ENGROSSED SENATE
BILL NO. 296

By: Gumm of the Senate

and

Carey of the House

An Act relating to civil procedure and fees; amending 12 O.S. 2001, Section 1584, which relates to improper issue of order for delivery; removing certain liability of court clerk; amending 28 O.S. 2001, Sections 84.1, 151, 152, as last amended by Section 3, Chapter 525, O.S.L. 2004 and 153, as last amended by Section 1, Chapter 451, O.S.L. 2004 (28 O.S. Supp. 2004, Sections 152 and 153), which relate to witness fees, collection of fines, fees and assessments, flat fee schedule and costs in criminal cases; directing collection of certain fees, assessments and payments and costs in criminal cases; adding form of payment acceptable for certain fines; defining term; clarifying applicability of certain assessment; amending 43 O.S. 2001, Section 9, which relates to original records; modifying acceptable form of certain records; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2001, Section 1584, is amended to read as follows:

Section 1584. Any order for the delivery of property, issued under this article, without the affidavit and undertaking required, shall be set aside at the cost of the clerk issuing the same, and ~~such clerk, as well as~~ the plaintiff, shall ~~also~~ be liable, in damages, to the party injured.

SECTION 2. AMENDATORY 28 O.S. 2001, Section 84.1, is amended to read as follows:

Section 84.1 Any employee of the state or any political subdivision thereof who is subpoenaed as a witness to testify on any matter pertaining to their employment, including any investigation conducted by the employee as a duty of said employment for which he is fully compensated, shall not be entitled to receive the witness fee and reimbursement for mileage provided for in Section 81 of

~~Title 28 of the Oklahoma Statutes~~ this title. However, if the employee is required by the subpoena to testify in a county other than his county of residence or employment, he shall be entitled to receive reimbursement pursuant to the State Travel Reimbursement Act ~~and the rules of the Supreme Court, payable from the court fund of the county where the prosecution is pending~~ in accordance with Section 82 of this title. No such witness shall receive such reimbursement in more than one case covering the same period of time or the same travel. Each such witness shall be required to make oath that the amounts claimed for reimbursement have not been claimed or received in any other case or from any other source.

SECTION 3. AMENDATORY 28 O.S. 2001, Section 151, is amended to read as follows:

Section 151. A. It shall be the duty of the clerks of the district court and other trial courts of record of this state to charge and collect the fees imposed by this title and other fees, assessments and payments as imposed by the Oklahoma Statutes, fines, costs and assessments imposed by the district courts or appellant courts, and none others, in all cases, except those in which the defendant is charged with a misdemeanor or traffic violation, and except cases under the Small Claims Procedure Act, Section 1751 et seq. of Title 12 of the Oklahoma Statutes.

B. 1. Payment for any fee provided for in this title may be made by a nationally recognized credit or debit card issued to the applicant. The court clerk may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of the payment as a service charge for the acceptance and verification of the credit or debit card. For purposes of this subsection, "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services, or

anything else of value and which is accepted by over one thousand merchants in this state. "Debit card" means an identification card or device issued to a person by a business organization which permits such person to obtain access to or activate a consumer banking electronic facility. The court clerk shall determine which nationally recognized credit or debit cards will be accepted as payment for fees.

2. Written procedures for acceptance or rejection of credit cards shall be established by the Office of the State Auditor and Inspector with approval and direction to court clerks to be issued by the Administrative Office of the Courts.

C. Payment for any fee provided for in this title may be made by a personal or business check. The court clerk, at the court clerk's discretion, may:

1. Add an amount equal to the amount of the service charge incurred, not to exceed three percent (3%) of the amount of the check as a service charge for the acceptance and verification of the check; or

2. Add an amount of no more than Five Dollars ($5.00) as a service charge for the acceptance and verification of a check. For purposes of this subsection, "personal or business check" shall not mean a money order, cashier's check, or bank certified check.

D. The Supreme Court is authorized to institute a cost collection program for collection of fees, fines, costs and assessments provided for in this title.

