

Enrolled House Bill 2316

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

CHAPTER

AN ACT

Relating to courts; creating new provisions; amending ORS 51.310, 52.410, 53.090 and 55.130; repealing sections 1, 2, 3, 4 and 5, chapter ___, Oregon Laws 2015 (Enrolled House Bill 3399); 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:

SECTION 1. ORS 51.310 is amended to read:

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

- (a) For the first appearance of the plaintiff, [~~\$40~~] **\$90**.
- (b) For the first appearance of the defendant, [~~\$40~~] **\$90**.
- (c) In the small claims department, for a plaintiff filing a claim, [~~\$28~~] **\$35**; and for a defendant requesting a hearing, [~~\$28~~] **\$35**.
- (d) For transcript of judgment, [~~\$6~~] **\$9**.
- (e) For transcript of judgment from the small claims department, [~~\$6~~] **\$9**.
- (f) For certified copy of judgment, [~~\$6~~] **\$9**.
- (g) For issuing writs of execution or writs of garnishment, [~~\$6~~] **\$20** for each writ.
- [(h) For taking an affidavit of a private party, \$1.]*
- [(i) For taking depositions, for each folio, 70 cents.]*
- (h) For issuing notices of restitution as provided in ORS 105.151, \$10 for each notice.**
- (i) For filing a motion described in ORS 21.200 in an action not in the small claims department, \$30.**
- (j) For supplying to private parties copies of records and files, the same fees as provided or established for the county clerk under ORS 205.320.
- (k) For each official certificate, [~~\$1~~] **\$10**.
- (L) For taking and certifying for a private party an acknowledgment of proof of any instrument, [~~\$3~~] **\$10**.
- (m) Costs in criminal cases, where there has been a conviction, or upon forfeiture of security, \$5.

(2) Not later than the last day of the month immediately following the month in which fees set forth in subsection (1) of this section are collected, the justice of the peace shall pay all such fees, other than those for performing marriage ceremonies, over to the county treasurer of the county wherein the justice of the peace was elected or appointed, for crediting to the general fund of the county, and shall take the receipt of the treasurer therefor.

SECTION 2. ORS 51.310, as amended by section 1 of this 2015 Act, is amended to read:

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

- (a) For the first appearance of the plaintiff, \$90.
- (b) For the first appearance of the defendant, \$90.
- (c) In the small claims department, for a plaintiff filing a claim, [~~\$35~~] **\$37**; and for a defendant requesting a hearing, [~~\$35~~] **\$37**.
- (d) For transcript of judgment, \$9.
- (e) For transcript of judgment from the small claims department, \$9.
- (f) For certified copy of judgment, \$9.
- (g) For issuing writs of execution or writs of garnishment, \$20 for each writ.
- (h) For issuing notices of restitution as provided in ORS 105.151, \$10 for each notice.
- (i) For filing a motion described in ORS 21.200 in an action not in the small claims department, \$30.
- (j) For supplying to private parties copies of records and files, the same fees as provided or established for the county clerk under ORS 205.320.
- (k) For each official certificate, \$10.
- (L) For taking and certifying for a private party an acknowledgment of proof of any instrument, \$10.
- (m) Costs in criminal cases, where there has been a conviction, or upon forfeiture of security, \$5.

(2) Not later than the last day of the month immediately following the month in which fees set forth in subsection (1) of this section are collected, the justice of the peace shall pay all such fees, other than those for performing marriage ceremonies, over to the county treasurer of the county wherein the justice of the peace was elected or appointed, for crediting to the general fund of the county, and shall take the receipt of the treasurer therefor.

SECTION 3. The amendments to ORS 51.310 by section 2 of this 2015 Act become operative on January 1, 2018, and apply only to claims filed and hearings requested on or after January 1, 2018.

SECTION 4. ORS 52.410 is amended to read:

52.410. (1) Parties to judicial proceedings in justice courts are required to contribute toward the expense of maintaining justice courts, or a particular action or proceeding therein, by the payment of a trial fee, **except that a trial fee may not be required for a hearing or trial in the small claims department of a justice court.**

[(2) The trial fee in a justice court, for every trial by jury, is \$17.]

(2) The trial fee in a justice court for a trial by jury is \$125 for each full or partial day of trial, payable by the party demanding the jury trial at the time the demand is made.

(3) The trial fee in a justice court for a trial without a jury is \$75 for each full or partial day of trial, payable by the plaintiff when the action or proceeding is set for trial.

(4) If a trial continues beyond the number of days originally paid for under subsection (2) or (3) of this section, the fee for subsequent days of trial must be paid in advance of each day the trial continues by the party responsible for the fee under subsection (2) or (3) of this section.

SECTION 5. ORS 55.130 is amended to read:

55.130. (1) If no appeal is taken by a party against whom a judgment to make payment is rendered and the party fails to pay the judgment according to the terms and conditions thereof, the justice of the peace before whom the hearing was had, may, on application of the prevailing party, certify the judgment in substantially the following form:

In the Justice Court for _____ District, _____ County, Oregon.

Plaintiff,
vs.

Defendant.

In the Small Claims Department

This is to certify that in a certain action before me, the undersigned, had on this, the _____ day of _____, 2____, wherein _____ was plaintiff and _____ was defendant, jurisdiction of the defendant having been had by personal service (or otherwise), as provided by law, I then and there entered judgment against the (defendant or plaintiff) in the sum of _____ dollars, which judgment has not been paid.

Witness my hand this _____ day of _____, 2____.

