

Senate Bill 708

Sponsored by Senator GELSER (at the request of Jaime Carlton)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Exempts petitioner in stalking protective order proceeding from requirement to pay prevailing party fee unless court finds petitioner initiated proceeding with malicious intent.

A BILL FOR AN ACT

1
2 Relating to prevailing party fees; amending ORS 20.190.

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

4 **SECTION 1.** ORS 20.190 is amended to read:

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

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

10 (b) In a circuit court:

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

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

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

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

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

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

20 (a) In a circuit court:

21 (A) When judgment is given without trial of an issue of law or fact, \$325; or

22 (B) When judgment is given after trial of an issue of law or fact, \$600.

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

24 (A) When judgment is given without trial of an issue of law or fact, \$110; or

25 (B) When judgment is given after trial of an issue of law or fact, \$125.

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (b) The objective reasonableness of the claims and defenses asserted by the parties.
- 2 (c) The extent to which an award of a larger prevailing party fee in the case would deter others
3 from asserting good faith claims or defenses in similar cases.
- 4 (d) The extent to which an award of a larger prevailing party fee in the case would deter others
5 from asserting meritless claims and defenses.
- 6 (e) The objective reasonableness of the parties and the diligence of the parties and their attor-
7 neys during the proceedings.
- 8 (f) The objective reasonableness of the parties and the diligence of the parties in pursuing
9 settlement of the dispute.
- 10 (g) Any award of attorney fees made to the prevailing party as part of the judgment.
- 11 (h) Such other factors as the court may consider appropriate under the circumstances of the
12 case.
- 13 (4) Nonprevailing parties are jointly liable for the prevailing party fees provided for in this
14 section. A court may not award more than one prevailing party fee to a prevailing party under this
15 section, or more than one prevailing party fee against a nonprevailing party regardless of the num-
16 ber of parties in the action, and, upon being paid the amount of the award, the prevailing party may
17 not seek recovery of any additional amounts under the provisions of this section from any other
18 nonprevailing party.
- 19 (5) In any appeal from the award or denial of a prevailing party fee under subsection (2) of this
20 section, the court reviewing the award may not modify the decision of the court in making or de-
21 nying an award, or the decision of the court as to the amount of the award, except upon a finding
22 of an abuse of discretion.
- 23 (6) The prevailing party fees provided for in this section may not be awarded:
- 24 (a) In the following proceedings:
- 25 [(a)] (A) A class action proceeding under ORCP 32.
- 26 [(b)] (B) A condemnation proceeding.
- 27 [(c)] (C) Proceedings under the provisions of ORS chapters 25, 107, 108, 109 and 110.
- 28 **(b) To a respondent in proceedings under ORS 30.866 or 163.730 to 163.750 unless the court**
29 **finds that the petitioner initiated the proceedings with malicious intent.**
- 30 (7) Mandatory arbitration under ORS 36.400 to 36.425 does not constitute a trial of an issue of
31 law or fact for the purposes of this section.
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