

Senate Bill 1073

Sponsored by Senators BROWN, WESTLUND, MORSE, BATES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes requirements and procedures for entering into civil union contract. Applies only to civil unions between persons of same sex. Provides that partners in civil unions have same privileges, immunities, rights, benefits and responsibilities under state law as are granted to or imposed on persons who are or were married.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to civil unions; creating new provisions; amending ORS 106.010, 106.020, 106.030, 106.041,
3 106.045, 106.050, 106.060, 106.077, 106.081, 106.100, 106.120, 106.130, 106.140, 106.150, 106.160,
4 106.165, 106.170, 106.180, 106.220; and prescribing an effective date.

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

6 **SECTION 1.** ORS 106.010 is amended to read:

7 106.010. **As used in this chapter:**

8 (1) **“Civil union” means a civil contract that is solemnized in accordance with ORS 106.150**
9 **and that is entered into in person between two individuals of the same sex who are at least**
10 **17 years of age and who are otherwise capable.**

11 (2) **“Marriage” [is] means a civil contract entered into in person [by males] between a male**
12 **at least 17 years of age and [females] a female at least 17 years of age, who are otherwise capable,**
13 **and solemnized in accordance with ORS 106.150.**

14 (3) **“Partner” means a person joined in a civil union.**

15 (4) **“Spouse” means a person joined in a marriage.**

16 **SECTION 2.** ORS 106.020 is amended to read:

17 106.020. The following marriages **and civil unions** are prohibited[,] and, if solemnized within this
18 state, are absolutely void:

19 (1) When either party [*thereto*] **to the marriage or civil union** had a wife, [*or*] husband **or**
20 **partner** living at the time of [*such*] **the marriage or civil union.**

21 (2) When the parties [*thereto*] **to the marriage or civil union** are first cousins or any nearer
22 of kin to each other, whether of the whole or half blood, whether by blood or adoption, computing
23 by the rules of the civil law, except that when the parties are first cousins by adoption only, the
24 marriage **or civil union** is not prohibited or void.

25 **SECTION 3.** ORS 106.030 is amended to read:

26 106.030. When either party to a marriage **or civil union** is incapable of making [*such*] **the** con-
27 tract or consenting [*thereto*] **to the contract** for want of legal age or sufficient understanding, or
28 when the consent of either party is obtained by force or fraud, [*such marriage shall be*] **the mar-**
29 **riage or civil union** is void from the time it is so declared by judgment of a court having jurisdic-
30 tion thereof.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 **SECTION 4.** ORS 106.041 is amended to read:

2 106.041. (1) All persons wishing to enter into a marriage contract **or a civil union contract**
3 shall obtain a license [*therefor*] from the county clerk upon application, directed to any person or
4 religious **congregation or** organization [*or congregation*] authorized by ORS 106.120 to solemnize
5 marriages **or civil unions**, and authorizing [*such*] **the** person, **congregation or** organization [*or*
6 *congregation*] to join together [*as husband and wife*] the persons named in the license.

7 (2) [*No license shall be issued by*] The county clerk **may not issue a marriage license or civil**
8 **union license** until the provisions of this section, ORS 106.050 and 106.060 are complied with.

9 (3) Each applicant for a [*marriage*] license shall file with the county clerk from whom the license
10 is sought a written application for the license on forms provided for this purpose by the Department
11 of Human Services. [*which shall*] **The written application shall** include the applicant's Social Se-
12 curity number, certain statistical data regarding age, place of birth, sex, occupation, residence and
13 previous marital **or civil union** status of the applicant and, if required, the name and address of the
14 affiant under ORS 106.050.

15 (4)(a) A **marriage** license [*issued after July 13, 1995,*] must contain the following statement:
16 "Neither you nor your spouse is the property of the other. The laws of the State of Oregon affirm
17 your right to enter into marriage and at the same time to live within the marriage free from vi-
18 olence and abuse."

