

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

HOUSE BILL 1125

By: Russ

AS INTRODUCED

An Act relating to marriage licenses; amending 28 O.S. 2011, Sections 31 and 152.4, which relate to fees; modifying fee; providing fee for recording marriage certificate or affidavit of common law marriage; deleting marriage license fee collection procedure; amending 43 O.S. 2011, Sections 3, 5.1, 7, 8, 9, as amended by Section 6, Chapter 278, O.S.L. 2012 and 15 (43 O.S. Supp. 2014, Section 9), which relate to marriage; deleting reference to marriage license; describing procedure when written permission is required for marriage; directing permission be retained by official or affixed to affidavit; providing reduced marriage certificate fee if premarital counseling is completed; deleting requirement that judge solemnize marriage; providing exception; allowing affidavit of common law marriage; providing for filing of affidavit with court clerk; listing contents of affidavit; requiring execution of marriage certificate; listing contents of certificate; directing filing of certificate with court clerk; instructing court clerk to record certificate or affidavit; setting forth procedures for recording and recordkeeping; requiring entity accept certificate or affidavit as proof of identity or marital status; providing applicability; construing provision; deleting punishment for judge or clerk issuing prohibited marriage license; repealing 28 O.S. 2011, Section 56, which relates to marriage ceremony fees; repealing 43 O.S. 2011, Sections 4, 5, as amended by Section 1, Chapter 192, O.S.L. 2013, 6, 10, 11, 16, 19 and 36 (43 O.S. Supp. 2014, Section 5), which relate to marriage; and providing an effective date.

1 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

2 SECTION 1. AMENDATORY 28 O.S. 2011, Section 31, is
3 amended to read as follows:

4 Section 31. Notwithstanding any other provision of law, the
5 clerk of the district court, or the clerk of any other court of
6 record, shall charge and collect the following fees for services by
7 them respectively rendered and none others, except as otherwise
8 provided by law:

9 Approving bond or undertaking, including
10 certificate and seal.....\$3.00

11 Making copy of an instrument of record or
12 on file, first page.....\$1.00

13 subsequent pages (each).....\$0.50

14 Certifying to any instrument (each).....\$0.50

15 Authentication of court records.....\$5.00

16 Receiving and paying out money in
17 pursuance of law or order of court.....1%

18 provided, however, that such charge
19 shall not exceed \$300.00.

20 ~~Application, issuing, entering return and~~
21 ~~recording~~ Recording marriage license
22 certificate if the applicants submit a
23 certificate that states the applicants
24 have completed the premarital counseling

1 program pursuant to Section 5.1 of Title
2 43 of the Oklahoma Statutes.....\$5.00

3 ~~Application, issuing, entering return and~~
4 ~~recording~~ Recording marriage license
5 certificate if the applicants do not
6 submit a certificate that states the
7 applicants have completed the premarital
8 counseling program pursuant to Section
9 5.1 of Title 43 of the Oklahoma Statutes
10 or recording affidavit of common law
11 marriage.....\$50.00

12 Conveyance of full-blood Indian heirs to
13 interest in inherited lands, same to be
14 accounted for as other fees.....\$5.00

15 Posting notice outside the courthouse.....\$10.00

16 Mailing, by any type of mail, writs,
17 warrants, orders, process, command or
18 notice for each person.....\$10.00, or
19 actual expense, whichever is greater,
20 except ordinary mailing of first-class
21 mail in probate cases, for each case.....\$10.00, or
22 actual expense, whichever is greater.

23 For the actual cost of all postage in each
24 case in excess of.....\$10.00, or

1 actual expense, whichever is greater.

2 For filing and indexing of disclaimers

3 other than in pending probate or civil

4 cases pursuant to the provisions of

5 Section 751 et seq. of Title 60 of the

6 Oklahoma Statutes.....\$5.00

7 SECTION 2. AMENDATORY 28 O.S. 2011, Section 152.4, is

8 amended to read as follows:

9 Section 152.4 In any proceeding for issuance of a license ~~other~~
10 ~~than a marriage license~~, the court clerk shall collect at the time
11 of filing the application for said license, court costs in the same
12 amounts as required in civil cases in addition to other fees
13 prescribed by law.

14 SECTION 3. AMENDATORY 43 O.S. 2011, Section 3, is

15 amended to read as follows:

16 Section 3. A. Any unmarried person who is at least eighteen
17 (18) years of age and not otherwise disqualified is capable of
18 contracting and consenting to marriage with a person of the opposite
19 sex.

