

**Chapter 2**

**OREGON FAMILY FAIRNESS ACT**

**Mark Johnson**

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## Chapter 2

### OREGON FAMILY FAIRNESS ACT

Mark Johnson

#### I. INTRODUCTION

Perhaps no social issue has impassioned more sustained debate among Americans in the last decade than the question of marriage rights for same-sex couples. Gay couples sought such protections for their relationships as early as 1971, *Baker v. Nelson*, 191 NW2d 185 (Minn. 1971), appeal dismissed, 409 US 810 (1972), but the issue did not really impinge on the public consciousness until some 20 years later. In 1993, the Hawaii Supreme Court decided in *Baehr v. Lewin*, 852 P2d 44 (Haw 1993), that denying the right of marriage to same-sex couples amounted to sex discrimination. On remand, the trial court rejected the state's attempt to show a compelling state interest and held the marriage statute unconstitutional. The Hawaii Supreme Court affirmed. *Baehr v. Miike*, 1996 WL 694235 (Haw Cir Ct 1996), *aff'd*, 950 P2d 1234 (Haw 1997).

Although an amendment to the Hawaii constitution later superseded the *Baehr* holding, the Rubicon was crossed. Congress enacted the Defense of Marriage Act (DOMA), 110 Stat 2419 (1996), which limited federal recognition of marriage to opposite-sex couples, and further provided that no state need recognize "a relationship between persons of the same sex that is treated as a marriage" by any other state. Thus began a complex patchwork of relationship recognition policies undertaken by each of the individual states and territories in the United States. The result for a family headed by a gay or lesbian couple is that the family members' legal relationships remain constantly in flux, changing according to their state of residence, the law of each state or territory to which they may travel, and whether the particular rights in question find their source in state or federal law.

According to the Human Rights Campaign ([www.hrc.org](http://www.hrc.org)), 26 states, including Oregon, have adopted constitutional provisions limiting marriage to opposite-sex couples. "It is the policy of Oregon, and its political subdivisions, that only a marriage between one man and one woman shall be valid or legally recognized as a marriage." Or Const Art XV, §5a. Nineteen states have enacted similar statutory restrictions. Meanwhile, ten states and the District of Columbia have adopted varying levels of legal protection for same-sex couples and their children. While only one American jurisdiction allows same-sex couples to marry, at least five countries worldwide, including Canada, do so.

State-law recognitions for same-sex couples fall into three general categories. As noted, one state – Massachusetts – accords full marriage equality between same- and opposite-sex couples. Six states – California, Connecticut, New Hampshire (effective January 2008), New Jersey, Oregon (effective January 2008), and Vermont – give benefits and protections substantially similar to marriage through an alternative vehicle ("civil unions"). (Oregon, along with some other states, is calling this status a "domestic partnership," *see* House Bill (HB) 2007, § 3 (2007), which should not be confused with local partnership registration ordinances that mostly carry no direct legal consequences.) And three states – Hawaii, Maine, and Washington, plus the District of Columbia – provide individual benefits to same-sex couples that are more limited in scope than full marriage rights ("reciprocal beneficiaries").

## II. PARTNERSHIP REGISTRATION IN OREGON

### A. 2007 Legislation

The legislature enacted the Oregon Family Fairness Act in 2007. HB 2007 (appended). A “domestic partnership” under OFFA is “a civil contract entered into in person between two individuals of the same sex who are at least 18 years of age, who are otherwise capable and at least one of whom is a resident of Oregon.” HB 2007, §3. “Two individuals wishing to become partners in a domestic partnership may complete and file a Declaration of Domestic Partnership with the county clerk.” HB 2007, §6(1).

### B. Effect of Registration

All of the rights and responsibilities of a marriage accompany the registration:

(1) Any privilege, immunity, right or benefit granted by statute, administrative or court rule, policy, common law or any other law to an individual because the individual is or was married, or because the individual is or was an in-law in a specified way to another individual, is granted on equivalent terms, substantive and procedural, to an individual because the individual is or was in a domestic partnership or because the individual is or was, based on a domestic partnership, related in a specified way to another individual.

