

House Bill 3414

Sponsored by COMMITTEE ON GENERAL GOVERNMENT AND CONSUMER PROTECTION

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**.

Authorizes former judges and former county clerks to solemnize marriages. Requires court and county clerk to maintain list of former judges and former county clerks who solemnize marriages in county.

A BILL FOR AN ACT

1
2 Relating to solemnization of marriage; creating new provisions; and amending ORS 106.120, 106.130,
3 106.150, 204.116 and 205.320.

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

5 **SECTION 1.** ORS 106.120 is amended to read:

6 106.120. *[(1) As used in this section, "judicial officer" means:]*

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

9 *[(b) An active judge of a federal court.]*

10 *[(c) An active United States magistrate judge.]*

11 *[(2) Marriages may be solemnized by:]*

12 *[(a) A judicial officer;]*

13 *[(b) A county clerk;]*

14 *[(c) Religious congregations or organizations as indicated in ORS 106.150 (2); or]*

15 *[(d) A clergyperson of any religious congregation or organization who is authorized by the con-*
16 *gregation or organization to solemnize marriages.]*

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

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

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

24 *[(c) The fee described in this subsection may be collected only if:]*

25 *[(A) The marriage is solemnized during normal working hours, excluding holidays;]*

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

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

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

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

4 *[(a) At a place other than the courthouse where the judicial officer or county clerk serves; or]*

5 *[(b) Outside of the judicial officer's or county clerk's normal working hours.]*

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

9 *[(7) The amount of actual costs charged by a judicial officer of this state or a county clerk under*
 10 *subsection (5) of this section may not exceed:]*

11 *[(a) Actual expenses for food and lodging as verified by receipts.]*

12 *[(b) If travel is made by personal vehicle, the actual number of round-trip miles from the judicial*
 13 *officer's or county clerk's home or office, whichever is greater, compensated at the rate of reimburse-*
 14 *ment then provided by the State of Oregon to its employees or, if travel is made by a commercial car-*
 15 *rier, reimbursement shall be made of the actual costs thereof, verified by receipts.]*

16 *[(8) A judicial officer of this state or a county clerk shall maintain records of the amount of per-*
 17 *sonal payments received for performing marriages, of actual costs and the supporting documentation*
 18 *related thereto for a period of four years.]*

19 *[(9) The parties to a marriage solemnized by a tax, appellate or circuit judge of this state shall*
 20 *show to the judge proof of payment of the fee required under subsection (4)(a) of this section before*
 21 *solemnization. Except as provided in subsection (4)(d) of this section, the judge may not solemnize a*
 22 *marriage without proof of payment of the fee.]*

23 **(1) A marriage may be solemnized at any place in this state by:**

24 **(a) An active United States magistrate judge;**

25 **(b) An active judge of a federal court;**

26 **(c) An active judge of the Supreme Court, the Court of Appeals, the Oregon Tax Court,**
 27 **a circuit court, a municipal court, a justice court or a county court; and**

28 **(d) A former judge who is a member of the Oregon State Bar, who served as a judge of**
 29 **one of the courts listed in paragraph (c) of this subsection for at least one year and who**
 30 **solemnized at least 25 marriages while an active judge. For purposes of this paragraph,**
 31 **“former judge” includes a judge who has retired under ORS 238.535 (1)(b) and who serves as**
 32 **a pro tem judge under ORS 238.535 (1)(c).**

33 **(2) A marriage may be solemnized at any place in this state by an active county clerk,**
 34 **or by a former county clerk who served as a county clerk for at least one year and who**
 35 **solemnized at least 25 marriages while an active county clerk.**

36 **(3) A marriage may be solemnized at any place in this state by a religious organization**
 37 **or congregation, or by a clergyperson of a religious congregation or organization who is au-**
 38 **thorized by the organization or congregation to solemnize marriages.**

39 **(4) The presiding judge of each circuit court shall establish and maintain a list of former**
 40 **judges who are authorized to solemnize marriages in the county and who have provided**
 41 **contact information as requested by the court. The court shall make copies of the list**
 42 **available to the public.**

43 **(5) The current county clerk in each county shall establish and maintain a list of former**
 44 **county clerks who are authorized to solemnize marriages in the county and who have pro-**
 45 **vided contact information as requested by the current county clerk. The current county**

1 clerk shall make copies of the list available to the public.

2 **SECTION 2.** Sections 3 and 4 of this 2011 Act are added to and made a part of ORS 106.100
3 to 106.190.

4 **SECTION 3.** (1) Before any marriage may be solemnized by an active judge of the Su-
5 preme Court, the Court of Appeals, the Oregon Tax Court or a circuit court, the clerk of the
6 court shall collect a fee of \$25 and deposit the fee in the Judicial Department Operating Ac-
7 count established under ORS 1.009.

8 (2) Before any marriage may be solemnized by an active county clerk, the county clerk
9 shall collect a fee of \$25 as provided in ORS 205.320.

