

House Bill 2007

Sponsored by COMMITTEE ON ELECTIONS, ETHICS AND RULES (at the request of Governor's Task Force on Equality)

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 between individuals of same sex.

Provides that any privilege, immunity, right or benefit granted by law to individual who is or was married is granted to individual who is or was in civil union. Provides that any responsibility imposed by law on individual who is or was married is imposed on individual who is or was in civil union.

Provides that any privilege, immunity, right, benefit or responsibility granted or imposed by law to or on spouse with respect to child of either spouse is granted to or imposed on partner with respect to child of either partner.

A BILL FOR AN ACT

Relating to same-sex relationships; creating new provisions; and amending ORS 107.615, 192.842, 205.320, 409.300, 432.235 and 432.405.

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

SECTION 1. Sections 1 to 9 of this 2007 Act may be cited as the Oregon Family Fairness Act.

SECTION 2. The Legislative Assembly finds that:

(1) Section 20, Article I of the Oregon Constitution has always enshrined the principle that all citizens of this state are to be provided with equal privileges and immunities under the laws of the State. In addition, as provided in ORS 659A.006, it has long been the public policy of this state that discrimination against any of the citizens of this state is a matter of state concern that threatens not only the rights and privileges of the state's inhabitants but menaces the institutions and foundation of a free democratic state. These fundamental principles are integral to Oregon's constitutional form of government, to its guarantees of political and civil rights and to the continued vitality of political and civil society in this state.

(2) The ability to enter into a committed, long-term relationship with another individual that is recognized not only by friends and family, but also by the laws of this state, is a significant and fundamental ability afforded to opposite-sex couples by the marriage laws of this state. Legal recognition of marriage by the state is the primary and, in a number of instances, the exclusive source of numerous rights, benefits and responsibilities available to married individuals under Oregon law. Marriage is limited to the union of one man and one woman by section 5a, Article XV of the Oregon Constitution.

(3) Many gay and lesbian Oregonians have formed lasting, committed, caring and faithful relationships with individuals of the same sex, despite long-standing social and economic discrimination. These couples live together, participate in their communities together and often raise children and care for family members together, just as do couples who are mar-

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 ried under Oregon law. Without the ability to obtain some form of legal status for their re-
2 lationships, same-sex couples face numerous obstacles and hardships in attempting to secure
3 rights, benefits and responsibilities for themselves and their children. Many of the rights,
4 benefits and responsibilities that the families of married couples take for granted cannot be
5 obtained in any way other than through state recognition of committed same-sex partner-
6 ships.

7 (4) This state has a strong interest in promoting stable and lasting families, including the
8 families of same-sex couples and their children. All Oregon families should be provided with
9 the opportunity to obtain necessary legal protections and status and the ability to achieve
10 their fullest potential.

11 (5) Sections 1 to 9 of this 2007 Act are intended to better align Oregon law with the values
12 embodied in the Constitution and public policy of this state, and to further the state's in-
13 terest in the promotion of stable and lasting families, by extending benefits, protections and
14 responsibilities to committed same-sex partners and their children that are comparable to
15 those provided to married individuals and their children by the laws of this state.

16 (6) The establishment of a civil union system will provide legal recognition to same-sex
17 relationships, thereby ensuring more equal treatment of gays and lesbians and their families
18 under Oregon law.

19 (7) The Legislative Assembly recognizes that the Oregon Constitution limits marriage to
20 the union of one man and one woman. The Legislative Assembly does not seek to alter this
21 definition of marriage in any way through the Oregon Family Fairness Act and recognizes
22 that the Legislative Assembly cannot bestow the status of marriage on partners in a civil
23 union. The Legislative Assembly recognizes that numerous distinctions will exist between
24 these two legally recognized relationships. The Legislative Assembly recognizes that the legal
25 recognition of civil union partnerships under the laws of this state may not be effective be-
26 yond the borders of this state and cannot impact restrictions contained in federal law.

27 (8) Sections 1 to 9 of this 2007 Act do not require the performance of any solemnization
28 ceremony to enter into a binding civil union contract. It is left to the dictates and conscience
29 of partners entering into a civil union to determine whether to seek a ceremony or blessing
30 over the union and to the dictates of each religious faith to determine whether to offer or
31 permit a ceremony or blessing of civil unions. Providing recognition to same-sex partnerships
32 through a civil union system in no way interferes with the right of each religious faith to
33 choose freely to whom to grant the religious status, sacrament or blessing of marriage under
34 the rules or practices of that faith.

