

Chapter 20

1983 REPLACEMENT PART

Costs and Disbursements

GENERAL

20.015 Definition of "prevailing party"

ATTORNEY FEES; EXPERT WITNESS FEES

- 20.080 Attorney fees in actions for damages for personal or property injury
- 20.085 Costs and attorney fees in inverse condemnation proceedings
- 20.090 Attorney fees in proceeding on check dishonored for lack of funds or because payment stopped
- 20.094 Attorney fees where defendant prevails because of discharge in bankruptcy
- 20.096 Attorney fees and costs in proceedings to enforce contract
- 20.097 Attorney fees and costs where defendant prevails in certain proceedings to enforce contract
- 20.098 Attorney fees and compensation of expert witnesses in certain proceedings for breach of warranty
- 20.105 Attorney fees where party disobeys court order or asserts claim in bad faith or for oppressive reasons

OTHER COSTS

- 20.120 Costs on review of decision of officer, tribunal, or court of inferior jurisdiction
- 20.130 Proceeding to which state or public corporation is party
- 20.140 State and certain public corporations not required to advance costs; payment of costs recovered
- 20.150 Recovery of costs and disbursements when party represented by another
- 20.160 Liability of attorney of nonresident or foreign corporation plaintiff; security for costs
- 20.170 Qualification of and exception to sureties; deposit in lieu of undertaking
- 20.180 Effect of tender as to costs
- 20.190 Recovery of additional amounts as part of costs and disbursements

APPEALS ON ATTORNEY FEES AND OTHER COSTS

20.220 Appeal on attorney fees and costs

TAXATION IN APPELLATE COURT

- 20.310 Taxation in Supreme Court or Court of Appeals; items taxable
- 20.320 Statement of costs and disbursements; objections; fees allowed of course
- 20.330 Costs and disbursements in cases of original jurisdiction

CROSS REFERENCES

Advance payment of judgments, 18.510

Adverse claims to property seized under writ of execution or attachment, costs and disbursements in trial, 23.340

Arbitration, witness fees taxed to losing party, 33.300

Attorney fees and expenses when state agency a party and court finds agency acted unreasonably, 182.090, 183.497

Attorney fees in action to recover fire abatement costs, 477.068

Attorney fees under Residential Landlord and Tenant Act, 91.755

Blood type examiner's compensation, taxability as costs, 109.256

Changing place of trial of action in justices' courts, costs paid by applicant, 52.530

Cooperative corporation, proceedings involving, costs, 62.440

Counsel and transcript for appellant without funds in post-conviction proceedings, 138.500, 138.590

Counsel appointed by court, expenses and fees, 135.055

Court appointed attorney in juvenile hearing, parents or guardian of estate liable for fees if determined able to pay, 419.498

Criminal actions, county's liability for costs, 138.300

Criminal code, costs payable by convicted defendant, 161.665

Declaratory judgment proceeding, costs, 28.100

District courts, costs and disbursements, 46.210

Execution costs for small claims judgment, taxable to defendant, 55.080

Fees, Ch. 21

Foreign judgment, enforcement, costs, 24.140

Habeas corpus, liability for costs of producing party, 34.450

Income tax, additional recovery by individual taxpayer upon appeal to Oregon Tax Court or Supreme Court, 305.447, 305.490

Indigent injured in automobile accident, cost of foreclosing lien, 445.260

Inspection of public records, actions, attorney fees, 192.490

Retail instalment contracts, fees and costs limited in actions, 83.100

Subdivision and Series Partition Control Law, 92.305 to 92.495

Tax court costs and disbursements, 305.490

Transcript on appeal, cost of preparation, 19.084

Transfer from district court to circuit court, costs, 46.075

Trial fees, who to pay in first instance, 21.600

Unemployment insurance contributions, immediate assessment to collect, costs, 657.681

Venue, change of, costs, 14.140

Violations of open meeting law, attorney fees awarded in suits, 192.680

Wages, collection of, costs, disbursements and attorney fees, 652.200

Workers' compensation cases, attorney fees, 656.382, 656.386, 656.593

20.085

Eminent domain procedure, Ch. 35

20.098

Warranties:

Consumer goods, 72.8010 to 72.8200

Sale of goods, 72.3120 to 72.3180

20.120

Writ of review, proceedings, 34.010 to 34.100

PROCEDURE IN CIVIL PROCEEDINGS

20.130

Commerce Department, attorney fees and costs in action relating to pressure vessel fee, 480.600
Criminal actions, liability of county for costs, 138.300
State, county and public corporations exempt from court fees, 21.580

20.140

State and county exempted from payment of certain fees, 21.580

20.150

Partition suits, apportionment of costs, 105.405

20.170

Deposit in lieu of bond, Ch. 22

20.180

Offer in writing to pay or deliver as equivalent to actual tender, 81.010

20.310

Supreme Court and Court of Appeals fees taxed as disbursements, 21.010
Transcript on appeal, cost of preparation, 19.084

20.010 [Repealed by 1981 c.898 §53]

GENERAL

20.015 Definition of "prevailing party." As used in this chapter "prevailing party" on appeal may include, at the discretion of the appellate court, any party who obtains a substantial modification of the judgment, decree or other decision of the trial court. [1983 c.527 §3]

20.020 [Repealed by 1981 c.898 §53]

20.030 [Repealed by 1979 c.284 §199]

20.040 [Amended by 1979 c.284 §59; repealed by 1981 c.898 §53]

20.050 [Repealed by 1981 c.898 §53]

20.055 [1967 c.359 §703a; repealed by 1981 c.898 §53]

20.060 [Repealed by 1981 c.898 §53]

20.070 [Amended by 1977 c.544 §1; repealed by 1981 c.898 §53]

ATTORNEY FEES; EXPERT WITNESS FEES

20.080 Attorney fees in actions for damages for personal or property injury.

(1) In any action for damages for an injury or wrong to the person or property, or both, of another where the amount pleaded is \$3,000 or less, and the plaintiff prevails in the action, there shall be taxed and allowed to the plaintiff, at trial and on appeal, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the action, if the court finds that written demand for the payment of such claim was made on the defendant not less than 10 days before the commencement of the action or the filing of a formal complaint under ORS 46.465 (3) or not more than 10 days after the transfer of the action under ORS 46.461. However, no attorney fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action or the filing of a formal complaint under ORS 46.465 (3) or not more than 10 days after the transfer of the action under ORS 46.461, an amount not less than the damages awarded to the plaintiff.

(2) If the defendant pleads a counterclaim, not to exceed \$3,000, and the defendant prevails in the action, there shall be taxed and allowed to the defendant, at trial and on appeal, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the counterclaim.

[Amended by 1955 c.554 §1; 1979 c.525 §1; 1981 c.897 §1; 1981 c.898 §19]

20.085 Costs and attorney fees in inverse condemnation proceedings. In a proceeding brought under section 18, Article I or section 4, Article XI, of the Oregon Constitution by an owner of property or by a person claiming an interest in property, if the owner or other person prevails, the owner or other person shall be entitled to costs and disbursements and reasonable attorney fees at trial and on appeal. [1965 c.484 §1; 1981 c.897 §2]

20.090 Attorney fees in proceeding on check dishonored for lack of funds or because payment stopped. (1) Except as otherwise provided in subsection (2) of this section, in any action against the maker of any check, draft or order for the payment of money which has been dishonored for lack of funds or credit to pay the same or because payment has been stopped, the court shall allow a reasonable attorney fee at trial and on appeal to the prevailing party, in addition to disbursements.