19 (b) **A civil union license must contain the following statement: "Neither you nor your**
20 **partner is the property of the other. The laws of the State of Oregon affirm your right to**
21 **enter into a civil union and at the same time to live within the civil union free from violence**
22 **and abuse."**

23 **SECTION 5.** ORS 106.045 is amended to read:

24 106.045. (1) In addition to any other fees provided by law, the county clerk shall collect a fee
25 of \$25 upon the application for a marriage license **or a civil union license**.

26 (2) The county clerk shall regularly pay over to the Director of Human Services all moneys
27 collected under subsection (1) of this section to be credited to the Domestic Violence Fund pursuant
28 to ORS 108.660.

29 **SECTION 6.** ORS 106.050 is amended to read:

30 106.050. (1) The county clerk may accept any reasonable proof of the applicant's age satisfactory
31 to the clerk. The clerk may require proof of age by affidavit of some person other than either of the
32 parties seeking the **marriage** license **or civil union license** if the clerk deems it necessary in order
33 to determine the age of an applicant to the clerk's satisfaction.

34 (2) If an applicant for a [*marriage*] license is less than 18 years of age, the applicant must file
35 with the county clerk an affidavit of some person other than either of the parties seeking the license
36 showing the facts other than age necessary to be shown under ORS 106.060 in the particular case,
37 except the consent of the parent or guardian required by ORS 106.060 [*shall*] **may not be part of the**
38 affidavit. The affidavit is sufficient authority to the clerk, so far as the facts stated [*therein*] **in the**
39 **affidavit**, for issuing the license.

40 **SECTION 7.** ORS 106.060 is amended to read:

41 106.060. A marriage license [*shall*] **or civil union license may** not be issued without the written
42 consent of the parent or guardian, if any, of an applicant who is less than 18 years of age, nor in
43 any case unless the parties are each of an age, as provided in ORS 106.010, capable of contracting
44 marriage **or civil union**. If either party under 18 years of age has no parent or guardian resident
45 within this state and either party has resided within the county in which application is made for the

1 six months immediately preceding the application, the license may issue, if otherwise proper, without
 2 the consent of the nonresident parent or guardian.

3 **SECTION 8.** ORS 106.077 is amended to read:

4 106.077. (1) When the county clerk has received the written application for the marriage license
 5 **or civil union license** from both applicants, and all other legal requirements for issuance of the
 6 [*marriage*] license have been met, the county clerk shall issue [*a marriage*] **the** license. [*which shall*
 7 *become*] **The license becomes** effective three days after the date on which the application was
 8 signed by the applicants. The county clerk shall indicate on the license the date on which the li-
 9 cense becomes effective. A license [*shall be*] **is** valid for 60 days after the effective date.

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

12 (a) A judge of probate of the county;

13 (b) A circuit court judge of the county in which the circuit court judge is not the judge of pro-
 14 bate if the jurisdiction of the circuit court has been extended to cover this section pursuant to ORS
 15 3.275;

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

18 (d) The county clerk or official responsible for issuing the [*marriage*] license.

19 **SECTION 9.** ORS 106.081 is amended to read:

20 106.081. When the county clerk issues a marriage license **or civil union license**, the county
 21 clerk shall also give to the licensees a pamphlet describing the medical condition known as fetal
 22 alcohol syndrome, its causes and its effects. The pamphlet shall be provided to the counties by the
 23 Department of Human Services under ORS 431.825 for distribution under this section.

24 **SECTION 10.** ORS 106.100 is amended to read:

25 106.100. The person solemnizing the marriage **or civil union** may retain the marriage license
 26 **or civil union license** in the possession of the person. The clerk who issues the license, before de-
 27 livering it, shall enter in the marriage **and civil union** book a memorandum of the names of the
 28 parties, the consent of the parent or guardian, if any, the name of the affiant, the substance of the
 29 affidavit upon which the license issued and the date of the license.

30 **SECTION 11.** ORS 106.120 is amended to read:

31 106.120. (1) As used in this section, "judicial officer" means:

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

34 (b) An active judge of a federal court.

