

Enrolled
House Bill 2795

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to fees; creating new provisions; amending ORS 18.999, 20.190, 21.006, 21.010, 21.025, 21.135, 21.145, 21.155, 21.160, 21.170, 21.180, 21.200, 21.205, 21.215, 21.225, 21.235, 24.135, 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 21.010 is amended to read:

21.010. (1) Except as provided in this section, the appellant in an appeal or the petitioner in a judicial review in the Supreme Court or the Court of Appeals shall pay a filing fee of [~~\$373~~] **\$391** in the manner prescribed by ORS 19.265. The respondent in such case and any other person appearing in the appeal, upon entering first appearance or filing first brief in the court, shall pay to the State Court Administrator a filing fee of [~~\$373~~] **\$391**. The party entitled to costs and disbursements on such appeal shall recover from the opponent the amount so paid.

(2) Filing and appearance fees may not be assessed in appeals from habeas corpus proceedings under ORS 34.710, post-conviction relief proceedings under ORS 138.650, juvenile court under ORS 419A.200, the involuntary commitment of persons determined to be persons with mental illness under ORS 426.135 or persons determined to have an intellectual disability under ORS 427.295 or orders of the State Board of Parole and Post-Prison Supervision or on judicial review of orders entered under ORS 161.315 to 161.351 by the Psychiatric Security Review Board or the Oregon Health Authority.

(3) Filing and appearance fees shall be assessed in an appeal from an appeal to a circuit court from a justice court or municipal court in an action alleging commission of a state offense designated as a violation or an action alleging violation of a city charter or ordinance, but not in an action alleging commission of a state crime.

(4) Filing and appearance fees shall only be assessed in an appeal in a contempt proceeding seeking imposition of remedial sanctions under the provisions of ORS 33.055.

(5) The filing and appearance fees established by this section apply to cases of original jurisdiction in the Supreme Court.

SECTION 2. 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 [~~\$252~~] **\$265** when a complaint or other docu-

ment 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 of 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 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 3. ORS 21.145 is amended to read:

21.145. In the following proceedings, a circuit court shall collect a filing fee of [~~\$111~~] **\$117** 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 4. ORS 21.155 is amended to read:

21.155. A circuit court shall collect a filing fee of [~~\$273~~] **\$287** 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 5. 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 [~~\$158~~] **\$165**.

(b) If the amount claimed is more than \$10,000 and less than \$50,000, the court shall collect a filing fee of [~~\$252~~] **\$267**.

(c) If the amount claimed is \$50,000 or more, and less than \$1 million, the court shall collect a filing fee of [~~\$531~~] **\$560**.

(d) If the amount claimed is \$1 million or more and less than \$10 million, the court shall collect a fee of [~~\$793~~] **\$834**.

(e) If the amount claimed is \$10 million or more, the court shall collect a filing fee of [~~\$1,056~~] **\$1,111**.

(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 6. 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, [~~\$252~~] **\$265**.

(b) If the value of the estate is \$50,000 or more, but less than \$1 million, [~~\$531~~] **\$558**.

(c) If the value of the estate is \$1 million or more, but less than \$10 million, [~~\$793~~] **\$832**.

(d) If the value of the estate is \$10 million or more, [~~\$1,056~~] **\$1,109**.

(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, [~~\$32~~] **\$33**.

(b) If the value of the estate is \$50,000 or more, but less than \$1 million, [~~\$268~~] **\$281**.

(c) If the value of the estate is \$1 million or more, but less than \$10 million, [~~\$531~~] **\$558**.

(d) If the value of the estate is \$10 million or more, [~~\$1,056~~] **\$1,109**.

(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 7. 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, [~~\$252~~] **\$265**.

(b) If the value of the estate is \$50,000 or more, but less than \$1 million, [~~\$531~~] **\$558**.

(c) If the value of the estate is \$1 million or more, but less than \$10 million, [~~\$793~~] **\$832**.

(d) If the value of the estate is \$10 million or more, [~~\$1,056~~] **\$1,109**.

(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, [~~\$32~~] **\$33**.

(b) If the value of the estate is \$50,000 or more, but less than \$1 million, [~~\$268~~] **\$281**.

(c) If the value of the estate is \$1 million or more, but less than \$10 million, [~~\$531~~] **\$558**.

(d) If the value of the estate is \$10 million or more, [~~\$1,056~~] **\$1,109**.

(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 7a. 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 [21.135] **21.160 (1)(a)**.

SECTION 8. 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) [~~\$53~~] **\$55**, when the amount claimed is \$2,500 or less; and
- (2) [~~\$95~~] **\$99**, when the amount is more than \$2,500.

