TITLE 11

DOMESTIC RELATIONS

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Chapter 106

1979 REPLACEMENT PART

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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, computing by the rules of the civil law.

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106.040 [Repealed by 1953 c 143 §9]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, 106.060 and 106.071 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 set forth certain statistical data regarding age, place of birth, sex, race, occupation, residence and previous marital status of the applicant and, if required, the name and address of the affiant under ORS 106.050. [1953 c 143 §2]

106.043 County clerk to furnish forms to applicant. Upon request of the applicants, the county clerk shall provide each applicant with forms prescribed by the Health Division and entitled "Medical Certificate for Marriage License" and "Statement of Medical History" as provided in ORS 106.071. [1953 c.143 §2; 1971 c 282 §1]

106.050 Affidavit prerequisite to the issuance of a marriage license. The applicant for a marriage license must file with the county clerk an affidavit of some person other than either of the parties seeking the license showing the facts specified in ORS 106.060 or any of them that may be necessary to be shown 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]

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 a female or male who is less than 18 years of age, nor in any case unless the parties are each of an age capable of contracting marriage. If either party 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]

106.070 [Repealed by 1953 c.143 §9]

106.071 Medical certificate prerequisite to marriage license. (1) Before any county clerk issues a marriage license, each applicant therefor shall file with the clerk a medical certificate for marriage license signed by a physician licensed to practice medicine or naturopathy in this state or in another state or territory of the United States or Canada, or by a commissioned medical officer of the Armed Forces or Public Health Service of the United States, if applicant is on active duty with the Armed Forces of the United States. The certificate shall certify that, in the opinion of the physician, after examination of applicant, the applicant does not have evidence of communicable venereal disease.

(2) The Health Division shall provide by rule the tests and procedures which shall be carried out by the physician relating to communicable venereal disease. Such tests shall be performed in a licensed laboratory, including the Health Division Laboratory. The Health Division is authorized to charge a reasonable fee. The physician shall file with the Health Division the sworn statement of medical history, including a report on rubella infection if any, which shall be confidential.

(3) If, at the time of the examination, the examining physician decides that the applicant may not be eligible for a medical certificate for marriage license, he shall delay issuance of the certificate and shall refer all pertinent information to a committee of three physicians licensed by the State Board of Medical Examiners, appointed by the Health Division, together with any other or additional evidence the applicant may wish to submit. If, in the opinion of this committee, the applicant should not marry, its decision is final, unless appealed, as provided in ORS 106.074 to the circuit court. [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]

106.074 Appeal from denial of marriage license. (1) When the applicant has been refused a marriage license by the clerk because the medical certificate does not comply with the requirements of ORS 106.043, he may appeal, within 90 days from the date of refusal, to the circuit court of the county in which the marriage license was denied. The circuit court shall try such appeals summarily, without a jury, upon the evidence contained in the medical history and other pertinent evidence presented.

(2) The court may either uphold the decision of the clerk or direct the clerk to issue the marriage license or may remand the case for such further examination as the court determines. [1953 c 143 §4(7); 1971 c 282 §3]

106.075 [Repealed by 1953 c.143 §9]

106.077 Issuance of marriage license by county clerk; waiting period; exception. (1) When the county clerk has received the medical certificate showing when the blood test for syphilis or premarital examination was made of each applicant and 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 30 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; or

(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. [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]

106.079 False statements in records required by ORS 106.041 and 106.071 prohibited. No applicant, laboratory director or physician shall intentionally make any material false statement in connection with the records or certificates required by ORS 106.041 and 106.071. [1953 c.143 §4(9)]

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

106.090 Certificates to indigents. The county physicians of the several counties shall, upon request, make the necessary examination and issue the certificate which may properly be issued under ORS 106.071, without charge to an indigent applicant.

106.100 Retention of license by person solemnizing marriage; clerk's memorandum. The person solemnizing the marriage may retain the marriage license in his possession. 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 any judicial officer of the state anywhere within the officer's jurisdiction, by the county clerk or by congregations or organizations as indicated in subsection (2) of ORS 106.150, or by 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 for record with the county clerk of the county in which the minister resides or in which the marriage is solemnized, evidence satisfactory to the county clerk that the minister has been so authorized. In the case of a nonresident minister, such filing shall be in any county in which the minister performs any marriage ceremony, but no minister shall be required to file such evidence of authority in more than one county.

(2) The evidence of authority, if approved by the county clerk, 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. Whenever any minister who has filed such evidence of authority with one county clerk solemnizes any marriage in any other county, the minister shall attach to or indorse upon the certificate required by ORS 106.170, a statement over the minister's signature showing place of residence and the county clerk with whom evidence of authority to solemnize marriages is recorded. [Amended by 1971 c.621 §22; 1975 c.607 §22; 1977 c.518 §2; 1979 c.724 §3; 1979 c 833 §24]

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 §4]

106.140 Solemnizing marriage unlawfully or without authority. No person shall undertake to join others in marriage knowing that he 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 §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 subsections (1) and (2) of ORS 106.165. [Amended by 1975 c 277 §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 the 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 and to the county clerk of the county where the marriage took place 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 ———, 19——, and issued by the county clerk of the County of ———, did on the —— day of ———, 19——, 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.]

106.180 Filing and recording report. 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.

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 §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 after marriage. Upon entering into marriage, either person may retain the prior surname. [1975 c.733 §3]

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 of ORS 106.140 is punishable upon conviction by imprisonment in the penitentiary or county jail for not more than one year, or by a fine of not more than $500 nor less than $100.

(3) Any medical examiner who wilfully makes any false statement in any certificate issued as provided in ORS 106.071 shall be punished by the revocation of his license to practice his profession within the state.

(4) Refusal or neglect to comply with subsection (2) of ORS 106.120 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 §9; subsection (1) enacted as 1953 c.143 §5]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173 170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law

Done at Salem, Oregon,
October 1, 1979

Thomas G. Clifford
Legislative Counsel