20 B. 1. Except as otherwise provided by this subsection, no
21 person under the age of eighteen (18) years shall enter into the
22 marriage relation, ~~nor shall any license issue therefor~~, except:

- 1 a. upon the consent and authority expressly given by the
2 parent or guardian of such underage ~~applicant in the~~
3 ~~presence of the authority issuing such license~~ person,
- 4 b. upon the written consent of the parent or guardian of
5 such underage ~~applicant~~ person executed and
6 acknowledged in person before a judge of the district
7 court or the court clerk of any county within the
8 State of Oklahoma,
- 9 c. if the parent or guardian resides outside of the State
10 of Oklahoma, upon the written consent of the parent or
11 guardian executed before a judge or clerk of a court
12 of record. The executed foreign consent shall be duly
13 authenticated in the same manner as proof of documents
14 from foreign jurisdictions,
- 15 d. if the certificate of a duly licensed medical doctor
16 or osteopath, acknowledged in the manner provided by
17 law for the acknowledgment of deeds, and stating that
18 such parent or guardian is unable by reason of health
19 or incapacity to be present in person, ~~is presented to~~
20 ~~such licensing authority~~, upon the written consent of
21 the parent or guardian, acknowledged in the same
22 manner as the accompanying medical certificate,
- 23 e. if the parent or guardian is on active duty with the
24 Armed Forces of the United States, upon the written

1 permission of the parent or guardian, acknowledged in
2 the manner provided by law for acknowledgment of deeds
3 by military personnel authorized to administer oaths.
4 Such permission shall be presented ~~to the licensing~~
5 ~~authority,~~ accompanied by a certificate executed by a
6 commissioned officer in command of the ~~applicant~~
7 person, to the effect that the parent or guardian is
8 on active duty in the Armed Forces of the United
9 States, or

10 f. upon affidavit of three (3) reputable persons stating
11 that both parents of the minor are deceased, or
12 mentally incompetent, or their whereabouts are unknown
13 to the minor, and that no guardian has theretofore
14 been appointed for the minor. ~~The judge of the~~
15 ~~district court issuing the license may in his or her~~
16 ~~discretion consent to the marriage in the same manner~~
17 ~~as in all cases in which consent may be given by a~~
18 ~~parent or guardian.~~

19 2. Every person under the age of sixteen (16) years is
20 expressly forbidden and prohibited from entering into the marriage
21 relation except when authorized by the court:

- 22 a. in settlement of a suit for seduction or paternity, or
- 23 b. if the unmarried female is pregnant, or has given
24 birth to an illegitimate child and at least one parent

1 of each minor, or the guardian or custodian of such
2 child, is present before the court and has an
3 opportunity to present evidence in the event such
4 parent, guardian, or custodian objects to the issuance
5 of a marriage license. If they are not present the
6 parent, guardian, or custodian may be given notice of
7 the hearing at the discretion of the court.

8 3. A parent or a guardian of any child under the age of
9 eighteen (18) years who is in the custody of the Department of Human
10 Services or the Department of Juvenile Justice shall not be eligible
11 to consent to the marriage of such minor child as required by the
12 provisions of this subsection.

13 4. Any certificate or written permission required by this
14 subsection shall be retained by the official ~~issuing~~ performing the
15 marriage ~~license~~ ceremony or affixed to the affidavit of common law
16 marriage.

17 C. No marriage may be authorized when such marriage would be
18 incestuous under this chapter.

19 SECTION 4. AMENDATORY 43 O.S. 2011, Section 5.1, is
20 amended to read as follows:

21 Section 5.1 A. The clerk of the district court shall reduce
22 the fee for recording a marriage ~~license~~ certificate as prescribed
23 by Section 31 of Title 28 of the Oklahoma Statutes to persons who
24

1 have successfully completed a premarital counseling program meeting
2 the conditions specified by this section.

3 B. 1. A premarital counseling program shall be conducted by a
4 health professional, an official representative of a religious
5 institution, or a person trained by the principal authors or duly
6 authorized agents of the principal authors of nationally recognized
7 marriage education curriculum including, but not limited to,
8 Prevention & Relationship Enhancement Program (PREP). Upon
9 successful completion of the program, the counseling program
10 provider shall issue to the persons a certificate signed by the
11 instructor of the counseling program. The certificate shall state
12 that the named persons have successfully completed the premarital
13 counseling requirements. A minimum of four (4) hours of education
14 or counseling shall be necessary for successful completion of the
15 marriage education curriculum.

16 2. For purposes of this subsection, the term "health
17 professional" means a person licensed or certified by this state to
18 practice psychiatry or psychology; a licensed social worker with
19 experience in marriage counseling; a licensed marital and family
20 therapist; or a licensed professional counselor.