Justice of the Peace
Sitting in the Small
Claims Department.

(2) Upon the payment of a fee of [\$5] **\$9**, the justice of the peace shall forthwith enter the judgment transcript on the docket of the justice court. Thereafter execution and other process on execution provided by law may issue thereon as in other cases of judgments of justice courts, and transcripts of the judgments may be filed and entered in judgment dockets in circuit courts with like effect as in other cases.

SECTION 6. The amendments to ORS 51.310, 52.410 and 55.130 by sections 1, 4 and 5 of this 2015 Act apply only to proceedings commenced or services provided on or after October 1, 2015.

SECTION 7. (1) As used in this section, “material witness order” has the meaning given that term in ORS 136.608.

(2) At any time after the court enters a material witness order, the court may order, or the district attorney or the defendant may file a petition to conduct, a deposition to perpetuate the testimony of the material witness.

(3)(a) The petition must be in writing and sworn to by the petitioner.

(b) The petitioner shall serve a notice and a copy of the petition on the opposing party and on the material witness.

(4) A petition filed under this section must describe:

(a) The basis on which the court entered the material witness order;

(b) Any findings made by the court in establishing the security amount under ORS 136.612;

(c) Any findings made by the court in detaining the material witness; and

(d) The reasons that perpetuating the testimony of the material witness is necessary.

(5) The court shall grant or deny the petition no later than 30 days after the date the petition is filed. The court shall consider whether the perpetuation of the testimony will prevent failure or delay of justice for the parties and the material witness. If the court orders the deposition of the material witness, the court may specify the subject matter of the deposition, impose limitations on the deposition and require audio or video recording of the deposition.

(6) The deposition of a material witness under this section does not invalidate or otherwise affect the material witness order, but may be considered in connection with an application to vacate or modify the order under ORS 136.612 (5).

(7) The Oregon Evidence Code applies to depositions under this section.

SECTION 8. (1) In any proceeding conducted in open court in a justice court, any party may arrange for audio recording or reporting of the proceeding by stenographic or other

means. The court may not prohibit recording or reporting of the proceeding under this section.

(2) A reporter providing stenographic reporting services under this section must be certified in shorthand reporting under ORS 8.415 to 8.455 or by a nationally recognized certification program. A party arranging for reporting of the proceeding by stenographic means must provide the court with the name of the reporter and an address and telephone number where the reporter may be contacted.

(3) If all parties to the proceeding and the court agree, the audio recording or stenographic or other reporting of the proceeding arranged under this section may be used by the parties during the proceeding.

(4) If all parties to the proceeding and the court agree, the audio recording or stenographic or other reporting of the proceeding arranged under this section is the official record of the proceeding.

(5) Unless other parties agree to pay all or part of the cost of the audio recording or stenographic or other reporting of the proceeding, the party arranging for the recording or reporting must pay all costs of the recording or reporting.

SECTION 9. ORS 53.090 is amended to read:

53.090. Within 30 days next following the allowance of the appeal, the appellant must cause to be filed with the clerk of the appellate court a transcript of the cause. The transcript must contain a copy of all the material entries in the justice docket relating to the cause or the appeal **and any transcript or audio record made under section 8 of this 2015 Act**, and must have annexed thereto all the original papers relating to the cause or the appeal and filed with the justice. Upon the filing of the transcript with the clerk of the appellate court, the appeal is perfected. Thenceforth the action shall be deemed pending and for trial therein as if originally commenced in such court, and the court shall have jurisdiction of the cause and shall proceed to hear, determine and try it anew, disregarding any irregularity or imperfection in matters of form which may have occurred in the proceedings in the justice court. If the transcript and papers are not filed with the clerk of the appellate court within the time provided, the appellate court, or the judge thereof, may by order extend the time for filing the same upon such terms as the court or judge may deem just. However, such order shall be made within the time allowed to file the transcript.

SECTION 10. Section 11 of this 2015 Act is added to and made a part of ORS chapter 221.

SECTION 11. (1) In any proceeding conducted in open court in a municipal court, any party may arrange for audio recording or reporting of the proceeding by stenographic or other means. The court may not prohibit recording or reporting of the proceeding under this section.

(2) A reporter providing stenographic reporting services under this section must be certified in shorthand reporting under ORS 8.415 to 8.455 or by a nationally recognized certification program. A party arranging for reporting of the proceeding by stenographic means must provide the court with the name of the reporter and an address and telephone number where the reporter may be contacted.

(3) If all parties to the proceeding and the court agree, the audio recording or stenographic or other reporting of the proceeding arranged under this section may be used by the parties during the proceeding.

(4) If all parties to the proceeding and the court agree, the audio recording or stenographic or other reporting of the proceeding arranged under this section is the official record of the proceeding.

(5) Unless other parties agree to pay all or part of the cost of the audio recording or stenographic or other reporting of the proceeding, the party arranging for the recording or reporting must pay all costs of the recording or reporting.

SECTION 12. Sections 8 and 11 of this 2015 Act and the amendments to ORS 53.090 by section 9 of this 2015 Act apply only to proceedings occurring in a justice court or municipal court on or after January 1, 2016.

SECTION 13. If House Bill 3399 becomes law, sections 1, 2 (amending ORS 53.090), 3, 4 and 5, chapter ___, Oregon Laws 2015 (Enrolled House Bill 3399), are repealed.

SECTION 14. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by House May 27, 2015

Received by Governor:

Repassed by House June 18, 2015

.....M.,....., 2015

Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2015

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate June 16, 2015

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State