

CS for SB 296

1 THE STATE SENATE
2 Thursday, February 24, 2005

3 Committee Substitute for
4 Senate Bill No. 296

5 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 296 - By: GUMM of the
6 Senate and CAREY of the House.

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

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

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

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

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

1 Section 84.1 Any employee of the state or any political
2 subdivision thereof who is subpoenaed as a witness to testify on any
3 matter pertaining to their employment, including any investigation
4 conducted by the employee as a duty of said employment for which he
5 is fully compensated, shall not be entitled to receive the witness
6 fee and reimbursement for mileage provided for in Section 81 of
7 ~~Title 28 of the Oklahoma Statutes~~ this title. However, if the
8 employee is required by the subpoena to testify in a county other
9 than his county of residence or employment, he shall be entitled to
10 receive reimbursement pursuant to the State Travel Reimbursement Act
11 ~~and the rules of the Supreme Court, payable from the court fund of~~
12 ~~the county where the prosecution is pending~~ in accordance with
13 Section 82 of this title. No such witness shall receive such
14 reimbursement in more than one case covering the same period of time
15 or the same travel. Each such witness shall be required to make
16 oath that the amounts claimed for reimbursement have not been
17 claimed or received in any other case or from any other source.

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

20 Section 151. A. It shall be the duty of the clerks of the
21 district court and other trial courts of record of this state to
22 charge and collect the fees imposed by this title and other fees,
23 assessments and payments as imposed by the Oklahoma Statutes, fines,

1 costs and assessments imposed by the district courts or appellant
2 courts, and none others, in all cases, except those in which the
3 defendant is charged with a misdemeanor or traffic violation, and
4 except cases under the Small Claims Procedure Act, Section 1751 et
5 seq. of Title 12 of the Oklahoma Statutes.

6 B. 1. Payment for any fee provided for in this title may be
7 made by a nationally recognized credit or debit card issued to the
8 applicant. The court clerk may add an amount equal to the amount of
9 the service charge incurred, not to exceed four percent (4%) of the
10 amount of the payment as a service charge for the acceptance and
11 verification of the credit or debit card. For purposes of this
12 subsection, "nationally recognized credit card" means any instrument
13 or device, whether known as a credit card, credit plate, charge
14 plate, or by any other name, issued with or without fee by an issuer
15 for the use of the cardholder in obtaining goods, services, or
16 anything else of value and which is accepted by over one thousand
17 merchants in this state. "Debit card" means an identification card
18 or device issued to a person by a business organization which
19 permits such person to obtain access to or activate a consumer
20 banking electronic facility. The court clerk shall determine which
21 nationally recognized credit or debit cards will be accepted as
22 payment for fees.

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

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

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

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

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

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

22 Section 152. A. In any civil case filed in a district court,
23 the court clerk shall collect, at the time of filing, the following

1 flat fees, none of which shall ever be refundable, and which shall
2 be the only charge for court costs, except as is otherwise
3 specifically provided for by law:

- 4 1. Actions for divorce, alimony without
5 divorce, separate maintenance, custody or
6 support..... \$140.00
- 7 2. Any ancillary proceeding to modify or
8 vacate a divorce decree providing for
9 custody or support.....\$40.00
- 10 3. Probate and guardianship.....\$132.00
- 11 4. Annual guardianship report.....\$30.00
- 12 5. Any proceeding for sale or lease of real or
13 personal property or mineral interest in
14 probate or guardianship.....\$40.00
- 15 6. Any proceeding to revoke the probate of a
16 will.....\$40.00
- 17 7. Judicial determination of death.....\$55.00
- 18 8. Adoption.....\$102.00
- 19 9. Civil actions for an amount of Ten Thousand
20 Dollars (\$10,000.00) or less and
21 condemnation.....\$147.00
- 22 10. Civil actions for an amount of Ten Thousand
23 One Dollars (\$10,001.00) or more\$160.00

- 1 11. Garnishment.....\$20.00
- 2 12. Continuing wage garnishment.....\$60.00
- 3 13. Any other proceeding after judgment.....\$30.00
- 4 14. All others, including but not limited to
- 5 actions for forcible entry and detainer,
- 6 judgments from all other courts, including
- 7 the Workers' Compensation Court.....\$82.00
- 8 15. Notice of renewal of judgment.....\$20.00

9 B. In addition to the amounts collected pursuant to paragraphs
 10 1, 3, 7, 8, 9, 10 and 14 of subsection A of this section, the sum of
 11 Six Dollars (\$6.00) shall be assessed and credited to the Law
 12 Library Fund.

