Chapter 20

1985 REPLACEMENT PART

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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20.020 [Repealed by 1981 c.898 §53]

20.030 [Repealed by 1979 c.284 §199]

20.040 [Amended by 1979 c.284 §59; repealed by 1981 c.898 §53]

20.050 [Repealed by 1981 c.898 §53]

20.055 [1967 c 359 §703a, repealed by 1981 c.898 §53]

20.060 [Repealed by 1981 c.898 §53]

20.070 [Amended by 1977 c 544 §1, repealed by 1981 c.898 §53]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 $4,000 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 $4,000, 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; 1985 c.342 §7]

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]

20.107 Attorney and expert witness fees and other costs on successful claim of

illegal discrimination; defense. (1) In any civil judicial proceeding, including judicial review of an administrative proceeding, a complaining party who prevails in a final binding judgment on a claim of illegal discrimination in violation of state constitutional provision, statute or administrative rule shall be entitled to recover costs and disbursements, including attorney and expert witness fees reasonably and necessarily incurred in connection with the discrimination claim, at the trial court or agency level and on appeal.

(2) In making an award under this section, the court shall calculate attorney and expert witness fees on the basis of a reasonable hourly rate at the time the award is made, multiplied by the amount of time actually and reasonably spent in connection with the discrimination claim.

(3) In making an award under this section, if a proceeding involved more than two parties, the court shall determine which party or parties were responsible for the illegal discrimination and shall order that the award be paid by the responsible party or parties in proportion to their responsibility. Nothing in this subsection precludes a court from making an award under this section against parties who were acting pursuant to a statute that is held by the court to be unconstitutional in whole or in part.

(4) When an award under this section is made against a state agency or an officer or employe of a state agency, the award shall be paid by the agency directly from funds available to it.

(5) Nothing in this section limits the authority of a court to award costs and disbursements, including attorney and expert witness fees, under any other provision of law.

(6) Any state agency, officer or employe is subject to subsection (3) of this section. However, a local government, local official or a private party may depend on a good faith reliance defense on a state statute found unconstitutional and is not liable for paying a prevailing party's attorney fees and costs.

(7) As used in this section, "unlawful discrimination" means discrimination based upon personal characteristics including, but not limited to, gender, national origin, age, marital status, race, religion or alienage. [1985 c 768 §1]

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.

20.125 Assessment of costs against attorney causing mistrial. In the case of a mistrial in a civil or criminal action, if the court determines that the mistrial was caused by the deliberate misconduct of an attorney, the court, upon motion by the opposing party or upon motion of the court, may assess costs and disbursements, as defined in ORCP 68, of the opposing party against the attorney causing the mistrial. Those costs and disbursements may be assessed against the attorney for the trial that ended in the mistrial. [1985 c.556 §1]

Note: ORS 20.125 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 20 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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, the natural person 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 nonresident 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 the attorney neglects to pay the same, upon the information of the defendant shall be punished as for a contempt. The attorney may relieve or discharge the attorney 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 the attorney, 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 answer that before the commencement thereof the defendant 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, the plaintiff shall not recover costs off the defendant, but the defendant shall recover them off the plaintiff.

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]

COSTS AND DISBURSEMENTS IN APPELLATE COURTS

20.310 Costs and disbursements in Supreme Court or Court of Appeals. (1) In any appeal to the Court of Appeals or review by the Supreme Court, the court shall allow costs and disbursements to the prevailing party, unless a statute provides that in the particular case costs and disbursements shall not be allowed to the prevailing party or shall be allowed to some other party, or unless the court directs otherwise. If, under a special provision of any statute, a party has a right to recover costs, such party shall also have a right to recover disbursements. On the same terms and conditions, when the Supreme Court denies a petition for review, the respondent on review is entitled to costs and disbursements

reasonably incurred in connection with the petition for review.

(2) Costs and disbursements on appeal to the Court of Appeals or Supreme Court or on petition for review by the Supreme Court are the filing or appearance fee, attorney fees as provided by law, the printing, including the abstract of record, required by rule of the court, and the transcript of testimony or other proceedings, when necessarily forming part of the record on appeal. [Amended by 1971 c 99 §1; 1977 c 290 §2, 1985 c.734 §13]

20.320 Statement of costs and disbursements; objections; fees allowed of course. No costs or 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 date of the court's decision. 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 appellate judgment, 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. The filing or appearance fee and the prevailing party fee under ORS 20.190 shall be allowed as a matter of course to the party entitled thereto, without the filing of a statement of costs and disbursements. [Amended by 1971 c 99 §2, 1983 c 774 §4, 1985 c.734 §14]

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.