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

(3) Any privilege, immunity, right, benefit or responsibility granted or imposed by statute, administrative or court rule, policy, common law or any other law to or on a spouse with respect to a child of either of the spouses is granted or imposed on equivalent terms, substantive and procedural, to or on a partner with respect to a child of either of the partners.

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

\* \* \* \* \*

HB 2007, §9.

Couples should be advised that even a law as broad as Oregon’s creates a status that is different from marriage and one that courts are likely to construe strictly. While the case law so far is perhaps unsurprising to a lawyer’s eye, ironies abound. A couple married in Canada cannot make a joint bankruptcy filing; that is a question of federal law governed by DOMA. *In re Kandau*, 315 BR

123 (Bankr WD Wash 2004). A civil union in California makes the couple eligible for only a single homestead exemption between them; that is a question of state law. *Rabin v. Schoenmann*, 359 BR 242 (BAP 9th Cir 2007). Domestic partners in California who mistakenly believe that they have registered their relationship cannot be treated as putative spouses. *Velez v. Smith*, 48 Cal Rptr 3d 642 (Cal Ct App 2006). The court held in *Burns v. Burns*, 560 SE2d 47 (Ga Ct App 2002), that the former wife violated a consent order that prohibited child visitation while living with an unmarried partner, despite the fact that she and her partner had registered a civil union in Vermont. And in *Garber v. Garber* (No. 04D006519), a case widely reported in the news media, a judge in Orange County, California, continued alimony payments to a former wife after she registered a union in that state with her new domestic partner.

### **C. Dissolution**

Gay and lesbian couples that consider marrying or otherwise formalizing their relationships must consider a host of issues created by the probable non-recognition of such marriages in most American jurisdictions, and by the frankly uncertain status granted by at least some state civil union and reciprocal beneficiary laws. Perhaps the clearest example of unintended consequences is the question of how to dissolve the relationship, should that unfortunate need arise. Massachusetts, invoking a miscegenation-era statute, refuses to marry any non-resident couples whose marriages are prohibited in their home states, but many American couples have traveled to Canada to marry. Marriage dissolution in Canada requires residency in that country. Similarly, at least some “civil union” states allow non-resident couples to register, but not to dissolve, their relationships. While a couple of other states’ trial courts have allowed their citizens equitable relief to dissolve a Vermont civil union, *Salucco v. Alldredge*, 17 Mass L Rptr 498 (Mass Super Ct 2004); *see also Alons v. Iowa Dist. Court for Woodbury County*, 698 NW2d 858 (Iowa 2005) (standing of strangers to appeal trial court dissolution), the prudent view is that most will not. *See Rosengarten v. Downes*, 802 A2d 170 (Conn Ct App 2002).

The Oregon law adopts several provisions designed to address these difficulties, at least insofar as domestic partnerships registered in Oregon are concerned. First, as already noted, at least one of the proposed partners must reside in Oregon. HB 2007, §3(1). Second, entering into a domestic partnership constitutes consent to have the relationship dissolved in Oregon, and the jurisdiction of the domestic relations court is expanded to allow dissolution in the Oregon county in which either partner last resided. HB 2007, §6(4). Finally, the registration form itself states consent to the jurisdiction of Oregon courts for dissolution, “even if one or both partners cease to reside in, or maintain a domicile in, this state \* \* \* .” HB 2007, § 6(5)(d).