(2) If the plaintiff prevails in an action described in subsection (1) of this section, the court shall not allow a reasonable attorney fee to the plaintiff as provided in subsection (1) of this section unless the court finds that the plaintiff made written demand of the defendant for the payment of such claim not less than 10 days before the date of the commencement of the action and that the defendant failed to tender to the plaintiff, prior to the commencement of the action, an amount of money not less than the damages awarded to the plaintiff. [Amended by 1963 c.247 §1; 1973 c.553 §1; 1981 c.897 §3]

20.094 Attorney fees where defendant prevails because of discharge in bankruptcy. In any action or suit on a debt, the court shall award the debtor who is a defendant a reasonable attorney fee at trial and on appeal, in addition to disbursements, if the defendant prevails on the grounds of discharge in bankruptcy. [1971 c.167 §2; 1973 c.216 §1; 1981 c.897 §4]

20.095 [1953 c.213 §1; repealed by 1965 c.611 §18]

20.096 Attorney fees and costs in proceedings to enforce contract. (1) In any action or suit on a contract, where such contract specifically provides that attorney fees and costs incurred to enforce the provisions of the contract shall be awarded to one of the parties, the prevailing party, whether that party is the party specified in the contract or not, at trial or on appeal, shall be entitled to reasonable attorney fees in addition to costs and disbursements.

(2) Attorney fees provided for in a contract described in subsection (1) of this section shall not be subject to waiver by the parties to any

such contract which is entered into after September 9, 1971. Any provision in such a contract which provides for a waiver of attorney fees is void.

(3) If the plaintiff prevails in any action or suit on a contract which expressly provides for the award of attorney fees where the amount of principal together with interest due on such contract at the time of commencement of the proceedings does not exceed \$200, there shall be taxed and allowed to the plaintiff a reasonable amount to be fixed by the court as attorney fees, if the court finds that written demand for the payment of plaintiff's claim was made on the defendant not less than 10 days before the commencement of the action. However, no attorney fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, subsequent to such demand but prior to the commencement of the action or suit, an amount not less than the damages awarded to the plaintiff.

(4) In the event that a default judgment is taken against the defendant in an action or suit described in subsection (3) of this section, the amount of attorney fees awarded shall be 25 percent of the amount of the principal together with interest due, exclusive of any other fees or costs authorized by law.

(5) Except as provided in ORS 20.015, as used in this section and ORS 20.097 "prevailing party" means the party in whose favor final judgment or decree is rendered.

(6) As used in this section and ORS 20.097 "contract" includes any instrument or document evidencing a debt. [1971 c.202 §1; 1975 c.623 §3; 1979 c.735 §1; 1981 c.898 §20; 1983 c.527 §1]

20.097 Attorney fees and costs where defendant prevails in certain proceedings to enforce contract. (1) In any action or suit on a contract by an assignee of any right under that contract, when that contract specifically provides that attorney fees and costs incurred to enforce the provisions of the contract shall be awarded to one of the parties, if the defendant is the prevailing party, the maker of that contract and the plaintiff in the action or suit on that contract shall be severally liable for reasonable attorney fees and costs provided by ORS 20.096.

(2) As used in this section, "maker" means the original party to the contract which is the subject of the action or suit who is the predecessor in interest of the plaintiff under the contract. [1975 c.623 §2]

20.098 Attorney fees and compensation of expert witnesses in certain proceedings for breach of warranty. (1) In any action for damages for breach of an express or implied warranty in a sale of consumer goods or services where the amount pleaded is \$2,500 or less and the plaintiff prevails in the action, there shall be taxed and allowed to the plaintiff, at trial and on appeal, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the action, and as part of the disbursements of the action, a reasonable amount to be fixed by the court as compensation of expert witnesses, if the court finds that written demand for the payment of such claim was made on the defendant not less than 30 days before commencement of the action and that the defendant was allowed within that 30 days reasonable opportunity to inspect any property pertaining to the claim; provided, that no attorney fees at trial and on appeal or compensation of expert witnesses shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action, an amount not less than the damages awarded to the plaintiff.

