**

30 Delete line 41 and insert:

31 “(a) Collect a filing fee of \$75;”.

32 On page 20, delete lines 1 through 3 and insert:

33 “(3) The court shall collect a filing fee of \$75 from a defendant that demands a trial under this
34 section.”.

35 On page 25, after line 30, insert:

36 **“SECTION 67a.** ORS 2.565 is amended to read:

37 **“2.565.** The Appellate Mediation Program Revolving Account is established within the General
38 Fund. The Judicial Department shall pay into the [*State Treasury*] **account** \$40 of each filing fee
39 paid by petitioners under the provisions of ORS 21.010, and \$24 of each filing fee paid by respond-
40 ents under the provisions of ORS 21.010. [*The State Treasurer shall deposit the moneys in the General*
41 *Fund to the credit of the Appellate Mediation Program Revolving Account.*] The moneys in the ac-
42 count are appropriated continuously to the Judicial Department, and may be used only for the pur-
43 pose of administering the appellate mediation program established under the provisions of ORS
44 2.560, including payment of administrative costs and costs of providing mediation services to indi-
45 gent parties.”.

1 Delete lines 38 through 44 and insert:

2 **“SECTION 70. Document fee; fee for writs of execution and garnishment. (1) A circuit**
3 **court shall collect a fee of \$10 for:**

4 **“(a) Making or entering a transcript of a judgment.**

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

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

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

9 **“(2) A circuit court shall collect a fee of \$35 for issuing a writ of execution or a writ of**
10 **garnishment.”.**

11 On page 39, line 39, delete the boldfaced material and insert “the program”.

12 On page 42, line 25, delete “9.820,”.

13 Delete lines 26 through 30 and insert:

14 **“SECTION 105. ORS 9.820 is amended to read:**

15 **“9.820. In all counties containing more than 400,000 inhabitants, according to the latest federal**
16 **decennial census, the governing body of the county [court or board of county commissioners] may**
17 **contract with any law library association or corporation owning and maintaining a law library in**
18 **the county at or convenient to the courthouse, for the use of the library by the judges of the circuit**
19 **and county courts, county commissioners, district attorney and all members of the bar[, and shall,].**
20 **If the association or corporation permits the use of its library by all members of the bar without**
21 **charge, [pay therefor all library fees collected pursuant to ORS 21.350 (1)] the governing body of the**
22 **county may pay all or part of the amounts received from the Court Civil Revenues Account**
23 **under section 1 (3) of this 2011 Act to the library association or corporation for the use of the**
24 **library.”.**

25 On page 43, delete lines 39 through 45 and insert:

26 **“SECTION 109. Counties may fund the following domestic relations services from dis-**
27 **tributions made under section 1 (3) of this 2011 Act:**

28 **“(1) Mediation under ORS 107.755 to 107.795;**

29 **“(2) Conciliation services under ORS 107.510 to 107.610;**

30 **“(3) Expedited parenting time enforcement under ORS 107.434;**

31 **“(4) Education programs under ORS 3.425;**

32 **“(5) Investigations, evaluations, examinations and referrals for services under ORS**
33 **107.425; and**

34 **“(6) Any other program or service to which parties may be referred or that may be or-**
35 **dered by the court, including programs or services established to assist the court or a family**
36 **in a domestic relations case.”.**

37 On page 44, delete lines 1 through 10.

38 In line 36, delete “allocated” and insert “distributed”.

39 On page 45, line 12, delete “allocated” and insert “distributed”.

40 On page 46, line 7, delete “\$12” and insert “\$35”.

41 On page 48, line 37, delete “(1)” and insert “(1)(a)”.

42 On page 49, line 39, delete “(1)” and insert “(1)(a)”.

43 On page 57, line 10, delete “Fees” and insert “Civil Revenues”.

44 On page 61, line 30, delete “Fees” and insert “Civil Revenues”.

45 On page 62, line 1, delete the first “Fees” and insert “Civil Revenues”.

- 1 In line 12, delete “Fees” and insert “Civil Revenues”.
- 2 In line 23, delete “Fees” and insert “Civil Revenues”.
- 3 In line 33, delete “Fees” and insert “Civil Revenues”.
- 4 On page 63, line 1, delete “Fees” and insert “Civil Revenues”.
- 5 In line 9, delete “Fees” and insert “Civil Revenues”.
- 6 In line 23, delete “Fees” and insert “Civil Revenues”.
- 7 After line 25, insert:

8

9 **“PREVAILING PARTY FEES**

10

11 **“SECTION 150a.** ORS 20.190 is amended to read:

12 “20.190. (1) Except as provided in subsections (2) to (5) of this section, a prevailing party in a
13 civil action or proceeding who has a right to recover costs and disbursements in the following cases
14 also has a right to recover, as a part of the costs and disbursements, the following additional
15 amounts:

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

17 “(b) In a circuit court:

18 “(A) When judgment is given without trial of an issue of law or fact or on an appeal, \$60; or

19 “(B) When judgment is given after trial of an issue of law or fact, \$85.

20 “(c) In a small claims department, a county court or justice court, one-half of the amount pro-
21 vided for in paragraph (b) of this subsection.

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

26 “(a) In a circuit court:

27 “(A) When judgment is given without trial of an issue of law or fact, \$275; or

28 “(B) When judgment is given after trial of an issue of law or fact, \$550.

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

30 “(A) When judgment is given without trial of an issue of law or fact, [~~\$85~~] **\$100**; or

31 “(B) When judgment is given after trial of an issue of law or fact, [~~\$100~~] **\$115**.

32 “(3) In addition to the amounts provided for in subsection (2) of this section, in any civil action
33 or proceeding in a circuit court in which recovery of money or damages is sought, the court may
34 award to the prevailing party up to an additional \$5,000 as a prevailing party fee. The court shall
35 consider the following factors in making an award under the provisions of this subsection:

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

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

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

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

43 “(e) The objective reasonableness of the parties and the diligence of the parties and their at-
44 torneys during the proceedings.

45 “(f) The objective reasonableness of the parties and the diligence of the parties in pursuing

1 settlement of the dispute.

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

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

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

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

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

17 “(a) A class action proceeding under ORCP 32.

18 “(b) A condemnation proceeding.

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

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

22
23 **“FILING FEE FOR DECLARATORY JUDGMENT ACTIONS**
24 **FILED ON OR AFTER JANUARY 1, 2011,**
25 **AND BEFORE JULY 1, 2011**
26

27 **“SECTION 150b. The filing fee for a declaratory judgment action filed in circuit court on**
28 **or after January 1, 2011, and before the effective date of this 2011 Act is \$117 for the plaintiff**
29 **and \$117 for the respondent. Upon request by any party that paid a filing fee or respondent’s**
30 **fee for a declaratory judgment action on or after January 1, 2011, and before the effective**
31 **date of this 2011 Act, the clerk of the court in which the action was filed shall refund the**
32 **amount of the filing fee paid by the party to the extent that the fee exceeds the filing fee**
33 **specified in this section. A request under this section must be made not later than 60 days**
34 **after the effective date of this 2011 Act.”.**
35