35 (c) An active United States magistrate judge.

36 (2) **Marriages and civil unions** may be solemnized by:

37 (a) A judicial officer;

38 (b) A county clerk;

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

40 (d) A clergyperson of any religious congregation or organization who is authorized by the con-
 41 gregation or organization to solemnize marriages **or civil unions**.

42 (3) A person authorized to solemnize marriages **or civil unions** under subsection (2) of this
 43 section may solemnize a marriage **or civil union** anywhere in this state.

44 (4)(a) When a marriage **or civil union** is solemnized by a tax, appellate or circuit judge of this
 45 state, the clerk of the court or the county clerk shall collect a fee of \$25 and deposit the fee in the

1 Judicial Department Operating Account established in ORS 1.009.

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

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

5 (A) The marriage **or civil union** is solemnized during normal working hours, excluding holidays;

6 (B) The marriage **or civil union** is solemnized in court facilities or a county clerk’s office; or

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

9 (d) The Chief Justice of the Supreme Court or the county clerk may establish a written proce-
 10 dure for waiver of the fee required under this subsection in exigent circumstances, including but not
 11 limited to indigency of the parties to the marriage **or civil union**.

12 (5) In addition to any fee collected under subsection (4) of this section, a judicial officer of this
 13 state and a county clerk may charge and accept an agreed upon personal payment not to exceed
 14 \$100 plus actual costs for the solemnization [*of a marriage if that solemnization*] **if it** is performed:

15 (a) At a place other than the courthouse where the judicial officer or county clerk serves; or

16 (b) Outside of the judicial officer’s or county clerk’s normal working hours.

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

20 (7) The amount of actual costs charged by a judicial officer of this state or a county clerk under
 21 subsection (5) of this section may not exceed:

22 (a) Actual expenses for food and lodging as verified by receipts.

23 (b) If travel is made by personal vehicle, the actual number of round-trip miles from the judicial
 24 officer’s or county clerk’s home or office, whichever is greater, compensated at the rate of re-
 25 imbursement then provided by the State of Oregon to its employees or, if travel is made by a com-
 26 mercial carrier, reimbursement shall be made of the actual costs thereof, verified by receipts.

27 (8) A judicial officer of this state or a county clerk shall maintain records of the amount of
 28 personal payments received for performing marriages **or civil unions**, of actual costs and the sup-
 29 porting documentation related [*thereto*] **to performing marriages or civil unions** for a period of
 30 four years.

31 (9) The parties to a marriage **or civil union** solemnized by a tax, appellate or circuit judge of
 32 this state shall show to the judge proof of payment of the fee required under subsection (4)(a) of this
 33 section before solemnization. Except as provided in subsection (4)(d) of this section, the judge may
 34 not solemnize a marriage **or civil union** without proof of payment of the fee.

35 **SECTION 12.** ORS 106.130 is amended to read:

36 106.130. A marriage **or civil union** solemnized before any person professing to be a judicial of-
 37 ficer of this state, a county clerk or a clergyperson of a religious congregation or organization
 38 therein is not void, nor shall the validity [*thereof*] **of the marriage or civil union** be in any way
 39 affected, on account of any want of power or authority in [*such*] **the** person, if [*such*] **the** person
 40 was acting at the time in the office or the capacity of a person authorized to solemnize [*marriage*]
 41 **marriages or civil unions** and if [*such*] **the** marriage **or civil union** is consummated with the belief
 42 on the part of the [*persons so married*] **parties**, or either of them, that they have been lawfully
 43 joined in a marriage **or civil union**.

44 **SECTION 13.** ORS 106.140 is amended to read:

45 106.140. [*No person shall*] **A person may not** undertake to join others in a marriage **or civil**

1 **union** knowing that the person is not lawfully authorized so to do. [No] A person authorized to
 2 solemnize [*marriage shall*] **marriages or civil unions may not** join persons in a marriage **or civil**
 3 **union** contrary to any of the provisions of ORS 106.010 to 106.060 or 106.100 to 106.190.

