

Chapter 106

TITLE 11
DOMESTIC RELATIONS

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Chapter 106

1999 EDITION

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Note: The name of the Department of Human Resources has been changed to the Department of Human Services and the title of the Director of Human Resources to the Director of Human Services. The name and title changes become operative on July 1, 2000. See sections 10 and 11, chapter 421, Oregon Laws 1999. References to the department and the director in this chapter use the name and the title that become operative on July 1, 2000.

106.010 Marriage as civil contract; age of parties. Marriage is a civil contract entered into in person by males at least 17 years of age and females at least 17 years of age, who are otherwise capable, and solemnized in accordance with ORS 106.150. [Amended by 1965 c.422 s.1; 1975 c.583 s.1]

106.020 Prohibited and void marriages. The following marriages are prohibited; and, if solemnized within this state, are absolutely void:

(1) When either party thereto had a wife or husband living at the time of such marriage.

(2) When the parties thereto are first cousins or any nearer of kin to each other, whether of the whole or half blood, whether by blood or adoption, computing by the rules of the civil law, except that when the parties are first cousins by adoption only, the marriage is not prohibited or void. [Amended by 1989 c.647 s.1]

106.030 Voidable marriages. When either party to a marriage is incapable of making such contract or consenting thereto for want of legal age or sufficient understanding, or when the consent of either party is obtained by force or fraud, such marriage shall be void from the time it is so declared by decree of a court having jurisdiction thereof.

106.040 [Repealed by 1953 c.143 s.9]

106.041 Necessity for marriage license; application. (1) All persons wishing to enter into a marriage contract shall obtain a license therefor from the county clerk upon application, directed to any person or religious organization

or congregation authorized by ORS 106.120 to solemnize marriages, and authorizing such person, organization or congregation to join together as husband and wife the persons named in the license.

(2) No license shall be issued by the county clerk until the provisions of this section, ORS 106.050 and 106.060 are complied with.

(3) Each applicant for marriage license shall file with the county clerk from whom the license is sought a written application for the license on forms provided for this purpose by the Health Division which shall include the applicant's Social Security number, certain statistical data regarding age, place of birth, sex, occupation, residence and previous marital status of the applicant and, if required, the name and address of the affiant under ORS 106.050.

(4) A license issued after July 13, 1995, must contain the following statement: "Neither you nor your spouse is the property of the other. The laws of the State of Oregon affirm your right to enter into marriage and at the same time to live within the marriage free from violence and abuse." [1953 c.143 s.2; 1981 c.152 s.1; 1993 c.324 s.1; 1995 c.555 s.4; 1999 c.80 s.67]

106.043 [1953 c.143 s.2; 1971 c.282 s.1; repealed by 1981 c.152 s.6]

106.045 Additional fee for marriage license; purpose. (1) In addition to any other fees provided by law, the county clerk shall collect a fee of \$25 upon the application for a marriage license.

(2) The county clerk shall regularly pay over to the Assistant Director for Services to Children and Families all moneys collected under subsection (1) of this section to be credited to the Domestic Violence Fund pursuant to ORS 108.660. [1981 c.357 s.1; 1983 c.480 s.6; 1987 c.740 s.1]

Note: 106.045 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 106 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

106.050 Proof of age; when affidavit prerequisite to the issuance of a marriage license. (1) The county clerk may accept any reasonable proof of the applicant's age satisfactory to the clerk. The clerk may require proof of age by affidavit of some person other than either of the parties seeking the license if the clerk deems it necessary in order to determine the age of an applicant to the clerk's satisfaction.

(2) If an applicant for a marriage license is less than 18 years of age, the applicant must file with the county clerk an affidavit of some person other than either of the parties seeking the license showing the facts other than age necessary to be shown under ORS 106.060 in the particular case, except the consent of the parent or guardian required by ORS 106.060 shall not be part of the affidavit. The affidavit is sufficient authority to the clerk, so far as the facts stated therein, for issuing the license. [Amended by 1965 c.467 s.1; 1969 c.242 s.1; 1987 c.340 s.1]

106.060 Consent of parent or guardian if party under 18. A marriage license shall not be issued without the written consent of the parent or guardian, if any, of an applicant who is less than 18 years of age, nor in any case unless the parties are each of an age, as provided in ORS 106.010, capable of contracting marriage. If either party under 18 years of age has no parent or guardian resident within this state and either party has resided within the county in which application is made for the six months immediately preceding the application, the license may issue, if otherwise proper, without the consent of the nonresident parent or guardian. [Amended by 1965 c.467 s.2; 1969 c.242 s.2; 1973 c.827 s.12; 1975 c.583 s.2; 1987 c.340 s.2]

