

D R A F T

SUMMARY

Makes statutory changes to achieve gender neutral language with respect to individuals who are in marital relationship.

Establishes state policy that same privileges, immunities, rights, benefits and responsibilities granted or imposed by law apply on equivalent terms to married individuals of different sex or same sex.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to gender neutrality in laws; creating new provisions; amending
3 ORS 40.135 and 40.255; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 40.255 is amended to read:

6 40.255. (1) As used in this section, unless the context requires otherwise:

7 (a) “Confidential communication” means a communication by a spouse to
8 the other spouse and not intended to be disclosed to any other person.

9 (b) “Marriage” means a marital relationship between [*husband and wife*]
10 **two individuals**, legally recognized under the laws of this state.

11 (c) “Spouse” means an individual in a marriage with another indi-
12 vidual.

13 (2) In any civil or criminal action, a spouse has a privilege to refuse to
14 disclose and to prevent the other spouse from disclosing any confidential
15 communication made by one spouse to the other during the marriage. The
16 privilege created by this subsection may be claimed by either spouse. The
17 authority of the spouse to claim the privilege and the claiming of the privi-
18 lege is presumed in the absence of evidence to the contrary.

1 (3) In any criminal proceeding, neither spouse, during the marriage, shall
2 be examined adversely against the other as to any other matter occurring
3 during the marriage unless the spouse called as a witness consents to testify.

4 (4) There is no privilege under this section:

5 (a) In all criminal actions in which one spouse is charged with bigamy
6 or with an offense or attempted offense against the person or property of the
7 other spouse or of a child of either, or with an offense against the person
8 or property of a third person committed in the course of committing or at-
9 tempting to commit an offense against the other spouse;

10 (b) As to matters occurring prior to the marriage; or

11 (c) In any civil action where the spouses are adverse parties.

12 **SECTION 2.** ORS 40.135 is amended to read:

13 40.135. (1) The following are presumptions:

14 (a) A person intends the ordinary consequences of a voluntary act.

15 (b) A person takes ordinary care of the person's own concerns.

16 (c) Evidence willfully suppressed would be adverse to the party suppress-
17 ing it.

18 (d) Money paid by one to another was due to the latter.

19 (e) A thing delivered by one to another belonged to the latter.

20 (f) An obligation delivered to the debtor has been paid.

21 (g) A person is the owner of property from exercising acts of ownership
22 over it or from common reputation of the ownership of the person.

23 (h) A person in possession of an order on that person, for the payment
24 of money or the delivery of a thing, has paid the money or delivered the
25 thing accordingly.

26 (i) A person acting in a public office was regularly appointed to it.

27 (j) Official duty has been regularly performed.

28 (k) A court, or judge acting as such, whether in this state or any other
29 state or country, was acting in the lawful exercise of the jurisdiction of the
30 court.

31 (L) Private transactions have been fair and regular.

1 (m) The ordinary course of business has been followed.

2 (n) A promissory note or bill of exchange was given or indorsed for a
3 sufficient consideration.

4 (o) An indorsement of a negotiable promissory note, or bill of exchange,
5 was made at the time and place of making the note or bill.

6 (p) A writing is truly dated.

7 (q) A letter duly directed and mailed was received in the regular course
8 of the mail.

9 (r) A person is the same person if the name is identical.

10 (s) A person not heard from in seven years is dead.

11 (t) Persons acting as copartners have entered into a contract of
12 copartnership.

13 (u) [*A man and woman*] **Two individuals** deporting themselves as [*hus-*
14 *band and wife*] **legally married to each other** have entered into a lawful
15 contract of marriage.

16 (v) A child born in lawful wedlock is legitimate.

17 (w) A thing once proved to exist continues as long as is usual with things
18 of that nature.

19 (x) The law has been obeyed.

20 (y) An uninterrupted adverse possession of real property for 20 years or
21 more has been held pursuant to a written conveyance.

22 (z) A trustee or other person whose duty it was to convey real property
23 to a particular person has actually conveyed it to the person, when such
24 presumption is necessary to perfect the title of the person or the person's
25 successor in interest.

26 (2) A statute providing that a fact or a group of facts is prima facie evi-
27 dence of another fact establishes a presumption within the meaning of this
28 section.

29 **SECTION 3. It is the policy of this state that:**

30 **(1) Any privilege, immunity, right or benefit granted by statute,**
31 **administrative or court rule, policy, common law or any other law to**

1 an individual because the individual is or was married to an individual
2 of a different sex, is granted on equivalent terms, substantive and
3 procedural, to an individual who is or was married to an individual of
4 the same sex.

5 (2) Any responsibility imposed by statute, administrative or court
6 rule, policy, common law or any other law on an individual because
7 the individual is or was married to an individual of a different sex, is
8 imposed on equivalent terms, substantive and procedural, to an indi-
9 vidual who is or was married to an individual of the same sex.

10 (3) Any privilege, immunity, right, benefit or responsibility granted
11 or imposed by statute, administrative or court rule, policy, common
12 law or any other law to or on a married individual with respect to a
13 child of either of the individuals in the marriage is granted or imposed
14 on equivalent terms, substantive and procedural, to all individuals in
15 any marriage without regard to whether the individuals in the mar-
16 riage are of different sex or of the same sex.

17 SECTION 4. Section 3 of this 2016 Act and the amendments to ORS
18 40.135 and 40.255 by sections 1 and 2 of this 2016 Act apply to individuals
19 who are or were legally married to each other before, on or after the
20 effective date of this 2016 Act.

21 SECTION 5. This 2016 Act being necessary for the immediate pres-
22 ervation of the public peace, health and safety, an emergency is de-
23 clared to exist, and this 2016 Act takes effect on its passage.

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