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

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

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

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

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

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

12 1. For each defendant convicted of exceeding
13 the speed limit by at least one (1) mile
14 per hour but not more than ten (10) miles
15 per hour, whether charged individually or
16 conjointly with others..... \$77.00

17 2. For each defendant convicted of a
18 misdemeanor traffic violation other than an
19 offense provided for in paragraph 1 or 5 of
20 this subsection, whether charged
21 individually or conjointly with others..... \$88.00

22 3. For each defendant convicted of a
23 misdemeanor, other than for driving under

1 the influence of alcohol or other
2 intoxicating substance or an offense
3 provided for in paragraph 1 or 2 of this
4 subsection, whether charged individually or
5 conjointly with others..... \$83.00

6 4. For each defendant convicted of a felony,
7 other than for driving under the influence
8 of alcohol or other intoxicating substance,
9 whether charged individually or conjointly
10 with others..... \$103.00

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

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

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

1 pursuant to Section 1201 et seq. of Title 20 of the Oklahoma
2 Statutes.

3 C. In addition to the amount collected pursuant to subsection A
4 of this section, the sum of Ten Dollars (\$10.00) shall be assessed
5 and collected in every traffic case for each offense other than for
6 driving under the influence of alcohol or other intoxicating
7 substance; the sum of Fifteen Dollars (\$15.00) shall be assessed and
8 collected in every misdemeanor case for each offense; the sum of
9 Fifteen Dollars (\$15.00) shall be assessed and collected in every
10 misdemeanor case for each offense for driving under the influence of
11 alcohol or other intoxicating substance; the sum of Twenty-five
12 Dollars (\$25.00) shall be assessed and collected in every felony
13 case for each offense; and the sum of Twenty-five Dollars (\$25.00)
14 shall be assessed and collected in every felony case for each
15 offense for driving under the influence of alcohol or other
16 intoxicating substance.

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

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

1 1. The sheriff's fee provided for in paragraph 9 of subsection
2 A of this section which, when collected, shall be deposited in the
3 Sheriff's Service Fee Account, created pursuant to the provisions of
4 Section 514.1 of Title 19 of the Oklahoma Statutes, of the sheriff
5 in the county in which service is made or attempted;

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

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

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

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

22 G. As used in this section, "convicted" means any final
23 adjudication of guilt, whether pursuant to a plea of guilty or nolo

1 contendere or otherwise, and any deferred judgment or suspended
2 sentence.

3 H. A court clerk may accept in payment for any fee, fine, or
4 cost for violation of any traffic law a nationally recognized credit
5 card or bank debit card issued to the applicant. The court clerk
6 may add an amount equal to the amount of the service charge
7 incurred, not to exceed four percent (4%) of the amount of the
8 payment as a service charge for the acceptance of the credit or
9 debit card. For purposes of this paragraph, "nationally recognized
10 credit card" means any instrument or device, whether known as a
11 credit card, credit plate, charge plate, or by any other name,
12 issued with or without fee by an issuer for the use of the
13 cardholder in obtaining goods, services, or anything else of value
14 and which is accepted by over one thousand (1,000) merchants in this
15 state. "Debit card" means an identification card or device issued
16 to a person by a business organization which permits such person to
17 obtain access to or activate a consumer banking electronic facility.
18 The court clerk shall determine which nationally recognized credit
19 cards will be accepted as payment for fees; provided, the court
20 clerk must ensure that no loss of state revenue will occur by the
21 use of such cards.

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

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

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

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

22 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-22-05 - DO
23 PASS, As Amended and Coauthored.