### **D. Interstate Portability**

#### **1. Full Faith and Credit issues**

Much is hazy in legal landscape, but one thing is clear: In the short term, sister-state recognition of these relationships will be spotty at best, and will be fought out on a case-by-case basis. The federal constitution provides that “Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State,” but a once-esoteric aspect of the case law interpreting that clause holds that public acts and records can be held to a different standard from judicial proceedings. Thus, the Tenth Circuit held in *Finstuen v. Crutcher*, \_\_\_ F3d \_\_\_, 2007 WL 2218887 (10th Cir 2007), that Oklahoma must recognize, as co-parents, same-sex couples who obtained adoption judgments in other states, and even that it must issue amended birth

certificates if the couples' children were born in Oklahoma. But the Kansas and Ohio courts declined to recognize, on behalf of their own citizens, amended birth certificates issued in other states that showed a change of sex following sex-reassignment treatments. *In re Gardiner*, 42 P3d 120 (Kan 2002); *In re Nash*, 2003 WL 23097095 (Ohio Ct App 2003). The logic of the latter cases rests on the notion that one state may decline to recognize another state's public acts and records-though not its court judgments-based on policy considerations. See generally *Finstuen*, 2007 WL 2218887\*9-13 (discussing Full Faith and Credit Clause).

The New York courts, in *Langan v. St. Vincent's Hosp. of N.Y.*, 802 NYS2d 476 (NY App Div 2005), *appeal dismissed*, 850 NE2d 672 (NY 2006), denied the right to bring a wrongful death action in that state to the surviving partner of a Vermont civil union. They also denied spousal health benefits to one of the husbands in a Canadian marriage. *Funderburke v. N.Y. State Dept. of Civil Serv.*, 822 NYS2d 393 (NY Sup Ct 2006). But, in perhaps the most notorious litigation yet to arise from the civil-union debate, the Virginia courts have yielded to a Vermont judgment that accords parental rights to both partners in a Vermont civil union who bore a child in Virginia and then moved to Vermont. *Miller-Jenkins v. Miller-Jenkins*, 637 SE2d 330 (Va Ct App 2006). A petition for a writ of certiorari to the Virginia Court of Appeals is pending in the United States Supreme Court. The Court has already denied certiorari in the Vermont case. *Miller-Jenkins v. Miller-Jenkins*, 912 A2d 951 (Vt 2006), *cert den*, \_\_\_ US \_\_\_, 127 S Ct 2130, 167 L Ed 2d 863 (2007).

## 2. What Law Governs

Even where a state chooses to recognize a relationship formalized elsewhere, implementation in a specific case can lead to surprising results. Interpreting that state's former reciprocal beneficiaries law, the New Jersey Tax Court held in *Hennefeld v. Township of Montclair*, 22 NJ Tax 166 (2005), that, although the New Jersey law recognized the parties' Vermont civil union, the rights accorded to the relationship were determined by New Jersey's law and not by Vermont's. Thus, the court held, the couple could not hold New Jersey real property as tenants by the entirety, since that was not a right extended by the New Jersey reciprocal beneficiaries law. 22 NJ Tax at 187, 190-91. The court granted the favored tax status actually at issue in the case, but only after the couple re-registered their relationship in New Jersey. 22 NJ Tax at 203-04.

## IV. CONCLUSIONS (SO FAR!)

The outcomes in *Burns*, *Garber*, and *Velez* should be considered carefully. Practitioners should note that the putative spouse doctrine, for example, is not a privilege, immunity, right, benefit or responsibility *of marriage*. The significance of these cases is in how they illustrate that a broadly written civil union statute can never capture the entire field of matrimonial law. A civil union, however expansive it may be, is not a marriage, and couples considering one should not treat it as such. At least in the short term, these clients need to consider, first, how their relationship is to be dissolved should that become necessary, and second, how the traditional tools of gay and lesbian relationship planning – domestic partnership agreements, powers of attorney, wills, and adoptions – may still be needed in order to give their families the legal protections they expect and deserve.

**Enrolled  
House Bill 2007**

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

CHAPTER .....

AN ACT

Relating to same-sex relationships; creating new provisions; and amending ORS 107.615, 192.842, 205.320, 409.300, 432.005, 432.235, 432.405 and 432.408.

**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 married under Oregon law. Without the ability to obtain some form of legal status for their relationships, same-sex couples face numerous obstacles and hardships in attempting to secure rights, benefits and responsibilities for themselves and their children. Many of the rights, benefits and responsibilities that the families of married couples take for granted cannot be obtained in any way other than through state recognition of committed same-sex partnerships.