4 **SECTION 14.** ORS 106.150 is amended to read:

5 106.150. (1) In the solemnization of a marriage **or civil union**, no particular form is required
 6 except that the parties thereto shall assent or declare in the presence of the clergyperson, county
 7 clerk or judicial officer solemnizing the marriage **or civil union** and in the presence of at least two
 8 witnesses, that:

9 (a) **In the solemnization of a marriage**, they take each other to be husband and wife; **or**

10 (b) **In the solemnization of a civil union**, they take each other to be partners.

11 (2) All marriages **and civil unions**, to which there are no legal impediments, solemnized before
 12 or in any religious **congregation or** organization [*or congregation*] according to the established rit-
 13 ual or form commonly practiced [*therein*] **in the congregation or organization**, are valid. In
 14 [*such*] **that** case, the person presiding or officiating in [*such*] **the** religious **congregation or** organ-
 15 ization [*or congregation*] shall make and deliver to the county clerk who issued the marriage license
 16 **or civil union license** the certificate described in ORS 106.170.

17 **SECTION 15.** ORS 106.160 is amended to read:

18 106.160. The person solemnizing the marriage **or civil union** shall give to the parties to the
 19 marriage **or civil union** a [*marriage*] certificate in the form prescribed in ORS 106.165 (1) and (2).

20 **SECTION 16.** ORS 106.165 is amended to read:

21 106.165. (1) The Director of Human Services by rule shall prescribe a standard form of the
 22 marriage certificate **and a standard form of the civil union certificate** to be used in this state.
 23 The [*certificate*] **certificates** shall contain the names and addresses of the parties and of at least two
 24 witnesses, the date and place of the marriage **or civil union**, the signature of the person who
 25 solemnized the marriage **or civil union**, the date of the license [*for the marriage*] and the name of
 26 the county clerk who issued the license.

27 (2) The form **of each certificate** shall be of such size and appearance as to emphasize the im-
 28 portance of the event that it evidences and the significance of the pioneer heritage of this state.

29 (3) In carrying out the duties imposed by subsections (1) and (2) of this section, the director [*of*
 30 *Human Services*] shall consult with the county clerks and may authorize a competition among
 31 graphic artists to prepare the [*form*] **forms** to be prescribed.

32 **SECTION 17.** ORS 106.170 is amended to read:

33 106.170. (1) A person solemnizing a marriage **or civil union** shall, within one month [*thereafter*]
 34 **after the solemnization**, make and deliver to the county clerk who issued the license for the
 35 marriage **or civil union** a certificate containing:

36 (a) The names and addresses of the parties and the names of at least two witnesses;

37 (b) The date and place of the marriage **or civil union**;

38 (c) The date of the [*marriage*] license and the name of the county that issued the license;

39 (d) If the person who solemnized the marriage **or civil union** is a clergyperson, the name and
 40 location of the religious congregation or organization that authorized the person to solemnize mar-
 41 riages **or civil unions**; and

42 (e) The signature of the person who solemnized the marriage **or civil union**.

43 (2) The certificate **for a marriage** may be in the following form:
 44
 45

1 State of Oregon,)
2) ss.
3 County of _____,)

4 This is to certify that the undersigned (judicial officer, county clerk or clergyperson, as the case
5 may be), by authority of a marriage license bearing date the _____ of _____, 2____, and issued
6 by the county clerk of the County of _____, did on the _____ day of _____, 2____, at the
7 house of _____, in the county and state aforesaid, join in lawful wedlock, A. B., of the County
8 of _____, and State of _____, and C. D., of the County of _____, and State of
9 _____, with their mutual assent, in the presence of E. F. and G. H., witnesses. If the under-
10 signed is a clergyperson, the authority to solemnize the marriage is granted by _____ (name
11 of religious congregation or organization), located in _____ (city, town or county, and state or
12 country).