35 **SECTION 3.** As used in sections 1 to 9 of this 2007 Act:

36 (1) "Civil union" means a civil contract entered into in person between two individuals
37 of the same sex who are at least 18 years of age, who are otherwise capable and at least one
38 of whom is a resident of Oregon.

39 (2) "Partner" means an individual joined in a civil union.

40 **SECTION 4.** (1) The following civil unions are prohibited and void:

41 (a) When either party to the civil union had a partner, wife or husband living at the time
42 of the civil union.

43 (b) When the parties to the civil union are first cousins or any nearer of kin to each
44 other, whether of the whole or half blood, whether by blood or adoption, computing by the
45 rules of the civil law. However, when the parties are first cousins by adoption only, the civil

1 union is not prohibited or void.

2 (2) When either party to a civil union is incapable of making the civil contract or con-
3 senting to the contract for want of legal age or sufficient understanding, or when the con-
4 sent of either party is obtained by force or fraud, the civil union is void from the time it is
5 so declared by a judgment of a court having jurisdiction of the civil union.

6 **SECTION 5.** (1) The Department of Human Services shall prepare forms entitled:

7 (a) "Declaration of Civil Union" meeting the requirements of section 6 of this 2007 Act;
8 and

9 (b) "Certificate of Registered Civil Union."

10 (2) The department shall distribute the forms to each county clerk. The department and
11 each county clerk shall make the Declaration of Civil Union forms available to the public.

12 **SECTION 6.** (1) Two individuals wishing to become partners in a civil union may complete
13 and file a Declaration of Civil Union with the county clerk.

14 (2) In accordance with the requirements of this section, the county clerk shall register
15 the Declaration of Civil Union in a civil union registry and return a copy of the registered
16 form and a Certificate of Registered Civil Union to the partners in person or at the mailing
17 address provided by the partners.

18 (3) An individual who has filed a Declaration of Civil Union may not file a new Declara-
19 tion of Civil Union or enter a marriage with someone other than the individual's registered
20 partner unless a judgment of dissolution or annulment of the most recent civil union has
21 been entered. This prohibition does not apply if the previous civil union ended because one
22 of the partners died.

23 (4) On the Declaration of Civil Union, each individual who wants to become a partner in
24 a civil union shall:

25 (a) State that the individual is at least 18 years of age and is otherwise capable to enter
26 into a civil union at the time the individual signs the form;

27 (b) State whether the individual is a resident of Oregon;

28 (c) Provide a mailing address;

29 (d) State that the individual consents to the jurisdiction of the circuit courts of Oregon
30 for the purpose of an action to obtain a judgment of dissolution or annulment of the civil
31 union or for legal separation of the partners in the civil union, or for any other proceeding
32 related to the partners' rights and obligations, even if one or both partners ceases to be a
33 resident of, or to maintain a domicile in, this state;

34 (e) Sign the form with a declaration that representations made on the form are true,
35 correct and contain no material omissions of fact to the best knowledge and belief of the
36 individual; and

37 (f) Have a notary public acknowledge the individual's signature.

38 (5) Both partners' signatures must be affixed to one Declaration of Civil Union form.
39 Filing an intentionally and materially false Declaration of Civil Union is punishable as a
40 misdemeanor.

41 (6) The county clerk may accept any reasonable proof of an individual's age satisfactory
42 to the clerk. The clerk may require proof of age by affidavit of some individual other than
43 either of the parties seeking to file the Declaration of Civil Union if the clerk deems it nec-
44 essary in order to determine the age of the individual to the clerk's satisfaction.

45 (7) The county clerk may not register a Declaration of Civil Union or return a copy of

1 the registered form and a Certificate of Registered Civil Union to the partners until the
 2 provisions of this section, section 7 of this 2007 Act and all other legal requirements are
 3 complied with.

4 (8) Notwithstanding any other provision of law, the registry of civil unions maintained
 5 by a county clerk is not a vital record as defined in ORS 432.005 and is a public record open
 6 and subject to full disclosure.

7 **SECTION 7.** (1) In addition to any other fees provided by law, the county clerk shall
 8 collect a fee of \$25 for registering a Declaration of Civil Union.

9 (2) The county clerk shall regularly pay over to the Director of Human Services all
 10 moneys collected under subsection (1) of this section to be credited to the Domestic Violence
 11 Fund pursuant to ORS 409.300.

12 **SECTION 8.** Upon entering into a civil union, either individual may retain the individual's
 13 prior surname, and either individual may resume the individual's prior legal name during the
 14 civil union.

