

TITLE 11

DOMESTIC RELATIONS

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Chapter 106

2003 EDITION

Marriage

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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 §1; 1975 c.583 §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 §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 judgment of a court having jurisdiction thereof. [Amended by 2003 c.576 §372]

106.040 [Repealed by 1953 c.143 §9]

106.041 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 Department of Human Services 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 §2; 1981 c.152 §1; 1993 c.324 §1; 1995 c.555 §4; 1999 c.80 §67]

106.043 [1953 c.143 §2; 1971 c.282 §1; repealed by 1981 c.152 §6]

106.045 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 Director of Human Services 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 §1; 1983 c.480 §6; 1987 c.740 §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 required. (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 §1; 1969 c.242 §1; 1987 c.340 §1]

106.060 Consent of parent or guardian if applicant 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 §2; 1969 c.242 §2; 1973 c.827 §12; 1975 c.583 §2; 1987 c.340 §2]

106.070 [Repealed by 1953 c.143 §9]

106.071 [1953 c.143 §4(1),(2),(3),(4),(5),(6); 1959 c.377 §1; 1971 c.282 §2; 1977 c.582 §4; 1979 c.731 §3; repealed by 1981 c.152 §6]

106.074 [1953 c.143 §4(7); 1971 c.282 §3; repealed by 1981 c.152 §6]

106.075 [Repealed by 1953 c.143 §9]

106.077 Issuance of marriage license; 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 §4(8); 1957 c.592 §1; 1963 c.429 §1; 1967 c.534 §13; 1971 c.456 §1; 1979 c.724 §2; 1981 c.152 §2; 1983 c.156 §1; 1989 c.508 §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 §4(9); 1981 c.152 §3]

106.080 [Amended by 1953 c.143 §9; repealed by 1971 c.282 §4]

106.081 Fetal alcohol syndrome pamphlets. 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 Department of Human Services under ORS 431.825 for distribution under this section. [1987 c.340 §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 §6]

106.100 Retention of marriage 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; fee; personal payment; records. (1) As used in this section, "judicial officer" means:

(a) A judicial officer of this state as that term is defined in ORS 1.210 and includes but is not limited to a judge of a municipal court and a justice of the peace.

(b) An active judge of a federal court.

(c) An active United States magistrate judge.

(2) Marriages may be solemnized by:

(a) A judicial officer;

(b) A county clerk;

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

(d) A clergyperson of any religious congregation or organization who is authorized by the congregation or organization to solemnize marriages.

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

(4)(a) When a marriage is solemnized by a tax, appellate or circuit judge of this state, the clerk of the court or the county clerk shall collect a fee of \$25 and deposit the fee in the Judicial Department Operating Account established in ORS 1.009.

(b) When a marriage is solemnized by a county clerk, the county clerk shall collect a fee of \$25, as provided in ORS 205.320.

(c) The fee described in this subsection may be collected only if:

(A) The marriage is solemnized during normal working hours, excluding holidays;

(B) The marriage is solemnized in court facilities or a county clerk's office; or

(C) More than a minimal amount of staff time or other court or county clerk's office resources are used in connection with the solemnization.

(d) The Chief Justice of the Supreme Court or the county clerk may establish a written procedure for waiver of the fee required under this subsection in exigent circumstances, including but not limited to indigency of the parties to the marriage.

(5) In addition to any fee collected under subsection (4) of this section, 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.

(6) The charging and accepting of a personal payment by a judicial officer of this state or a county clerk under subsection (5) of this section does not constitute a violation of any of the provisions of ORS chapter 244.

(7) The amount of actual costs charged by a judicial officer of this state or a county clerk under subsection (5) of this section may 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.

(8) A judicial officer of this state or a 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.

(9) The parties to a marriage solemnized by a tax, appellate or circuit judge of this state shall show to the judge proof of payment of the fee required under subsection (4)(a) of this section before solemnization. Except as provided in subsection (4)(d) of this section, the judge may not solemnize a marriage without proof of payment of the fee. [Amended by 1971 c.621 §22; 1975 c.607 §22; 1977 c.518 §2; 1979 c.724 §3; 1979 c.833 §24; 1981 c.176 §1; 1991 c.282 §1; 1991 c.458 §1; 1997 c.424 §1; 1999 c.776 §1; 2001 c.501 §1; 2003 c.565 §1; 2003 c.737 §111]

106.130 Validity of marriage solemnized by unauthorized person. A marriage solemnized before any person professing to be a judicial officer of this state, a county clerk or a clergyperson of a reli-

gious congregation or organization 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 §4; 2001 c.501 §5]

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 clergyperson, 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, the person presiding or officiating in such religious organization or congregation shall make and deliver to the county clerk who issued the marriage license the certificate described in ORS 106.170. [Amended by 1979 c.724 §5; 2001 c.501 §2]

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 §4]

106.165 Form of marriage certificate; preparation; rules. (1) The Director of Human Services 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 date and place of the marriage, the signature of the person who solemnized the marriage, the date of the license for the marriage and the name of the county clerk who issued the license.

(2) The form shall be of such size and appearance as to emphasize the importance of the event that 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 Director of Human Services shall consult with the county clerks and may authorize a competition among graphic artists to prepare the form to be prescribed. [1975 c.277 §§1,2; 2001 c.501 §6]

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. (1) 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:

- (a) The names and addresses of the parties and the names of at least two witnesses;
- (b) The date and place of the marriage;
- (c) The date of the marriage license and the name of the county that issued the license;
- (d) If the person who solemnized the marriage is a clergyperson, the name and location of the religious congregation or organization that authorized the person to solemnize marriages; and
- (e) The signature of the person who solemnized the marriage.

(2) The certificate may be in the following form:

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

This is to certify that the undersigned (judicial officer, county clerk or clergyperson, as the case may be), by authority of a marriage 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. If the undersigned is a clergyperson, the authority to solemnize the marriage is granted by _____ (name of religious congregation or organization), located in _____ (city, town or county, and state or country).

Witness my hand.

J. P.

(Judicial officer, county clerk or clergyperson, as the case may be.)

[Amended by 1981 c.176 §2; 2001 c.501 §3]

106.180 Filing and recording report of marriage. (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 §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 judgment 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 judgment, if the marriage is in all other respects regular, are legitimate. [Amended by 2003 c.576 §373]

106.200 [Repealed by 1957 c.411 §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 §1; 1959 c.531 §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 §3; 1981 c.775 §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 Correc-

tions 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 106.170 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 §9; subsection (1) enacted as 1953 c.143 §5; 1981 c.152 §4; 1987 c.320 §16; 1999 c.776 §3; 2001 c.501 §7]

