

ATTORNEY FEES; EXPERT WITNESS FEES

20.075 Factors to be considered by court in awarding attorney fees; limitation on appellate review of attorney fee award. (1) A court shall consider the following factors in determining whether to award attorney fees in any case in which an award of attorney fees is authorized by statute and in which the court has discretion to decide whether to award attorney fees:

(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 an attorney 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 an attorney 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) The amount that the court has awarded as a prevailing party fee under ORS 20.190.

(h) Such other factors as the court may consider appropriate under the circumstances of the case.

(2) A court shall consider the factors specified in subsection (1) of this section in determining the amount of an award of attorney fees in any case in which an award of attorney fees is authorized or required by statute. In addition, the court shall consider the following factors in determining the amount of an award of attorney fees in those cases:

(a) The time and labor required in the proceeding, the novelty and difficulty of the questions involved in the proceeding and the skill needed to properly perform the legal services.

(b) The likelihood, if apparent to the client, that the acceptance of the particular employment by the attorney would preclude the attorney from taking other cases.

(c) The fee customarily charged in the locality for similar legal services.

(d) The amount involved in the controversy and the results obtained.

(e) The time limitations imposed by the client or the circumstances of the case.

(f) The nature and length of the attorney's professional relationship with the client.

(g) The experience, reputation and ability of the attorney performing the services.

(h) Whether the fee of the attorney is fixed or contingent.

(3) In any appeal from the award or denial of an attorney fee subject to 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.

(4) Nothing in this section authorizes the award of an attorney fee in excess of a reasonable attorney fee. [1995 c.618 §6; 2001 c.417 §3]

20.077 Determination of prevailing party; cases in which more than one claim made; prevailing party on appeal. (1) In any action or suit in which one or more claims are asserted for which an award of attorney fees is either authorized or required, the prevailing party on each claim shall be determined as provided in this section. The provisions of this section apply to all proceedings in the action or suit, including arbitration, trial and appeal.

(2) For the purposes of making an award of attorney fees on a claim, the prevailing party is the party who receives a favorable judgment or arbitration award on the claim. If more than one claim is made in an action or suit for which an award of attorney fees is either authorized or required, the court or arbitrator shall:

(a) Identify each party that prevails on a claim for which attorney fees could be awarded;

(b) Decide whether to award attorney fees on claims for which the court or arbitrator is authorized to award attorney fees, and the amount of the award;

(c) Decide the amount of the award of attorney fees on claims for which the court or arbitrator is required to award attorney fees; and

(d) Enter a judgment that complies with the requirements of ORS 18.038 and 18.042.

(3) Notwithstanding subsection (2) of this section, upon appeal of a judgment in an action or suit in which one or more claims are asserted for which the prevailing party may receive an award of attorney fees, the appellate court in its discretion may designate as the prevailing party a party who obtains a substantial modification of the judgment.

(4) This section does not create a claim to an award of attorney fees in any action or suit in which the court or arbitrator is not otherwise authorized or required to make an award of attorney fees by contract or other law. [2001 c.417 §1; 2003 c.576 §167]

20.080 Attorney fees for certain tort claims of \$5,500 or less. (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 \$5,500 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, 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, 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, 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 \$5,500, 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.

(3) The provisions of this section do not apply to any action based on contract. [Amended by 1955 c.554 §1; 1979 c.525 §1; 1981 c.897 §1; 1981 c.898 §19; 1985 c.342 §7; 1985 c.618 §15c; 1997 c.46 §2; 1999 c.947 §1; 2001 c.542 §2]

20.082 Attorney fees for contract claims of \$5,500 or less. (1) As used in this section, "contract" includes:

- (a) Express contracts;
- (b) Implied contracts; and
- (c) Instruments or documents evidencing a debt.

(2) Except as provided in this section, a court shall allow reasonable attorney fees to the prevailing party on any claim based on contract if:

(a) The amount of the principal together with interest due on the contract at the time the claim is filed is \$5,500 or less; and

(b) The contract does not contain a clause that authorizes or requires the award of attorney fees.

(3) Attorney fees may not be awarded to a plaintiff under the provisions of this section unless written demand for payment of the 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, or not more than 10 days after the transfer of the action under ORS 46.461. The failure of a plaintiff to give notice under the provisions of this subsection does not affect the ability of a defendant to claim attorney fees under the provisions of this section.

(4) Attorney fees may not be awarded to a plaintiff under the provisions of this section 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, or not more than 10 days after the transfer of the action under ORS 46.461, an amount not less than the amount awarded to the plaintiff.

(5) The provisions of this section do not apply to:

- (a) Contracts for insurance;

(b) Contracts for which another statute authorizes or requires an award of attorney fees;

(c) Any action for damages for breach of an express or implied warranty in a sale of consumer goods or services that is subject to ORS 20.098; or

(d) Any action against the maker of a dishonored check that is subject to ORS 30.701. [2001 c.542 §1; 2005 c.22 §10]

20.083 Attorney fees under void or unenforceable contract. A prevailing party in a civil action relating to an express or implied contract is entitled to an award of attorney fees that is authorized by the terms of the contract or by statute, even though the party prevails by reason of a claim or defense asserting that the contract is in whole or part void or unenforceable. [2003 c.393 §1]

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; 1995 c.79 §8]

20.090 [Amended by 1963 c.247 §1; 1973 c.553 §1; 1981 c.897 §3; repealed by 1997 c.182 §7]

20.094 Attorney fees in actions or suits in which discharge in bankruptcy asserted. In any action or suit on a debt in which the defendant asserts a discharge in bankruptcy as a defense, the court shall award a reasonable attorney fee at trial and on appeal to the prevailing party. [1971 c.167 §2; 1973 c.216 §1; 1981 c.897 §4; 1995 c.618 §18]

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

20.096 Reciprocity of attorney fees and costs in proceedings to enforce contract. (1) In any action or suit in which a claim is made based 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 party that prevails on the claim, whether that party is the party specified in the contract or not, 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 that is entered into after September 9, 1971. Any provision in such a contract that provides for a waiver of attorney fees is void.

(3) 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; 2001 c.542 §§3,3a]

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, the maker of that contract and the plaintiff in the action or suit on that contract shall be severally liable for any attorney fees and costs that may be awarded to the defendant in the action.

(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.

(3) A maker shall be liable under this section only if the defense successfully asserted by the defendant existed at the time of the assignment of the contract. [1975 c.623 §2; 1989 c.1065 §1; 2001 c.542 §4]

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, defense or ground for appeal without objectively reasonable basis. (1) In any civil action, suit or other proceeding in 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 shall award reasonable attorney fees 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 willfully disobeyed a court order or that there was no objectively reasonable basis for asserting the claim, defense or ground for appeal.

(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; 1995 c.618 §2]

20.107 Attorney and expert witness fees and other costs on claim of unlawful discrimination; defense. (1) In any civil judicial proceeding, including judicial review of an administrative proceeding based on a claim of unlawful discrimination, the court shall award to the prevailing plaintiff 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. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court or agency.

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

(4) 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; 1995 c.618 §20]