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

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

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

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

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

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

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

(2) "Partner" means an individual joined in a domestic partnership.

**SECTION 4.** (1) The following domestic partnerships are prohibited and void:

(a) When either party to the domestic partnership had a partner, wife or husband living at the time of the domestic partnership.

(b) When the parties to the domestic partnership 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. However, when the parties are first cousins by adoption only, the domestic partnership is not prohibited or void.

(2) When either party to a domestic partnership is incapable of making the civil contract or consenting to the contract for want of legal age or sufficient understanding, or when the consent of either party is obtained by force or fraud, the domestic partnership is void from the time it is so declared by a judgment of a court having jurisdiction of the domestic partnership.

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

(a) "Declaration of Domestic Partnership" meeting the requirements of section 6 of this 2007 Act; and

(b) "Certificate of Registered Domestic Partnership."

(2) The department shall distribute the forms to each county clerk. The department and each county clerk shall make the Declaration of Domestic Partnership forms available to the public.

**SECTION 6.** (1) Two individuals wishing to become partners in a domestic partnership may complete and file a Declaration of Domestic Partnership with the county clerk.

(2) In accordance with the requirements of this section, the county clerk shall register the Declaration of Domestic Partnership in a domestic partnership registry and return a copy of the registered form and a Certificate of Registered Domestic Partnership to the partners in person or at the mailing address provided by the partners.

(3) An individual who has filed a Declaration of Domestic Partnership may not file a new Declaration of Domestic Partnership or enter a marriage with someone other than the individual's registered partner unless a judgment of dissolution or annulment of the most recent domestic partnership has been entered. This prohibition does not apply if the previous domestic partnership ended because one of the partners died.

(4) Each person signing a Declaration of Domestic Partnership consents to the jurisdiction of the circuit courts of Oregon for the purpose of an action to obtain a judgment of dissolution or annulment of the domestic partnership, for legal separation of the partners in the domestic partnership or for any other proceeding related to the partners' rights and obligations, even if one or both partners cease to reside in, or to maintain a domicile in, this state. Notwithstanding ORS 107.086, a petition for dissolution or annulment of the domestic partnership, for legal separation of the partners in the domestic partnership or for any other proceeding related to the partners' rights and obligations may be filed in the county in which either the petitioner or respondent last resided.

(5) On the Declaration of Domestic Partnership, each individual who wants to become a partner in a domestic partnership shall:

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

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

(c) Provide a mailing address;

(d) State that the individual consents to the jurisdiction of the circuit courts of Oregon for the purpose of an action to obtain a judgment of dissolution or annulment of the domestic partnership or for legal separation of the partners in the domestic partnership, or for any other proceeding related to the partners' rights and obligations, even if one or both partners cease to reside in, or to maintain a domicile in, this state;

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

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

(6) Both partners' signatures must be affixed to one Declaration of Domestic Partnership form. Filing an intentionally and materially false Declaration of Domestic Partnership is punishable as a misdemeanor.

(7) The county clerk may accept any reasonable proof of an individual's age satisfactory to the clerk. The clerk may require proof of age by affidavit of some individual other than either of the parties seeking to file the Declaration of Domestic Partnership if the clerk deems it necessary in order to determine the age of the individual to the clerk's satisfaction.

(8) The county clerk may not register a Declaration of Domestic Partnership or return a copy of the registered form and a Certificate of Registered Domestic Partnership to the partners until the provisions of this section, section 7 of this 2007 Act and all other legal requirements are complied with.

(9) Notwithstanding ORS 432.121 or any other provision of law, the registry of domestic partnerships maintained by a county clerk is a public record and subject to full disclosure.

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

(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 409.300.

**SECTION 8.** Upon entering into a domestic partnership, either individual may retain the individual's prior surname, and either individual may resume the individual's prior legal name during the domestic partnership.