106.070 [Repealed by 1953 c.143 s.9]

106.071 [1953 c.143 s.4(1), (2), (3), (4), (5), (6); 1959 c.377 s.1; 1971 c.282 s.2; 1977 c.582 s.4; 1979 c.731 s.3; repealed by 1981 c.152 s.6]

106.074 [1953 c.143 s.4(7); 1971 c.282 s.3; repealed by 1981 c.152 s.6]

106.075 [Repealed by 1953 c.143 s.9]

106.077 Issuance of marriage license by county clerk; waiting period; exception. (1) When the county clerk has received the written application for the marriage license from both applicants, and all other legal requirements for issuance of the marriage license have been met, the county clerk shall issue a marriage license which shall become

effective three days after the date on which the application was signed by the applicants. The county clerk shall indicate on the license the date on which the license becomes effective. A license shall be valid for 60 days after the effective date.

(2) For good and sufficient cause shown, a written order waiving the three-day waiting period provided in subsection (1) of this section may be signed by:

(a) A judge of probate of the county;

(b) A circuit court judge of the county in which the circuit court judge is not the judge of probate if the jurisdiction of the circuit court has been extended to cover this section pursuant to ORS 3.275;

(c) A judge of a county court of the county in which the judge of the county court is not the judge of probate if the circuit court judge does not reside therein; or

(d) The county clerk or official responsible for issuing the marriage license. [1953 c.143 s.4(8); 1957 c.592 s.1; 1963 c.429 s.1; 1967 c.534 s.13; 1971 c.456 s.1; 1979 c.724 s.2; 1981 c.152 s.2; 1983 c.156 s.1; 1989 c.508 s.1]

106.079 False statements in records required by ORS 106.041 prohibited. No applicant shall intentionally make any material false statement in connection with the records required by ORS 106.041. [1953 c.143 s.4(9); 1981 c.152 s.3]

106.080 [Amended by 1953 c.143 s.9; repealed by 1971 c.282 s.4]

106.081 County clerk to distribute fetal alcohol syndrome pamphlets to marriage license applicants. When the county clerk issues a marriage license, the county clerk shall also give to the licensees a pamphlet describing the medical condition known as fetal alcohol syndrome, its causes and its effects. The pamphlet shall be provided to the counties by the Health Division of the Department of Human Services under ORS 431.825 for distribution under this section. [1987 c.340 s.3]

Note: 106.081 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 106 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

106.090 [Repealed by 1981 c.152 s.6]

106.100 Retention of license by person solemnizing marriage; clerk's memorandum. The person solemnizing the marriage may retain the marriage license in the possession of the person. The clerk who issues the license, before delivering it, shall enter in the marriage book a memorandum of the names of the parties, the consent of the parent or guardian, if any, the name of the affiant, the substance of the affidavit upon which the license issued and the date of the license.

106.110 Unlawful issue of marriage license prohibited. No county clerk shall issue a license contrary to the provisions of ORS 106.041 to 106.077 or 106.100.

106.120 Who may solemnize marriage; recording of authority; fee. (1) Marriages may be solemnized by:

(a) Any judicial officer of the state;

(b) A county clerk;

(c) Congregations or organizations as indicated in ORS 106.150 (2); or

(d) Any minister of any church organized, carrying on its work and having congregations in this state, who is authorized by such church to solemnize marriages, and who has filed an Affidavit of Authority to Perform Marriages for record with the county clerk of the county in which the minister resides or in which the marriage is solemnized.

(2) A person authorized to solemnize marriages under subsection (1) of this section may solemnize a marriage anywhere in this state.

(3) In the case of a nonresident minister, the filing required by subsection (1)(d) of this section must be in any county in which the minister performs any marriage ceremony, but no minister shall be required to file such affidavit of authority in more than one county.

(4) The affidavit of authority shall be recorded by the county clerk in a book called "Authority to Solemnize Marriages," for which the county clerk shall charge a fee for recording and indexing as set by ORS 205.320. The form of the Affidavit of Authority to Perform Marriages must be substantially as follows:

**AFFIDAVIT OF AUTHORITY
TO PERFORM MARRIAGES**

The _____ (name of organization) is organized and carries on its work in the State of Oregon. Its active meetings are located in _____ (city, town or county). The organization hereby finds _____ (name of person) is in good standing and is authorized by the organization to perform marriage ceremonies.