SECTION 4. AMENDATORY 28 O.S. 2001, Section 152, as last amended by Section 3, Chapter 525, O.S.L. 2004 (28 O.S. Supp. 2004, Section 152), is amended to read as follows:

Section 152. A. In any civil case filed in a district court, the court clerk shall collect, at the time of filing, the following flat fees, none of which shall ever be refundable, and which shall

be the only charge for court costs, except as is otherwise specifically provided for by law:

1. Actions for divorce, alimony without divorce, separate maintenance, custody or support..... $140.00
2. Any ancillary proceeding to modify or vacate a divorce decree providing for custody or support.....$40.00
3. Probate and guardianship.....$132.00
4. Annual guardianship report.....$30.00
5. Any proceeding for sale or lease of real or personal property or mineral interest in probate or guardianship.....$40.00
6. Any proceeding to revoke the probate of a will.....$40.00
7. Judicial determination of death.....$55.00
8. Adoption.....$102.00
9. Civil actions for an amount of Ten Thousand Dollars ($10,000.00) or less and condemnation.....$147.00
10. Civil actions for an amount of Ten Thousand One Dollars ($10,001.00) or more $160.00
11. Garnishment.....$20.00
12. Continuing wage garnishment.....$60.00
13. Any other proceeding after judgment.....$30.00
14. All others, including but not limited to actions for forcible entry and detainer, judgments from all other courts, including the Workers' Compensation Court.....$82.00
15. Notice of renewal of judgment.....$20.00

B. In addition to the amounts collected pursuant to <u>paragraphs 1, 3, 7, 8, 9, 10 and 14 of</u> subsection A of this section, the sum of

Six Dollars ($6.00) shall be assessed and credited to the Law Library Fund.

C. In addition to the amounts collected pursuant to subsections A and B of this section, the sum of Ten Dollars ($10.00) shall be assessed and credited to the Oklahoma Court Information System Revolving Fund created pursuant to Section 1315 of Title 20 of the Oklahoma Statutes.

D. Of the amounts collected pursuant to paragraph 8 of subsection A of this section, the sum of Twenty Dollars ($20.00) shall be deposited to the credit of the Voluntary Registry and Confidential Intermediary program and the Mutual Consent Voluntary Registry established pursuant to the Oklahoma Adoption Code.

E. Of the amounts collected pursuant to subsection A of this section, the sum of Ten Dollars ($10.00) shall be deposited to the credit of the Child Abuse Multidisciplinary Account.

F. In any case in which a litigant claims to have a just cause of action and that, by reason of poverty, the litigant is unable to pay the fees and costs provided for in this section and is financially unable to employ counsel, upon the filing of an affidavit in forma pauperis executed before any officer authorized by law to administer oaths to that effect and upon satisfactory showing to the court that the litigant has no means and is, therefore, unable to pay the applicable fees and costs and to employ counsel, no fees or costs shall be required. The opposing party or parties may file with the court clerk of the court having jurisdiction of the cause an affidavit similarly executed contradicting the allegation of poverty. In all such cases, the court shall promptly set for hearing the determination of eligibility to litigate without payment of fees or costs. Until a final order is entered determining that the affiant is ineligible, the clerk shall permit the affiant to litigate without payment of fees or costs. Any litigant executing a false affidavit or counter

affidavit pursuant to the provisions of this section shall be guilty of perjury.

SECTION 5. AMENDATORY 28 O.S. 2001, Section 153, as last amended by Section 1, Chapter 451, O.S.L. 2004 (28 O.S. Supp. 2004, Section 153), is amended to read as follows:

Section 153. A. The clerks of the courts shall collect as costs in every criminal case for each offense of which the defendant is convicted, irrespective of whether or not the sentence is deferred, the following flat charges and no more, except for standing and parking violations and for charges otherwise provided for by law, which fee shall cover docketing of the case, filing of all papers, issuance of process, warrants, orders, and other services to the date of judgment:

1. For each defendant convicted of exceeding the speed limit by at least one (1) mile per hour but not more than ten (10) miles per hour, whether charged individually or conjointly with others..... $77.00
2. For each defendant convicted of a misdemeanor traffic violation other than an offense provided for in paragraph 1 or 5 of this subsection, whether charged individually or conjointly with others..... $88.00
3. For each defendant convicted of a misdemeanor, other than for driving under the influence of alcohol or other intoxicating substance or an offense provided for in paragraph 1 or 2 of this subsection, whether charged individually or conjointly with others..... $83.00
4. For each defendant convicted of a felony, other than for driving under the influence

of alcohol or other intoxicating substance, whether charged individually or conjointly with others..... $103.00

5. For each defendant convicted of the misdemeanor of driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others..... $283.00

6. For each defendant convicted of the felony of driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others..... $283.00

7. For the services of a court reporter at each preliminary hearing and trial held in the case..... $20.00

8. For each time a jury is requested..... $30.00

9. A sheriff's fee for serving or endeavoring to serve each writ, warrant, order, process, command, or notice or pursuing any fugitive from justice

   a. within the county..... $30.00, or mileage as established by the Oklahoma Statutes, whichever is greater, or

   b. outside of the county..... $30.00, or actual, necessary expenses, whichever is greater

10. For the services of a language interpreter, other than an interpreter appointed pursuant to the provisions of the Oklahoma Interpreter for the Deaf Act, at each hearing held in the case, the actual cost of the interpreter.