**SECTION 9.** (1) Any privilege, immunity, right or benefit granted by statute, administrative or court rule, policy, common law or any other law to an individual because the individual is or was married, or because the individual is or was an in-law in a specified way to another individual, is granted on equivalent terms, substantive and procedural, to an individual because the individual is or was in a domestic partnership or because the individual is or was, based on a domestic partnership, related in a specified way to another individual.

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

(3) Any privilege, immunity, right, benefit or responsibility granted or imposed by statute, administrative or court rule, policy, common law or any other law to or on a spouse with respect to a child of either of the spouses is granted or imposed on equivalent terms, substantive and procedural, to or on a partner with respect to a child of either of the partners.

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

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

(6) Sections 1 to 9 of this 2007 Act do not require or permit the extension of any benefit under ORS chapter 238 or 238A, or under any other retirement, deferred compensation or other employee benefit plan, if the plan administrator reasonably concludes that the extension of benefits would conflict with a condition for tax qualification of the plan, or a condition for other favorable tax treatment of the plan, under the Internal Revenue Code or regulations adopted under the Internal Revenue Code.

(7) Sections 1 to 9 of this 2007 Act do not require the extension of any benefit under any employee benefit plan that is subject to federal regulation under the Employee Retirement Income Security Act of 1974.

(8) For purposes of administering Oregon tax laws, partners in a domestic partnership, surviving partners in a domestic partnership and the children of partners in a domestic partnership have the same privileges, immunities, rights, benefits and responsibilities as are granted to or imposed on spouses in a marriage, surviving spouses and their children.

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

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

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

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

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

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

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

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

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

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

(3) A school district shall use the actual address of a program participant for any purpose related to admission or assignment. The school district shall take such measures as necessary to protect the confidentiality of the actual address of the program participant. Student records created under ORS 326.565 and 326.580 shall use the substitute address of the program participant.

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

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

205.320. In every county there shall be charged and collected in advance by the county clerk, for the benefit of the county, the following fees, and no more, for the following purposes and services:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 16.** ORS 432.005 is amended to read:

432.005. As used in this chapter, unless the context requires otherwise:

(1) "Dead body" means a human body or such parts of such human body from the condition of which it reasonably may be concluded that death occurred.

(2) "Department" means the Department of Human Services.

(3) "Director" means the Director of Human Services.

(4) "Divorce" means dissolution of a marriage.

(5) "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy. The death is indicated

by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles.

(6) "File" means the presentation and acceptance of a vital record or vital report provided for in this chapter by the Center for Health Statistics.

(7) "Final disposition" means the burial, interment, cremation, removal from the state or other authorized disposition of a dead body or fetus, except that when removal from the state is conducted by the holder of a certificate of removal registration issued under ORS 692.270, the final disposition may not be considered complete until the certificate of death is filed.

(8) "Induced termination of pregnancy" means the purposeful interruption of an intrauterine pregnancy with the intention other than to produce a live-born infant and that does not result in a live birth.

(9) "Institution" means any establishment, public or private, that provides inpatient or outpatient medical, surgical or diagnostic care or treatment or nursing, custodial or domiciliary care, or to which persons are committed by law.

(10) "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, that, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

(11) "Person acting as a funeral service practitioner" means:

(a) A person other than a funeral service practitioner licensed under ORS 692.045, including but not limited to a relative, friend or other interested party, who performs the duties of a funeral service practitioner without payment; or

(b) A funeral service practitioner who files death certificates in another state if the funeral service practitioner is employed by a funeral establishment licensed in another state and registered with the State Mortuary and Cemetery Board under ORS 692.270.

(12) "Physician" means a person authorized or licensed under the laws of this state to practice medicine, osteopathy, chiropractic or naturopathic medicine.

(13) "Registration" means the process by which vital records and vital reports are completed, filed and incorporated into the official records of the Center for Health Statistics.

(14) "State registrar" means the State Registrar of the Center for Health Statistics.

(15) "System of vital statistics" means the registration, collection, preservation, amendment and certification of vital records and vital reports; the collection of other reports required by this chapter, and activities related thereto including the tabulation, analysis, dissemination and publication of vital statistics and training in the use of health data.