15 **SECTION 9.** (1) Any privilege, immunity, right or benefit granted by statute, adminis-
 16 trative or court rule, policy, common law or any other law to an individual because the in-
 17 dividual is or was married, or because the individual is or was an in-law in a specified way
 18 to another individual, is granted on equivalent terms, substantive and procedural, to an in-
 19 dividual because the individual is or was in a civil union or because the individual is or was,
 20 based on a civil union, related in a specified way to another individual.

21 (2) Any responsibility imposed by statute, administrative or court rule, policy, common
 22 law or any other law on an individual because the individual is or was married, or because
 23 the individual is or was an in-law in a specified way to another individual, is imposed on
 24 equivalent terms, substantive and procedural, on an individual because the individual is or
 25 was in a civil union or because the individual is or was, based on a civil union, related in a
 26 specified way to another individual.

27 (3) Any privilege, immunity, right, benefit or responsibility granted or imposed by stat-
 28 ute, administrative or court rule, policy, common law or any other law to or on a spouse
 29 with respect to a child of either of the spouses is granted or imposed on equivalent terms,
 30 substantive and procedural, to or on a partner with respect to a child of either of the part-
 31 ners.

32 (4) Any privilege, immunity, right, benefit or responsibility granted or imposed by stat-
 33 ute, administrative or court rule, policy, common law or any other law to or on a former or
 34 surviving spouse with respect to a child of either of the spouses is granted or imposed on
 35 equivalent terms, substantive and procedural, to or on a former or surviving partner with
 36 respect to a child of either of the partners.

37 (5) Many of the laws of this state are intertwined with federal law, and the Legislative
 38 Assembly recognizes that it does not have the jurisdiction to control federal laws or the
 39 privileges, immunities, rights, benefits and responsibilities related to federal laws.

40 (6) Nothing in sections 1 to 9 of this 2007 Act requires or permits the extension of any
 41 benefit under ORS chapter 238 or 238A if doing so would conflict with tax qualification re-
 42 quirements under the Internal Revenue Code and regulations adopted under the Internal
 43 Revenue Code.

44 (7) For purposes of administering Oregon tax laws, partners in a civil union, surviving
 45 partners in a civil union and the children of partners in a civil union have the same privi-

1 **leges, immunities, rights, benefits and responsibilities as are granted to or imposed on**
 2 **spouses in a marriage, surviving spouses and their children.**

3 **SECTION 10. Section 11 of this 2007 Act is added to and made a part of ORS chapter 314.**

4 **SECTION 11. This chapter applies to partners in a civil union, as defined in section 3 of**
 5 **this 2007 Act, and surviving partners as if federal income tax law recognized a civil union in**
 6 **the same manner as Oregon law.**

7 **SECTION 12. ORS 107.615 is amended to read:**

8 107.615. (1) The governing body of any county may impose a fee up to \$10 above that prescribed
 9 in ORS 205.320 (5) for **issuing** a marriage license **or registering a Declaration of Civil Union.**

10 (2) In addition to any other funds used therefor, the governing body shall use the proceeds from
 11 the fee increase authorized by this section to pay the expenses of conciliation services under ORS
 12 107.510 to 107.610 and mediation services under ORS 107.755 to 107.795. If there are none in the
 13 county, the governing body may provide [*such*] **conciliation and mediation** services through other
 14 county agencies or may contract with a public or private agency or person to provide [*such*] **con-**
 15 **ciliation and mediation** services.

16 (3) The governing body may establish rules of eligibility for conciliation services funded under
 17 this section so long as its rules do not conflict with rules of the court adopted under ORS 107.580.

18 (4) Fees collected under this section shall be collected and deposited in the same manner as
 19 other county funds are collected and deposited but shall be maintained in a separate account to be
 20 used as provided in this section.

21 **SECTION 13. ORS 192.842 is amended to read:**

22 192.842. (1) A county clerk shall use the actual address of a program participant for voter reg-
 23 istration purposes. Except as provided in ORS 192.820 to 192.868, the county clerk may not disclose
 24 the actual address.

25 (2) A county clerk shall use the substitute address of the program participant for purposes of
 26 mailing a ballot to an elector under ORS 254.470.

27 (3) A school district shall use the actual address of a program participant for any purpose re-
 28 lated to admission or assignment. The school district shall take such measures as necessary to pro-
 29 tect the confidentiality of the actual address of the program participant. Student records created
 30 under ORS 326.565 and 326.580 shall use the substitute address of the program participant.