(2) If the defendant prevails in an action in which the plaintiff requests attorney fees or compensation of expert witnesses under subsection (1) of this section, the court may in its discretion allow reasonable attorney fees at trial and on appeal or a reasonable amount as compensation of expert witnesses to the defendant if it finds the action to have been frivolous. [1971 c.744 §23; 1975 c.586 §1; 1981 c.897 §5; 1981 c.898 §21]

20.100 [Repealed by 1981 c.898 §53]

20.105 Attorney fees where party disobeys court order or asserts claim in bad faith or for oppressive reasons. (1) In any civil action, suit or other proceeding in a district court, a circuit court or the Oregon Tax Court, or in any civil appeal to or review by the Court of Appeals or Supreme Court, the court may, in its discretion, award reasonable attorney fees appropriate in the circumstances to a party against whom a claim, defense or ground for appeal or review is asserted, if that party is a prevailing party in the proceeding and to be paid by the party asserting the claim, defense or ground, upon a finding by the court that the party wilfully disobeyed a court order or acted in bad faith, wantonly or solely for oppressive reasons.

(2) All attorney fees paid to any agency of the state under this section shall be deposited to the credit of the agency's appropriation or cash account from which the costs and expenses of

the proceeding were paid or incurred. If the agency obtained an Emergency Board allocation to pay costs and expenses of the proceeding, to that extent the attorney fees shall be deposited in the General Fund available for general governmental expenses. [1983 c.763 §57]

20.110 [Repealed by 1981 c.898 §53]

OTHER COSTS

20.120 Costs on review of decision of officer, tribunal, or court of inferior jurisdiction. When the decision of an officer, tribunal, or court of inferior jurisdiction is brought before a court for review, such review shall, for all the purposes of costs or disbursements, be deemed an appeal to such court upon errors in law, and costs therein shall be allowed and recovered accordingly.

20.130 Proceeding to which state or public corporation is party. In all actions or suits prosecuted or defended in the name and for the use of the state, or any county or other public corporation therein, the state or public corporation is liable for and may recover costs and disbursements in like manner and with like effect as in the case of natural persons. When a natural person is joined with the state as plaintiff, or the action is upon the information of such natural person, he shall be liable in the first instance for the defendant's costs and disbursements; and such costs and disbursements shall not be recovered from the state until after execution is issued therefor against such person and returned unsatisfied in whole or in part.

20.140 State and certain public corporations not required to advance costs; payment of costs recovered. In all actions or proceedings in any court in this state in which the state or any county, city or school district is a party or is interested, it shall not be required to advance any fees taxable as costs and disbursements. In any case in which the state, county, city or school district recovers costs and disbursements, it shall pay to the respective state and county officers the fees earned by such officers and not advanced by it, and which are so recovered. [Amended by 1983 c.763 §19]

20.150 Recovery of costs and disbursements when party represented by another. In an action, suit or proceeding prosecuted or defended by an executor, administrator, trustee of an express trust or person expressly authorized by statute to prosecute or defend therein, or in which a party appears by general guardian, conservator or guardian ad litem, costs

and disbursements shall be recovered or not as in ordinary cases, but if recovered shall be chargeable only upon or collected from the estate, trust fund or party represented or for whom appearance is made, unless the court or judge thereof shall order such costs and disbursements to be recovered from the executor, administrator, trustee, person, guardian or conservator personally for mismanagement or bad faith in the commencement, prosecution or defense of the action, suit or proceeding. [Amended by 1961 c.344 §99]

20.160 Liability of attorney of non-resident or foreign corporation plaintiff; security for costs. The attorney of a plaintiff who resides out of the state or is a foreign corporation, against whom costs are adjudged in favor of a defendant, is liable to the defendant therefor; and if he neglects to pay the same, upon the information of the defendant shall be punished as for a contempt. The attorney may relieve or discharge himself from such liability by filing an undertaking at the commencement of the action or suit, or at any time thereafter before judgment or decree, for the payment to the defendant of the costs and disbursements that may be adjudged to him, executed by one or more sufficient sureties.

20.170 Qualification of and exception to sureties; deposit in lieu of undertaking. The sureties in the undertaking described in ORS 20.160 shall possess the qualifications of sureties in an undertaking for bail on arrest, and their sufficiency may be excepted to by the defendant at any time within five days from notice of filing the same, and if so, they shall justify in an amount not less than \$200, in like manner and with like effect as sureties for bail on arrest. Until the time for excepting to the sufficiency of the sureties has expired or, if excepted to, until they are found sufficient, the attorney is liable as if no undertaking had been given. A deposit of \$200 or other sum which the court or judge may direct, with the clerk, may be made in lieu of such undertaking.