21 SECTION 5. AMENDATORY 43 O.S. 2011, Section 7, is
22 amended to read as follows:

23 Section 7. A. ~~All~~ Except as provided in subsection E of this
24 section marriages must be contracted by a formal ceremony performed

1 or solemnized in the presence of at least two adult, competent
2 persons as witnesses, by ~~a judge or retired judge of any court in~~
3 ~~this state, or~~ an ordained or authorized preacher or minister of the
4 Gospel, priest or other ecclesiastical dignitary of any denomination
5 who has been duly ordained or authorized by the church to which he
6 or she belongs to preach the Gospel, or a rabbi and who is at least
7 eighteen (18) years of age.

8 B. 1. ~~The judge shall place his or her order of appointment on~~
9 ~~file with the office of the court clerk of the county in which he or~~
10 ~~she resides.~~

11 ~~2.~~ The preacher, minister, priest, rabbi, or ecclesiastical
12 dignitary who is a resident of this state shall have filed, in the
13 office of the court clerk of the county in which he or she resides,
14 a copy of the credentials or authority from his or her church or
15 synagogue authorizing him or her to solemnize marriages.

16 ~~3.~~ 2. The preacher, minister, priest, rabbi, or ecclesiastical
17 dignitary who is not a resident of this state, but has complied with
18 the laws of the state of which he or she is a resident, shall have
19 filed once, in the office of the court clerk of the county in which
20 he or she intends to perform or solemnize a marriage, a copy of the
21 credentials or authority from his or her church or synagogue
22 authorizing him or her to solemnize marriages.

23 ~~4.~~ 3. The filing by resident or nonresident preachers,
24 ministers, priests, rabbis, or ecclesiastical dignitaries ~~or judges~~

1 shall be effective in and for all counties of this state; provided,
2 no fee shall be charged for such recording.

3 C. No person herein authorized to perform or solemnize a
4 marriage ceremony shall do so unless ~~the license issued therefor be~~
5 ~~first delivered into his or her possession nor unless he or she has~~
6 ~~good reason to believe the persons presenting themselves before him~~
7 ~~or her for marriage are the identical persons named in the license,~~
8 ~~and for whose marriage the same was issued, and that there is no~~
9 legal objection or impediment to such marriage.

10 D. Marriages between persons belonging to the society called
11 Friends, or Quakers, the spiritual assembly of the Baha'is, or the
12 Church of Jesus Christ of Latter Day Saints, which have no ordained
13 minister, may be solemnized by the persons and in the manner
14 prescribed by and practiced in any such society, church, or
15 assembly.

16 E. Marriages not contracted by a formal ceremony pursuant to
17 subsection A of this section may be acknowledged by filing an
18 affidavit of common law marriage with the court clerk. The
19 affidavit of common law marriage shall be signed by both parties,
20 notarized with official seal affixed and include:

- 21 1. The place of residence of each party;
- 22 2. The full legal name and age of each party as they appear
23 upon or are calculable from a certified copy of the birth
24 certificate, the current driver license or identification card, the

1 current passport or visa, or any other certificate, license or
2 document issued by or existing pursuant to the laws of any nation or
3 of any state, or political subdivision thereof, accepted as proof of
4 identity and age;

5 3. The full name by which each party will be known after the
6 common law marriage, which shall become the full legal name of the
7 party upon the filing of the affidavit of common law marriage; and

8 4. That the parties are not disqualified from or incapable of
9 entering into a common law marriage.

10 SECTION 6. AMENDATORY 43 O.S. 2011, Section 8, is
11 amended to read as follows:

12 Section 8. A. The person performing or solemnizing the
13 marriage ceremony shall, immediately upon the completion of the
14 ceremony, ~~endorse upon the license~~ execute a marriage certificate
15 authorizing the marriage and containing the following information:

16 1. The place of residence of each party;

17 2. The full legal name and age of each party as they appear
18 upon or are calculable from a certified copy of the birth
19 certificate, the current driver license or identification card, the
20 current passport or visa, or any other certificate, license or
21 document issued by or existing pursuant to the laws of any nation or
22 of any state, or political subdivision thereof, accepted as proof of
23 identity and age;
24

1 3. The full name by which each party will be known after the
2 marriage, which shall become the full legal name of the party upon
3 the filing of the marriage certificate;

4 4. That the parties are not disqualified from or incapable of
5 entering into marriage;

6 5. His or her name and official or clerical designation;