31 (4) A county clerk shall accept the substitute address of the program participant as the address
 32 of the applicant for the purpose of issuing a marriage license under ORS 106.041 **or registering a**
 33 **Declaration of Civil Union under section 6 of this 2007 Act.**

34 **SECTION 14. ORS 205.320 is amended to read:**

35 205.320. In every county there shall be charged and collected in advance by the county clerk,
 36 for the benefit of the county, the following fees, and no more, for the following purposes and ser-
 37 vices:

38 (1) For filing and making entry when required by law of any instrument required or permitted
 39 by law to be filed, when it is not recorded, \$5 for each page.

40 (2) For filing and making entry of the assignment or satisfaction of any filed, but not recorded,
 41 instrument, \$5 for each page.

42 (3) For each official certificate, \$3.75.

43 (4)(a) For purposes of this subsection, "page" means one side of a sheet 14 inches, or less, long
 44 and 8-1/2 inches, or less, wide.

45 (b) For recording any instrument required or permitted by law to be recorded, \$5 for each page,

1 but the minimum fee shall not be less than \$5.

2 (c) For supplying to private parties copies of records or files, not more than \$3.75 for locating
3 a record requested by the party and 25 cents for each page.

4 (d) For each official certificate, \$3.75.

5 (5) For taking **an** affidavit for and making and issuing **a** marriage license and registering the
6 return *[thereof]* **of the license, or for taking an affidavit for and registering a Declaration of**
7 **Civil Union**, \$25.

8 (6) For solemnizing a marriage under ORS 106.120, \$25. This subsection does not require that
9 the county clerk charge a fee for solemnizing a marriage after normal working hours or on Satur-
10 days or legal holidays. This subsection does not prohibit a county clerk from charging and accepting
11 a personal payment for solemnizing a marriage if otherwise authorized by ORS 106.120.

12 (7) For taking and certifying acknowledgment or proof of execution of any instrument, the fee
13 established in the schedule adopted by the Secretary of State under ORS 194.164.

14 (8) For issuing any license required by law, other than a marriage or liquor license, and for
15 which no fee is otherwise provided by law, \$5.

16 (9) For any service the clerk may be required or authorized to perform and for which no fee is
17 provided by law, such fees as may favorably compare with those established by this section for
18 similar services and as may be established by order or rule of the county court or board of county
19 commissioners.

20 (10) For recording any instrument under ORS 205.130 (2), as required by ordinance pursuant to
21 ORS 203.148.

22 (11) In addition to and not in lieu of the fees charged under subsection (4) of this section, for
23 each additional municipal assessment lien recorded under ORS 93.643, \$5.

24 (12) In addition to and not in lieu of the fees charged under subsection (4) of this section, for
25 each additional assignment, release or satisfaction of any recorded instrument, \$5.

26 (13) In addition to and not in lieu of the fees charged under subsection (4) of this section, for
27 each additional transaction described under ORS 205.236, \$5.

28 (14) In addition to and not in lieu of the fees charged under subsection (4) of this section, for
29 each additional lien recorded under ORS 311.675, \$5.

30 (15) For preparing and recording the certificate under ORS 517.280, \$20 or such other fee that
31 is established by the county governing body.

32 (16) In addition to and not in lieu of the fees charged under subsection (4) of this section, for
33 each additional claim listed on an affidavit of annual compliance under ORS 517.210, \$5.

34 (17) In addition to and not in lieu of the fees charged under subsection (4) of this section, for
35 each additional name listed on a cooperative contract under ORS 62.360 (2) or for recording the
36 termination of a cooperative contract under ORS 62.360 (4), \$5.

37 (18) Notwithstanding any other law, five percent of any fee or tax that is not collected for the
38 benefit of the county clerk shall be deducted from the fee or tax. The moneys deducted shall be
39 expended for acquiring storage and retrieval systems, payment of expenses incurred in collecting the
40 fee or tax and maintaining and restoring records as authorized by the county clerk. Moneys col-
41 lected under this subsection shall be deposited in a county clerk records fund established by the
42 county governing body. No moneys shall be deducted under this subsection from:

43 (a) Fees collected for the Domestic Violence Fund under ORS 106.045.

44 (b) Fees collected for conciliation services under ORS 107.615.

45 (c) Real estate transfer taxes enacted prior to January 1, 1998.

1 (d) Fees collected under ORS 205.323 for the Oregon Land Information System Fund.

2 **SECTION 15.** ORS 409.300 is amended to read:

3 409.300. (1) There is established the Domestic Violence Fund in the Services to Children and
4 Families Account of the General Fund established under ORS 409.260.