(16) "Vital records" means certificates or reports of birth, death, marriage, **declaration of domestic partnership**, dissolution of marriage or **domestic partnership** and data related thereto.

(17) "Vital reports" means reports of fetal death, induced termination of pregnancy, suicide attempts by persons under 18 years of age and survey and questionnaire documents and data related thereto.

(18) "Vital statistics" means the data derived from certificates and reports of birth, death, fetal death, induced termination of pregnancy, marriage, **declaration of domestic partnership**, dissolution of marriage, **dissolution of domestic partnership**, suicide attempts by persons under 18 years of age and related reports.

**SECTION 17.** ORS 432.235 is amended to read:

432.235. (1) A certificate or report registered under this chapter may be amended only in accordance with this chapter and rules adopted by the State Registrar of the Center for Health Statistics to protect the integrity and accuracy of vital records and vital reports.

(2) A certificate or report that is amended under this section shall indicate that it has been amended, except as otherwise provided in ORS 432.230, this section or by rule of the state registrar. A record shall be maintained that identifies the evidence upon which the amendment was based, the

date of the amendment and the identity of the person making the amendment. The state registrar shall prescribe by rule the conditions under which additions or minor corrections may be made to certificates or reports within one year without the certificate or report indicating that it has been amended.

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

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

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

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

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

(8)(a) When a party or legal representative proposes to set aside or change any information recorded in a dissolution of marriage judgment **or dissolution of domestic partnership judgment** filed pursuant to ORS 432.408, the party or legal representative seeking the amendment or set aside order shall prepare a summary of the changes in the form prescribed or furnished by the state registrar and shall present the form to the clerk of the court along with the proposed supplemental judgment. In all cases the completed form shall be a prerequisite to the entry of the supplemental judgment.

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

**SECTION 18.** ORS 432.405 is amended to read:

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

(2) The county clerk or county official who issues the marriage license **or registers the Declaration of Domestic Partnership** shall prepare the record in the form prescribed or furnished by the state registrar upon the basis of information obtained from the parties [*to be married*].

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

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

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

**SECTION 19.** ORS 432.408 is amended to read:

432.408. (1) A record of each dissolution of marriage judgment or dissolution of domestic partnership judgment by any court in this state shall be filed by the clerk of the court with the Center for Health Statistics and shall be registered if it has been completed and filed in accordance with this section. The record shall be prepared by the petitioner or a legal representative of the petitioner in the form prescribed or furnished by the State Registrar of the Center for Health Statistics and shall be presented to the clerk of the court with the petition. In all cases the completed record shall be prerequisite to the entry of the judgment. The state registrar shall design the record so that, for judgments or orders issued in proceedings under ORS 107.085 or 107.485, the state registrar, county clerks, county recording officers and state courts may keep Social Security numbers confidential and exempt from public inspection.

(2) The clerk of the court shall complete and forward to the Center for Health Statistics on or before the 10th day of each calendar month the records of each dissolution of marriage judgment or dissolution of domestic partnership judgment granted during the preceding calendar month. The clerk shall comply with procedures established under ORS 107.840 to ensure that, in the records completed and forwarded under this subsection, the Social Security numbers of parties to a proceeding under ORS 107.085 or 107.485 are kept confidential and exempt from public inspection.

(3) A dissolution of marriage record or dissolution of domestic partnership record not filed within the time prescribed by subsection (2) of this section may be registered in accordance with rules adopted by the state registrar.

Passed by House April 17, 2007

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 Chief Clerk of House

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 Speaker of House

Passed by Senate May 2, 2007

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 President of Senate

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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 Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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 Secretary of State

# Full Faith and Credit Issues

- Beth A. Allen, Comment, *Same-Sex Marriage and Conflict-of-Laws Analysis for Oregon*, 32 WILLAMETTE L REV 619 (1996).
- *Garrett v. Chapman*, 252 Or 361, 449 P2d 856 (1969).
- *Personius v. Asbury Transp. Co. of Oregon*, 152 Or 286 53 P2d 1065 (1936).