7 ~~2. 6.~~ The court of which he or she is the judge, or the
8 congregation or body of which he or she is pastor, preacher,
9 minister, priest, rabbi or dignitary; provided, that the authority
10 to perform or solemnize marriages shall be coextensive with the
11 congregation or body of which he or she is pastor, preacher,
12 minister, priest, rabbi or dignitary; provided further, that all
13 marriages solemnized among the society called Friends or Quakers,
14 the spiritual assembly of the Baha'is, or the Church of Jesus Christ
15 of Latter-day Saints, in the form heretofore practiced and in use in
16 their meetings shall be good and valid. One person chosen by such
17 society, assembly, or church shall be responsible for completing the
18 marriage certificate pursuant to this section in the same manner as
19 a minister or other person authorized to perform marriages;

20 ~~3. 7.~~ The town or city and county where the court,
21 congregation, body, society, assembly, or church is located; and

22 4. 8. His or her signature along with his or her official or
23 clerical designation.
24

1 B. The witnesses to the ceremony shall endorse the marriage
2 certificate, attesting to their presence at the ceremony, with their
3 names and post office addresses.

4 C. The persons who have been married in the ceremony shall
5 endorse the marriage certificate with the names by which they are to
6 be known from the time of the marriage, ~~as evidenced on the marriage~~
7 ~~license.~~

8 D. The ~~marriage license, along with the completed~~ marriage
9 certificate shall be transmitted without delay to the ~~judge or the~~
10 court clerk who ~~issued the license and~~ shall file the marriage
11 certificate.

12 SECTION 7. AMENDATORY 43 O.S. 2011, Section 9, as
13 amended by Section 6, Chapter 278, O.S.L. 2012 (43 O.S. Supp. 2014,
14 Section 9), is amended to read as follows:

15 Section 9. A. The ~~judge or~~ clerk of the district court ~~issuing~~
16 recording any marriage license certificate or affidavit of common
17 law marriage shall make a complete record of the ~~application,~~
18 ~~license, and certificate~~ or affidavit thereon, on an optical disc,
19 microfilm, microfiche, imaging, in a book kept by the ~~judge or~~ clerk
20 for that purpose, properly indexed, or by electronic means using any
21 method approved by the Supreme Court; and the record of the ~~license~~
22 ~~shall be made before it is delivered to the person procuring the~~
23 ~~same, and the record of the certificate~~ or affidavit shall be made
24 upon ~~the return of the license~~ filing; provided, that all records

1 ~~pertaining to the issuance of such license~~ marriage certificates or
2 affidavits of common law marriage shall be open to public inspection
3 during office hours; provided further, that after recording of the
4 original ~~license and completed~~ certificate or affidavit as
5 hereinbefore required, it shall be returned to the persons ~~to whom~~
6 ~~the same was issued~~ who filed it, with the ~~issuing officer's~~ court
7 clerk's certificate affixed thereon showing the book and page or
8 case number where the same has been recorded.

9 B. Any entity requiring proof of identity or marital status
10 shall accept a certified copy of the marriage certificate or
11 affidavit of common law marriage that has been filed with the court
12 clerk. Any reference in the Oklahoma Statutes requiring a marriage
13 license as proof of identity or marital status shall be interpreted
14 to include a marriage certificate or affidavit of common law
15 marriage on or after November 1, 2015.

16 C. Nothing provided in this section shall be construed to
17 invalidate a marriage license issued by the court clerk prior to
18 November 1, 2015.

19 SECTION 8. AMENDATORY 43 O.S. 2011, Section 15, is
20 amended to read as follows:

21 Section 15. ~~Any judge of the district court, or clerk of the~~
22 ~~district court, knowingly issuing any marriage license, or~~
23 ~~concealing any record thereof, contrary to the provisions of this~~
24 ~~chapter, or any person knowingly performing or solemnizing the~~

1 marriage ceremony contrary to any of the provisions of this chapter,
2 shall be guilty of a misdemeanor and upon conviction thereof shall
3 be punished by a fine of not less than One Hundred Dollars (\$100.00)
4 nor more than Five Hundred Dollars (\$500.00), or by imprisonment in
5 the county jail not less than thirty (30) days nor more than one (1)
6 year or by both such fine and imprisonment.

7 SECTION 9. REPEALER 28 O.S. 2011, Section 56, is hereby
8 repealed.

9 SECTION 10. REPEALER 43 O.S. 2011, Sections 4, 5, as
10 amended by Section 1, Chapter 192, O.S.L. 2013, 6, 10, 11, 16, 19
11 and 36 (43 O.S. Supp. 2014, Section 5), are hereby repealed.

12 SECTION 11. This act shall become effective November 1, 2015.

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