I am duly authorized by _____ (name of organization) to complete and submit this affidavit.

Signature of Official _____
Name of Official _____ (type or print name)
Title of Official _____
State of Oregon
County of _____

Subscribed and sworn to before me the ____ day of _____, 2____, by _____.

Notary Public for Oregon
My commission expires: _____

(5) If a person is no longer a member in good standing of the organization that authorized the person to perform marriage ceremonies, the organization shall file an Affidavit of Revocation of Authority to Perform Marriages with the county clerk of the county where the original affidavit of authority was filed. The Affidavit of Revocation of Authority to Perform Marriages must be substantially as follows:

**AFFIDAVIT OF
REVOCATION OF AUTHORITY
TO PERFORM MARRIAGES**

The _____ (name of organization) is organized and carries on its work in the State of Oregon. Its active meetings are located in _____ (city, town or county). The organization hereby revokes the authority of _____ (name of person) filed in _____ (name of county) on the ____ day of _____, ____ (year) to perform marriage ceremonies.

I am duly authorized by _____ (name of organization) to complete and submit this affidavit.

Signature of Official _____
Name of Official _____ (type or print name)
Title of Official _____
State of Oregon
County of _____

Subscribed and sworn to before me the ____ day of _____, 2____, by _____.

Notary Public for Oregon
My commission expires: _____

(6) A judicial officer of this state and a county clerk may charge and accept an agreed upon personal payment not to exceed \$100 plus actual costs for the solemnization of a marriage if that solemnization is performed:

- (a) At a place other than the courthouse where the judicial officer or county clerk serves; or
- (b) Outside of the judicial officer's or county clerk's normal working hours.
- (7) The charging and accepting of a personal payment under subsection (6) of this section shall not constitute a violation of any of the provisions of ORS chapter 244.
- (8) The amount of actual costs charged by a judicial officer or county clerk under subsection (6) of this section shall not exceed:

- (a) Actual expenses for food and lodging as verified by receipts.
- (b) If travel is made by personal vehicle, the actual number of round-trip miles from the judicial officer's or county clerk's home or office, whichever is greater, compensated at the rate of reimbursement then provided by the State of Oregon to its employees or, if travel is made by a commercial carrier, reimbursement shall be made of the actual costs thereof, verified by receipts.

(9) A judicial officer or county clerk shall maintain records of the amount of personal payments received for performing marriages, of actual costs and the supporting documentation related thereto for a period of four years.

(10) As used in this section, "judicial officer" has the meaning given that term in ORS 1.210 and includes, but is not limited to, a judge of a municipal court and a justice of the peace. [Amended by 1971 c.621 s.22; 1975 c.607 s.22; 1977 c.518 s.2; 1979 c.724 s.3; 1979 c.833 s.24; 1981 c.176 s.1; 1991 c.282 s.1; 1991 c.458 s.1; 1997 c.424 s.1; 1999 c.776 s.1]

106.130 Marriage by person acting in capacity of person authorized. A marriage solemnized before any person professing to be a judicial officer of this state, a county clerk or a minister of any church or congregation therein is not void, nor shall the validity thereof be in any way affected, on account of any want of power or authority in such person, if such person was acting at the time in the office or the capacity of a person authorized to solemnize marriage and if such marriage is consummated with the belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage. [Amended by 1979 c.724 s.4]

106.140 Solemnizing marriage unlawfully or without authority. No person shall undertake to join others in marriage knowing that the person is not lawfully authorized so to do. No person authorized to solemnize marriage shall join persons in marriage contrary to any of the provisions of ORS 106.010 to 106.060 or 106.100 to 106.190.

106.150 Form of solemnization; witnesses; solemnization before congregation. (1) In the solemnization of a marriage no particular form is required except that the parties thereto shall assent or declare in the presence of the minister, county clerk or judicial officer solemnizing the marriage and in the presence of at least two witnesses, that they take each other to be husband and wife.