13 Witness my hand.

14 J. P.

15 (Judicial officer, county clerk or clergyperson, as the case may be.)
16 _____
17

18 **(3) The certificate for a civil union may be in the following form:**
19 _____
20

21 **State of Oregon,**)
22) ss.
23 **County of _____,**)

24 **This is to certify that the undersigned (judicial officer, county clerk or clergyperson, as**
25 **the case may be), by authority of a civil union license bearing date the _____ of _____,**
26 **2____, and issued by the county clerk of the County of _____, did on the _____ day**
27 **of _____, 2____, at the house of _____, in the county and state aforesaid, join in civil**
28 **union, A. B., of the County of _____, and State of _____, and C. D., of the County**
29 **of _____, and State of _____, with their mutual assent, in the presence of E. F. and**
30 **G. H., witnesses. If the undersigned is a clergyperson, the authority to solemnize the civil**
31 **union is granted by _____ (name of religious congregation or organization), located in**
32 **_____ (city, town or county, and state or country).**

33 **Witness my hand.**

34 **J. P.**

35 **(Judicial officer, county clerk or clergyperson, as the case may be.)**
36 _____
37

38 **SECTION 18.** ORS 106.180 is amended to read:

39 106.180. (1) The county clerk shall file the certificate mentioned in ORS 106.170 and record it
40 in the record of marriages **and civil unions**. *[No fee shall be charged for such]* **The county clerk**
41 **may not charge a fee for** filing, recording or indexing **the certificate**.

42 (2) Notwithstanding any other provision of law, the record of [*marriage*] **marriages and civil**
43 **unions** maintained by a county clerk is not a vital record as defined by ORS 432.005 and is a public
44 record open and subject to full disclosure.

45 **SECTION 19.** ORS 106.220 is amended to read:

1 106.220. Upon entering into a marriage or civil union, either person may retain the prior sur-
2 name, and either person may resume the person's prior legal name during the marriage or civil
3 union.

4 **SECTION 20.** Section 21 of this 2005 Act is added to and made a part of ORS chapter 106.

5 **SECTION 21.** (1) Partners in a civil union have the same privileges, immunities, rights,
6 benefits and responsibilities under the laws of this state, whether derived from statute, ad-
7 ministrative or court rule, policy or common law, as are granted to or imposed on spouses
8 joined in a marriage. If a law provides privileges, immunities, rights or benefits to, or im-
9 poses responsibilities on, a person because the person is or was married, the law applies
10 equally to a person who is or was in a civil union.

11 (2) This section is intended to extend to partners in a civil union the privileges, immu-
12 nities, rights, benefits and responsibilities that flow from marriage under Oregon law. Many
13 of the laws of this state are intertwined with federal law, and the Legislative Assembly re-
14 cognizes that it does not have the jurisdiction to control federal laws or the privileges, im-
15 munities, rights, benefits and responsibilities related to federal laws.

16 (3) This section shall be construed to secure for partners in a civil union the same legal
17 status as that conferred upon spouses in a marriage, with the same privileges, immunities,
18 rights, benefits and responsibilities of marriage.

19 (4) Whenever the term "husband," "wife," "married woman," "spouse," "family," "im-
20 mediate family," "dependent" or "next of kin" or any other term that denotes or includes the
21 spousal relationship is used in the laws of this state, the term includes a partner in a civil
22 union.

23 (5)(a) Whenever the term "marriage" or any other term that denotes or includes the
24 marital relationship or the status of marriage is used in the laws of this state, the term in-
25 cludes a civil union.

26 (b) Whenever the term "marry," "marries" or "married" or any other term that denotes
27 or includes the act or state of being joined as husband and wife in marriage is used in the
28 laws of this state, the term includes the act or state of being joined as partners in a civil
29 union.

30 **SECTION 22.** ORS 106.045, 106.081 and 106.165 are added to and made a part of ORS
31 chapter 106.

32 **SECTION 23.** This 2005 Act takes effect on the 91st day after the date on which the
33 regular session of the Seventy-third Legislative Assembly adjourns sine die.

34