

SENATE AMENDMENTS TO RESOLVE CONFLICTS TO A-ENGROSSED HOUSE BILL 2359

By COMMITTEE ON JUDICIARY

June 22

1 On page 29 of the printed A-engrossed bill, after line 35, insert:

2 **“SECTION 31a. If House Bill 2261 becomes law, section 31 of this 2005 Act (amending**
3 **ORCP 68 C) is repealed and ORCP 68 C, as amended by section 4, chapter 22, Oregon Laws**
4 **2005 (Enrolled House Bill 2261), is amended to read:**

5 “C Award of and entry of judgment for attorney fees and costs and disbursements.

6 “C(1) Application of this section to award of attorney fees. Notwithstanding Rule 1 A and the
7 procedure provided in any rule or statute permitting recovery of attorney fees in a particular case,
8 this section governs the pleading, proof and award of attorney fees in all cases, regardless of the
9 source of the right to recovery of such fees, except when:

10 “C(1)(a) Such items are claimed as damages arising prior to the action; or

11 “C(1)(b) Such items are granted by order, rather than entered as part of a judgment.

12 “C(2)(a) Alleging right to attorney fees. A party seeking attorney fees shall allege the facts,
13 statute or rule that provides a basis for the award of such fees in a pleading filed by that party.
14 Attorney fees may be sought before the substantive right to recover such fees accrues. No attorney
15 fees shall be awarded unless a right to recover such fee is alleged as provided in this subsection.

16 “C(2)(b) If a party does not file a pleading and seeks judgment or dismissal by motion, a right
17 to attorney fees shall be alleged in such motion, in similar form to the allegations required in a
18 pleading.

19 “C(2)(c) A party shall not be required to allege a right to a specific amount of attorney fees.
20 An allegation that a party is entitled to ‘reasonable attorney fees’ is sufficient.

21 “C(2)(d) Any allegation of a right to attorney fees in a pleading or motion shall be deemed de-
22 nied and no responsive pleading shall be necessary. The opposing party may make a motion to strike
23 the allegation or to make the allegation more definite and certain. Any objections to the form or
24 specificity of allegation of the facts, statute or rule that provides a basis for the award of fees shall
25 be waived if not alleged prior to trial or hearing.

26 “C(3) Proof. The items of attorney fees and costs and disbursements shall be submitted in the
27 manner provided by subsection (4) of this section, without proof being offered during the trial.

28 “C(4) Procedure for seeking attorney fees or costs and disbursements. The procedure for seeking
29 attorney fees or costs and disbursements shall be as follows:

30 “C(4)(a) Filing and serving statement of attorney fees and costs and disbursements. A party
31 seeking attorney fees or costs and disbursements shall, not later than 14 days after entry of judg-
32 ment pursuant to Rule 67:

33 “C(4)(a)(i) File with the court a signed and detailed statement of the amount of attorney fees
34 or costs and disbursements, together with proof of service, if any, in accordance with Rule 9 C; and

35 “C(4)(a)(ii) Serve, in accordance with Rule 9 B, a copy of the statement on all parties who are

1 not in default for failure to appear.

2 “C(4)(b) Objections. A party may object to a statement seeking attorney fees or costs and dis-
3 bursements or any part thereof by written objections to the statement. The objections shall be
4 served within 14 days after service on the objecting party of a copy of the statement. The objections
5 shall be specific and may be founded in law or in fact and shall be deemed controverted without
6 further pleading. Statements and objections may be amended in accordance with Rule 23.

7 “C(4)(c) Hearing on objections.

8 “C(4)(c)(i) If objections are filed in accordance with paragraph C(4)(b) of this rule, the court,
9 without a jury, shall hear and determine all issues of law and fact raised by the statement of at-
10 torney fees or costs and disbursements and by the objections. The parties shall be given a reason-
11 able opportunity to present affidavits, declarations and other evidence relevant to any factual issue,
12 including any factors that ORS 20.075 or any other statute or rule requires or permits the court to
13 consider in awarding or denying attorney fees or costs and disbursements.

14 “C(4)(c)(ii) The court shall deny or award in whole or in part the amounts sought as attorney
15 fees or costs and disbursements.

16 “C(4)(d) No timely objections. If objections are not timely filed the court may award attorney
17 fees or costs and disbursements sought in the statement.

18 “C(4)(e) Findings and conclusions. On the request of a party, the court shall make special
19 findings of fact and state its conclusions of law on the record regarding the issues material to the
20 award or denial of attorney fees. A party shall make a request pursuant to this paragraph by in-
21 cluding a request for findings and conclusions in the title of the statement of attorney fees or costs
22 and disbursements or objections filed pursuant to paragraph (a) or (b) of this subsection. In the ab-
23 sence of a request under this paragraph, the court may make either general or special findings of
24 fact and may state its conclusions of law regarding attorney fees.

25 “C(5) Judgment concerning attorney fees or costs and disbursements.

26 “C(5)(a) As part of judgment. [*When*] **If** all issues regarding attorney fees or costs and dis-
27 bursements [*have been determined*] **are decided** before **entry of** a judgment pursuant to Rule 67 [*is*
28 *entered*], the court shall include any award or denial of attorney fees or costs and disbursements in
29 that judgment.

30 “C(5)(b) By supplemental judgment; notice. [*When*] **If** any issue regarding attorney fees or costs
31 and disbursements [*has*] **is not** [*been determined*] **decided** before **entry of a general** judgment [*pur-*
32 *suant to Rule 67 is entered*], any award or denial of attorney fees or costs and disbursements shall
33 be made by [*a separate*] supplemental judgment. [*The supplemental judgment shall be filed and entered*
34 *and notice shall be given to the parties as provided in ORS 18.078.*]

35 “C(6) Avoidance of multiple collection of attorney fees and costs and disbursements.

36 “C(6)(a) Separate judgments for separate claims. If more than one judgment is entered in an
37 action, the court shall take such steps as necessary to avoid the multiple taxation of the same at-
38 torney fees and costs and disbursements in those judgments.

39 “C(6)(b) Separate judgments for the same claim. If more than one judgment is entered for the
40 same claim (when separate actions are brought for the same claim against several parties who might
41 have been joined as parties in the same action, or when pursuant to Rule 67 B separate limited
42 judgments are entered against several parties for the same claim), attorney fees and costs and dis-
43 bursements may be entered in each judgment as provided in this rule, but satisfaction of one judg-
44 ment bars recovery of attorney fees or costs and disbursements included in all other judgments.”.