B. In addition to the amount collected pursuant to paragraphs 2 through 5 of subsection A of this section, the sum of Six Dollars ($6.00) shall be assessed and credited to the Law Library Fund pursuant to Section 1201 et seq. of Title 20 of the Oklahoma Statutes.

C. In addition to the amount collected pursuant to subsection A of this section, the sum of Ten Dollars ($10.00) shall be assessed and collected in every traffic case for each offense other than for driving under the influence of alcohol or other intoxicating substance; the sum of Fifteen Dollars ($15.00) shall be assessed and collected in every misdemeanor case for each offense; the sum of Fifteen Dollars ($15.00) shall be assessed and collected in every misdemeanor case for each offense for driving under the influence of alcohol or other intoxicating substance; the sum of Twenty-five Dollars ($25.00) shall be assessed and collected in every felony case for each offense; and the sum of Twenty-five Dollars ($25.00) shall be assessed and collected in every felony case for each offense for driving under the influence of alcohol or other intoxicating substance.

D. Prior to conviction, parties in criminal cases shall not be required to pay, advance, or post security for the services of a language interpreter or for the issuance or service of process to obtain compulsory attendance of witnesses.

E. The fees collected pursuant to this section shall be deposited into the court fund, except the following:

1. The sheriff’s fee provided for in paragraph 9 of subsection A of this section which, when collected, shall be deposited in the Sheriff’s Service Fee Account, created pursuant to the provisions of

Section 514.1 of Title 19 of the Oklahoma Statutes, of the sheriff in the county in which service is made or attempted;

2. The sheriff's fee provided for in Section 153.2 of this title;

3. The witness fees paid by the district attorney pursuant to the provisions of Section 82 of this title which, if collected by the court clerk, shall be transferred to the district attorney's office in the county where witness attendance was required. Fees transferred pursuant to this paragraph shall be deposited in the district attorney's maintenance and operating expense account; and

4. The fees provided for in subsection C of this section shall be forwarded to the District Attorneys Council Revolving Fund to defray the costs of prosecution.

F. Costs required to be collected pursuant to this section shall not be dismissed or waived; provided, if the court determines that a person needing the services of a language interpreter is indigent, the court may waive all or part of the costs or require the payment of costs in installments.

G. As used in this section, "convicted" means any final adjudication of guilt, whether pursuant to a plea of guilty or nolo contendere or otherwise, and any deferred judgment or suspended sentence.

H. A court clerk may accept in payment for any fee, fine, or cost for violation of any traffic law a nationally recognized credit card <u>or bank debit card</u> issued to the applicant. The court clerk may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of the payment as a service charge for the acceptance of the credit <u>or debit</u> card. For purposes of this paragraph, "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate, or by any other name, issued with or without fee by an issuer for the use of the

cardholder in obtaining goods, services, or anything else of value and which is accepted by over one thousand (1,000) merchants in this state. "Debit card" means an identification card or device issued to a person by a business organization which permits such person to obtain access to or activate a consumer banking electronic facility. The court clerk shall determine which nationally recognized credit cards will be accepted as payment for fees; provided, the court clerk must ensure that no loss of state revenue will occur by the use of such cards.

I. Upon receipt of payment of fines and costs for offenses charged prior to July 1, 1992, the court clerk shall apportion and pay Thirteen Dollars ($13.00) per conviction to the court fund.

SECTION 6. AMENDATORY 43 O.S. 2001, Section 9, is amended to read as follows:

Section 9. The judge or clerk of the district court issuing any marriage license shall make a complete record of the application, license, and certificate thereon, ~~in connected form, each subjoining the other~~ on an optical disc, microfilm, microfiche imaging, or in a book kept by the judge or clerk for that purpose, properly indexed; and the record of the license shall be made before it is delivered to the person procuring the same, and the record of the certificate shall be made upon the return of the license; provided, that all records pertaining to the issuance of such license shall be open to public inspection during office hours; provided further, that after recording of the original license and completed certificate as hereinbefore required, it shall be returned to the persons to whom the same was issued, with the issuing officer's certificate on the back thereof showing the book and page where the same has been recorded.

SECTION 7. This act shall become effective November 1, 2005.

Passed the Senate the 14th day of March, 2005.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2005.

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Presiding Officer of the House
of Representatives