10 (3) The fees described in this section may be collected only if:

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

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

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

15 (4) The Chief Justice of the Supreme Court or the county clerk may establish standards
16 and procedures for waiver of the fee required under this section.

17 (5) Proof of payment of the fee required under this section, or waiver of the fee, must
18 be provided to a judge before the judge solemnizes the marriage.

19 **SECTION 4.** (1) In addition to any fee collected under section 3 of this 2011 Act, active
20 judges and active county clerks may collect and retain a personal payment in an amount not
21 to exceed \$100 plus actual costs for a solemnization of a marriage that is performed:

22 (a) At a place other than the courthouse where the judge serves, or the county clerk's
23 office; or

24 (b) At a time other than the normal working hours of the judge or county clerk.

25 (2) Former judges and former county clerks may collect and retain a personal payment
26 in an amount not to exceed \$100 plus actual costs for a solemnization of a marriage.

27 (3) The collection and retention of a fee under this section does not constitute a violation
28 of any of the provisions of ORS chapter 244.

29 (4) The amount of actual costs collected by an active or former judge or county clerk
30 under this section may not exceed:

31 (a) Actual expenses for food and lodging, verified by receipts; and

32 (b) Mileage reimbursement for the use of a personal vehicle for the number of miles
33 traveled from the home or office of the judge or county clerk, compensated at the rate for
34 mileage reimbursement paid by the State of Oregon to its employees. If travel is made by
35 public transportation, reimbursement must be for the actual costs of travel, verified by re-
36 cepts.

37 (5) Active and former judges, and active and former county clerks, shall maintain records
38 of the amount of payments received under this section, including documentation for actual
39 expenses, for a period of four years.

40 **SECTION 5.** ORS 106.130 is amended to read:

41 106.130. A marriage solemnized before any person [*professing to be a judicial officer of this state,*
42 *a county clerk or a clergyperson of a religious congregation or organization therein*] **claiming to be**
43 **authorized to solemnize marriages under ORS 106.120** is not void, nor shall the validity thereof
44 be in any way affected, on account of any want of power or authority in such person, if such person
45 was acting at the time in the office or the capacity of a person authorized to solemnize marriage

1 and if such marriage is consummated with the belief on the part of the persons so married, or either
 2 of them, that they have been lawfully joined in marriage.

3 **SECTION 6.** ORS 106.150 is amended to read:

4 106.150. (1) In the solemnization of a marriage no particular form is required except that the
 5 parties thereto shall assent or declare in the presence of the [*clergyperson, county clerk or judicial*
 6 *officer*] **person** solemnizing the marriage and in the presence of at least two witnesses, that they
 7 take each other to be husband and wife.

8 (2) All marriages[,] to which there are no legal impediments, solemnized before or in any reli-
 9 gious organization or congregation according to the established ritual or form commonly practiced
 10 therein, are valid. In such case, the person presiding or officiating in the religious organization or
 11 congregation shall deliver to the county clerk who issued the marriage license the application, li-
 12 cense and record of marriage in accordance with ORS 106.170.

13 **SECTION 7.** ORS 204.116 is amended to read:

14 204.116. (1) Except as otherwise provided by law, the governing body of each county shall fix
 15 the compensation of its own members and of every other county officer, deputy and employee when
 16 the compensation of such individuals is paid from county funds.

17 (2) Any commission, fees or other moneys received by a county officer, deputy or employee for
 18 services rendered in the course of that individual's office or employment shall not be allowed to or
 19 retained by that individual, but shall promptly be paid into the county treasury except:

- 20 (a) For compensation fixed under subsection (1) of this section;
- 21 (b) As otherwise determined by the governing body of the county; or
- 22 (c) As otherwise provided by [*ORS 106.120*] **section 4 of this 2011 Act** or **ORS 205.320 (6)**.

23 **SECTION 8.** ORS 205.320 is amended to read:

24 205.320. In every county there shall be charged and collected in advance by the county clerk,
 25 for the benefit of the county, the following fees, and no more, for the following purposes and ser-
 26 vices:

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

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

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

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

34 (b) For recording any instrument required or permitted by law to be recorded, \$5 for each page,
 35 but the minimum fee shall not be less than \$5.

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

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

39 (5) For taking an affidavit for and making and issuing a marriage license and registering the
 40 return of the license, or for taking an affidavit for and registering a Declaration of Domestic Part-
 41 nership, \$25.

42 (6) For solemnizing a marriage under ORS 106.120, \$25. This subsection does not require that
 43 the county clerk charge a fee for solemnizing a marriage after normal working hours or on Satur-
 44 days or legal holidays. This subsection does not prohibit a county clerk from charging and accepting
 45 a personal payment for solemnizing a marriage if otherwise authorized by [*ORS 106.120*] **section 4**

1 **of this 2011 Act.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (e) Fees collected under ORS 205.323 (1)(c) for the housing-related programs listed in ORS
38 294.187 (2)(b).

39