5 (2) All moneys received by the Director of Human Services under ORS 106.045 [(2)] **or section**
6 **7 of this 2007 Act** and any other funds allocated for expenditure under ORS 409.292 shall be cred-
7 ited to the Domestic Violence Fund.

8 (3) All moneys credited to the Domestic Violence Fund are continuously appropriated for the
9 purposes of ORS 409.292 to be expended by the director as provided in ORS 409.290 and 409.292.
10 However, the director shall expend not more than 10 percent of such moneys for administrative
11 costs of the Department of Human Services incurred under ORS 409.290 and 409.292.

12 **SECTION 16.** ORS 432.235 is amended to read:

13 432.235. (1) A certificate or report registered under this chapter may be amended only in ac-
14 cordance with this chapter and rules adopted by the State Registrar of the Center for Health Sta-
15 tistics to protect the integrity and accuracy of vital records and vital reports.

16 (2) A certificate or report that is amended under this section shall indicate that it has been
17 amended, except as otherwise provided in ORS 432.230, this section or by rule of the state registrar.
18 A record shall be maintained that identifies the evidence upon which the amendment was based, the
19 date of the amendment and the identity of the person making the amendment. The state registrar
20 shall prescribe by rule the conditions under which additions or minor corrections may be made to
21 certificates or reports within one year without the certificate or report indicating that it has been
22 amended.

23 (3) Upon receipt of a certified copy of an order of a court changing the name of a person born
24 in this state and upon request of such person or if the person is a minor or incompetent, the parents,
25 guardian or legal representative of the person, the state registrar shall amend the certificate of birth
26 to show the new name.

27 (4) Upon receipt of a certified copy of an order of a court of competent jurisdiction indicating
28 that the sex of an individual born in this state has been changed by surgical procedure and whether
29 such individual's name has been changed, the certificate of birth of such individual shall be amended
30 as prescribed by rule of the state registrar.

31 (5) When an applicant does not submit the minimum documentation required by rule of the state
32 registrar for amending a vital record or when the state registrar has cause to question the validity
33 or adequacy of the applicant's sworn statements or the documentary evidence, and if the deficiencies
34 are not corrected, the state registrar shall not amend the vital record and shall advise the applicant
35 of the reason for this action and shall further advise the applicant of the right of appeal under ORS
36 183.480 and 183.484.

37 (6) When a certificate or report is amended under this section by the state registrar, the state
38 registrar shall report the amendment to any other custodian of the vital record and the record of
39 the other custodian shall be amended accordingly.

40 (7) When an amendment is made to a certificate [of] **for a marriage or to a Declaration of Civil**
41 **Union** by the local official issuing the marriage license **or registering the declaration**, copies of
42 the amendment shall be forwarded to the state registrar.

43 (8)(a) When a party or legal representative proposes to set aside or change any information re-
44 corded in a dissolution of marriage judgment filed pursuant to ORS 432.408, the party or legal rep-
45 resentative seeking the amendment or set aside order shall prepare a summary of the changes in the

1 form prescribed or furnished by the state registrar and shall present the form to the clerk of the
2 court along with the proposed supplemental judgment. In all cases the completed form shall be a
3 prerequisite to the entry of the supplemental judgment.

4 (b) The clerk of the court shall complete and forward to the Center for Health Statistics the
5 records of each such supplemental judgment in the same manner prescribed by ORS 432.408.

6 **SECTION 17.** ORS 432.405 is amended to read:

7 432.405. (1) A record of each marriage performed **and civil union registered** in this state shall
8 be filed with the Center for Health Statistics and shall be registered if it has been completed and
9 filed in accordance with this section and rules adopted by the State Registrar of the Center for
10 Health Statistics.

11 (2) The county clerk or county official who issues the marriage license **or registers the Dec-**
12 **laration of Civil Union** shall prepare the record in the form prescribed or furnished by the state
13 registrar upon the basis of information obtained from the parties [*to be married*].

14 (3) Each person who performs a marriage ceremony shall certify the fact of marriage and return
15 the record to the official who issued the license within 10 days after the ceremony.

16 (4) Every official issuing marriage licenses **or registering Declarations of Civil Union** shall
17 complete and forward to the Center for Health Statistics on or before the 10th day of each calendar
18 month the records of marriages returned to such official during the preceding calendar month **and**
19 **the records of Declarations of Civil Union registered during the preceding calendar month.**

20 (5) A marriage **or civil union** record not filed within the time prescribed by this section may
21 be registered in accordance with rules adopted by the state registrar.

22