(2) All marriages, to which there are no legal impediments, solemnized before or in any religious organization or congregation according to the established ritual or form commonly practiced therein, are valid. In such case, a certificate containing the particulars specified in ORS 106.160 shall be made and filed for record by the person presiding or officiating in such religious organization or congregation, in like manner and with like effect as in ordinary cases. [Amended by 1979 c.724 s.5]

106.160 Delivery of marriage certificate. The person solemnizing the marriage shall give to the parties to the marriage a marriage certificate in the form prescribed in ORS 106.165 (1) and (2). [Amended by 1975 c.277 s.4]

106.165 Form of certificate; preparation. (1) The Assistant Director for Health by rule shall prescribe a standard form of the marriage certificate to be used in this state. The certificate shall contain the names and addresses of the parties and of at least two witnesses, the time and place of the marriage, the signature of the person who solemnized the marriage, the date of the license for the marriage and by whom issued.

(2) The form shall be of such size and appearance as to emphasize the importance of the event which it evidences and the significance of the pioneer heritage of this state.

(3) In carrying out the duties imposed by subsections (1) and (2) of this section, the Assistant Director for Health shall consult with the county clerks and may authorize a competition among graphic artists to prepare the form to be prescribed. [1975 c.277 ss.1,2]

Note: 106.165 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 106 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

106.170 Report of marriage to county clerk. A person solemnizing a marriage shall within one month thereafter make and deliver to the county clerk who issued the license for the marriage a certificate containing the particulars specified in ORS 106.160. Such certificate may be in the following form:

State of Oregon,)
) ss.
County of _____,)

This is to certify that the undersigned (minister or judicial officer, as the case may be), by authority of a license bearing date the ____ of _____, 2__, and issued by the county clerk of the County of _____, did on the ____ day of _____, 2__, at the house of _____, in the county and state aforesaid, join in lawful wedlock, A. B., of the County of _____, and State of _____, and C. D., of the County of _____, and State of _____, with their mutual assent, in the presence of E. F. and G. H., witnesses.

Witness my hand.

J. P.

(Judge, justice of the peace or minister, as the case may be.)

[Amended by 1981 c.176 s.2]

106.180 Filing and recording certificate. (1) The county clerk shall file the certificate mentioned in ORS 106.170 and record it in the record of marriages. No fee shall be charged for such filing, recording or indexing.

(2) Notwithstanding any other provision of law, the record of marriage maintained by a county clerk is not a vital record as defined by ORS 432.005 and is a public record open and subject to full disclosure. [Amended by 1999 c.776 s.2]

106.190 Legitimacy of issue of certain imperfect marriages. (1) The issue of marriages void under ORS 106.020 are legitimate.

(2) All children conceived or born of parents who married or who may hereafter marry prior to the expiration of six months from the date of a decree of divorce or declaring a marriage void rendered in a suit to which one of the parents was a party or during the period of an appeal from such a decree, if the marriage is in all other respects regular, are legitimate.

106.200 [Repealed by 1957 c.411 s.7]

106.210 Certain marriages validated; children of such marriages declared legitimate. Any marriage in all other respects legal and regular but heretofore void by reason of:

(1) Oregon Laws of 1866, section 1, page 10 (section 23-1010, O.C.L.A.) prohibiting marriage between a white person and one having Negro, Chinese, Kanaka or Indian blood, or

(2) Section 2 of the Act entitled "An Act to regulate marriages," approved October 17, 1862 (section 63-102, O.C.L.A.) prohibiting marriages between a white person and one having Negro or Mongolian blood, hereby is declared valid; and any child conceived or born of such marriage shall be deemed legitimate. [1955 c.694 s.1; 1959 c.531 s.1]

106.220 Surname may be retained or resumed after marriage. Upon entering into marriage, either person may retain the prior surname, and either person may resume the person's prior legal name during the marriage. [1975 c.733 s.3; 1981 c.775 s.7]

106.990 Penalties. (1) Violation of ORS 106.079 is punishable, upon conviction, by a fine of not more than \$100 or by imprisonment in the county jail for not more than 30 days, or both.

(2) Violation of ORS 106.110 or 106.140 is punishable upon conviction by imprisonment in the custody of the Department of Corrections or county jail for not more than one year, or by a fine of not more than \$500 nor less than \$100.

(3) Refusal or neglect to comply with ORS 106.120 (4) or with ORS 106.170 shall result in the forfeiture of a penalty of not less than \$10 nor more than \$50 to be recovered by action for every five days of such refusal or neglect. [Amended by 1953 c.143 s.9; subsection (1) enacted as 1953 c.143 s.5; 1981 c.152 s.4; 1987 c.320 s.16; 1999 c.776 s.3]