SECTION 9. 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 [~~\$79~~] **\$83**;
- (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 [~~\$79~~] **\$83** 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 10. (1) **The amendments to ORS 21.010, 21.135, 21.145, 21.155, 21.160, 21.170, 21.180, 24.135, 46.570 and 105.130 by sections 1 to 9 of this 2017 Act apply to filings made on or after October 1, 2017.**

(2) If a civil action or proceeding is filed before October 1, 2017, and an answer or other first appearance is not filed in the proceeding until on or after October 1, 2017, the person filing the answer or other first appearance must pay the appropriate fee prescribed in ORS 21.010, 21.135, 21.145, 21.155, 21.160, 21.165, 21.170, 21.175, 21.180, 46.570 and 105.130, as in effect on October 1, 2017.

(3) Notwithstanding ORS 21.105 and 21.160, if an action or proceeding based on a tort or contract is filed before October 1, 2017, and the complaint or any other pleading filed in the proceeding is amended on or after October 1, 2017, 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, 2017, and the inventory filed in the proceeding is amended to increase the value of the estate on or after October 1, 2017, 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 11. ORS 21.025 is amended to read:

21.025. (1) In any appeal or petition for review subject to a fee under ORS 21.010, a [~~\$50~~] **\$53** fee must be paid by the party filing one of the following motions and by the party responding to the motion:

- (a) A motion to dismiss filed by a respondent.
- (b) A motion to determine jurisdiction.
- (c) A motion for continuance.

(d) A motion for an extension of time for the filing of a brief or other document in the proceeding.

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

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 [~~\$100~~] **\$105** 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 [~~\$150~~] **\$158** 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 [~~\$50~~] **\$53** 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 21.025, 21.200 and 21.205 by sections 11 to 13 of this 2017 Act apply to motions filed on or after October 1, 2017.

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 [~~\$100~~] **\$105** 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 [~~\$200~~] **\$210** 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 2017 Act apply to settlement conferences conducted on or after October 1, 2017.

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 [~~\$125~~] **\$131** 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 [~~\$225~~] **\$236** 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 [~~\$150~~] **\$158** 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 2017 Act apply to trials commenced on or after October 1, 2017.

WRITS OF GARNISHMENT

SECTION 19. ORS 18.999 is amended to read:

18.999. This section establishes the right of a plaintiff to recover certain moneys the plaintiff has expended 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 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 [~~\$37~~] **\$45** for each garnishment.

(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 [~~\$16~~] **\$17** 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 [~~\$37~~] **\$45** 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 2017 Act apply to writs of garnishment issued on or after October 1, 2017.**

(2) **The amendments to ORS 21.235 (1) by section 20 of this 2017 Act apply to services described in ORS 21.235 (1) that are rendered on or after October 1, 2017.**

MARRIAGE SOLEMNIZATION

SECTION 22. ORS 106.120 is amended to read:

106.120. (1) As used in this section, "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.
- (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); or
 - (d) A clergyperson of any religious congregation or organization who is authorized by the congregation or 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 [~~\$105~~] **\$110** 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 [~~\$105~~] **\$110**, 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, [~~\$105~~] **\$110**. 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 2017 Act apply to marriages solemnized on or after October 1, 2017.

PREVAILING PARTY FEES

SECTION 25. 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, [~~\$300~~] **\$325**; or

(B) When judgment is given after trial of an issue of law or fact, [~~\$575~~] **\$600**.

(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, [~~\$100~~] **\$110**; or

(B) When judgment is given after trial of an issue of law or fact, [~~\$115~~] **\$125**.

(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 26. The amendments to ORS 20.190 by section 25 of this 2017 Act apply to actions commenced on or after October 1, 2017.

STATE COURT TECHNOLOGY FUND

SECTION 27. ORS 21.006 is amended to read:

21.006. Notwithstanding ORS 21.005, each month the State Court Administrator shall transfer to the State Court Technology Fund [4.75] **8.85** percent of the fees collected by the State Court Administrator under ORS 21.010, 21.135, 21.145, 21.155, 21.160, 21.170, 21.180, 21.235, 46.570, 105.130 and 106.120.

SECTION 28. The amendments to ORS 21.006 by section 27 of this 2017 Act apply to fees collected on or after October 1, 2017.

CAPTIONS

SECTION 29. The unit captions used in this 2017 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 2017 Act.

EMERGENCY CLAUSE

SECTION 30. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by House July 5, 2017

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

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Tina Kotek, Speaker of House

Passed by Senate July 7, 2017

.....
Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

.....
Dennis Richardson, Secretary of State