20.180 Effect of tender as to costs. When in any action or suit for the recovery of money or damages only, the defendant shall allege in his answer that before the commencement thereof he tendered to the plaintiff a certain amount of money in full payment or satisfaction of the cause, and now brings the same into court and deposits it with the clerk for the plaintiff, if such allegation of tender is found true, and the plaintiff does not recover a greater sum than the amount so tendered, he shall not

recover costs off the defendant, but the defendant shall recover them off him.

20.190 Recovery of additional amounts as part of costs and disbursements. 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:

(1) In the Supreme Court or Court of Appeals, on an appeal, \$85.

(2) In a circuit court or district court:

(a) When judgment is given without trial of an issue of law or fact or on an appeal, \$35; or

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

(3) In a county court or justice's court, one-half of the amount provided for in subsection (2) of this section. [1981 c.898 §18a]

APPEALS ON ATTORNEY FEES AND OTHER COSTS

20.210 [Amended by 1959 c.638 §7; 1979 c.284 §60; repealed by 1981 c.898 §53]

20.220 Appeal on attorney fees and costs. An appeal may be taken from a judgment under ORCP 68 C.(4) on the allowance and taxation of attorney fees and costs and disbursements on questions of law only, as in other cases. On such appeal the statement of attorney fees and costs and disbursements, the objections thereto, the judgment rendered thereon, and the exceptions, if any, shall constitute the trial court file, as defined in ORS 19.005. [Amended by 1967 c.471 §2; 1981 c.898 §22]

20.230 [Repealed by 1981 c.898 §53]

TAXATION IN APPELLATE COURT

20.310 Taxation in Supreme Court or Court of Appeals; items taxable. When costs are allowed to the prevailing party on appeal to the Supreme Court or Court of Appeals the appearance fees, attorney fees, as provided by law; the necessary expenses of transcript or abstract, as the law or rules require; the printing required by rule of the court, and the transcript

of testimony or other proceedings, when necessarily forming part of the record on appeal, shall be taxed in the Supreme Court or Court of Appeals as costs of the appeal. [Amended by 1971 c.99 §1; 1977 c.290 §2]

20.320 Statement of costs and disbursements; objections; fees allowed of course. No disbursements shall be allowed in the Supreme Court or Court of Appeals to any party unless that party serves on the adverse party or the adverse party's attorney, and files with the State Court Administrator, a verified statement showing with reasonable certainty the items of all costs and disbursements in the cause. The statement shall be accompanied by proof of service thereof and shall be filed within 21 days, or such further time as may be allowed by the court, from the time an opinion is rendered, or, if no opinion is handed down, then within 21 days from the giving of a decision by the court. The total of the items included in the statement of costs and disbursements thus filed, with the exception of items or amounts not allowed by law or by rules of the Supreme Court or Court of Appeals, shall be entered by the administrator as a part of the judgment or decree, in favor of the party entitled thereto, unless the adverse party within 14 days from date of service of such statement shall serve and file verified objections thereto. Appearance fees, trial fees and attorney fees shall be allowed as a matter of course to the party entitled thereto, without the filing of a statement of disbursements. [Amended by 1971 c.99 §2; 1983 c.774 §4]

Note: Section 1, chapter 774, Oregon Laws 1983, provides:

Sec. 1. To the extent that amendments of statute sections by sections 2 to 5 of this Act decrease or increase time periods, those amendments are not applicable to time periods that began and did not expire before the effective date of this Act [January 1, 1984]. Those time periods that began and did not expire before the effective date of this Act shall expire as provided by the law in effect immediately before that effective date.

20.330 Costs and disbursements in cases of original jurisdiction. Litigants shall recover their costs and disbursements in cases of original jurisdiction in the Supreme Court, the same as provided in cases on appeal.