

**Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.**

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001  
4

*As Engrossed: H3/8/01 S3/26/01*

## A Bill

**Act 1486 of 2001**  
HOUSE BILL 2039

5 By: Representatives Hunt, Schall, Willis, Eason, Green, C. Taylor, Scroggin, Haak, Childers, G. Jeffress,  
6 *Borhauer, Womack, French, Agee*

7 By: Senators Wooldridge, J. Jeffress, Baker, *Brown*  
8  
9

### For An Act To Be Entitled

10 AN ACT TO BE KNOWN AS THE "COVENANT MARRIAGE  
11 ACT OF 2001"; AND FOR OTHER PURPOSES.  
12  
13

### Subtitle

14 AN ACT TO BE KNOWN AS THE "COVENANT  
15 MARRIAGE ACT OF 2001".  
16  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code 9-11-202, concerning forms for marriage  
22 licenses, is amended by adding the following additional subsection:

23 (c) If the parties intend to contract a covenant marriage, the  
24 application for a marriage license must also include the following statement  
25 completed by at least one (1) of the two (2) parties:

26 "We [insert name of spouse] and [insert name of spouse] declare our  
27 intent to contract a Covenant Marriage and, accordingly, have executed the  
28 attached declaration of intent."  
29

30 SECTION 2. Arkansas Code 9-11-205, concerning forms for marriage  
31 licenses, is amended by adding the following additional section:

32 (h) If applicable, the notice of intention to wed shall contain the  
33 declaration of intent for a covenant marriage as provided in the Covenant  
34 Marriage Act of 2001, which begins at § 9-11-801.  
35

36 SECTION 3. Arkansas Code 9-11-215(b), concerning forms for marriage

1 licenses, is amended to read as follows:

2 (b) It shall be lawful for religious societies who reject formal  
3 ceremonies to join together in marriage persons who are members of the  
4 society, according to the forms, customs, or rites of the society to which  
5 they belong, with the exception that if the parties enter into a covenant  
6 marriage, the requirements set forth in the Covenant Marriage Act of 2001,  
7 which begins at § 9-11-801, shall be complied with.

8  
9 SECTION 4. Arkansas Code 9-11-220, concerning forms for marriage  
10 licenses, is amended by adding the following additional subsection:

11 (e) On the face of the certificate shall appear the certification  
12 to the fact of marriage, including, if applicable, a designation that the  
13 parties entered into a covenant marriage, signed by the parties to the  
14 marriage and the witnesses, and the signature and title of the officiant.

15  
16 SECTION 5. Arkansas Code Title 9, Chapter 11 is amended by adding the  
17 following new subchapter:

18 9-11-801. Title.

19 This subchapter shall be known and may be cited as the "Covenant  
20 Marriage Act of 2001".

21  
22 9-11-802. Definitions.

23 As used in this subchapter:

24 (1) "Authorized counseling" means marital counseling provided by  
25 a priest, minister, rabbi, clerk of the Society of Friends, any clergy member  
26 of any religious sect, or a "licensed professional counselor", "licensed  
27 associate counselor," "licensed marriage and family therapist," "licensed  
28 clinical psychologist," or "licensed associate marriage and family therapist"  
29 as defined by § 17-27-102; and

30 (2) "Judicial separation" means a judicial proceeding pursuant to  
31 § 9-11-809 which results in a court determination that the parties of a  
32 covenant marriage live separate and apart.

33  
34 9-11-803. Covenant marriage.

35 (a)(1) A covenant marriage is a marriage entered into by one (1) male  
36 and one (1) female who understand and agree that the marriage between them is

1 a lifelong relationship.

2 (2) Parties to a covenant marriage have received authorized  
3 counseling emphasizing the nature, purposes and responsibilities of marriage.

4 (3) Only when there has been a complete and total breach of the marital  
5 covenant commitment may a party seek a declaration that the marriage is no  
6 longer legally recognized.

7 (b)(1) A man and woman may contract a covenant marriage by declaring  
8 their intent to do so on their application for a marriage license, as  
9 otherwise required under this chapter, and executing a declaration of intent  
10 to contract a covenant marriage as provided in § 9-11-804.

11 (2) The application for a marriage license and the declaration of  
12 intent shall be filed with the official who issues the marriage license.

13  
14 9-11-804. Content of declaration of intent.

15 (a) A declaration of intent to contract a covenant marriage shall  
16 contain all of the following:

17 (1) A recitation signed by both parties to the following effect:

18 "A COVENANT MARRIAGE

19 We do solemnly declare that marriage is a covenant between a man  
20 and a woman who agree to live together as husband and wife for so long as they  
21 both may live. We have chosen each other carefully and disclosed to one  
22 another everything which could adversely affect the decision to enter into  
23 this marriage. We have received authorized counseling on the nature,  
24 purposes, and responsibilities of marriage. We have read the Covenant  
25 Marriage Act of 2001, and we understand that a covenant marriage is for life.  
26 If we experience marital difficulties, we commit ourselves to take all  
27 reasonable efforts to preserve our marriage, including marital counseling.

28 With full knowledge of what this commitment means, we do hereby  
29 declare that our marriage will be bound by Arkansas law on covenant marriages  
30 and we promise to love, honor, and care for one another as husband and wife  
31 for the rest of our lives."

32 (2)(A) An affidavit by the parties that they have received  
33 authorized counseling which shall include a discussion of the seriousness of  
34 covenant marriage, communication of the fact that a covenant marriage is a  
35 commitment for life, a discussion of the obligation to seek marital counseling  
36 in times of marital difficulties, and a discussion of the exclusive grounds

1 for legally terminating a covenant marriage by divorce.

2 (B) An attestation, signed by the counselor and attached to  
3 or included in the parties' affidavit, confirming that the parties received  
4 authorized counseling as to the nature and purpose of the marriage and the  
5 grounds for termination thereof and an acknowledgment that the counselor  
6 provided to the parties the informational pamphlet developed and promulgated  
7 by the office of the Administrative Office of the Courts under this  
8 subchapter, which pamphlet provides a full explanation of the terms and  
9 conditions of a covenant marriage; and

10 (3)(A) The signature of both parties witnessed by a notary.

11 (B) If one (1) or both of the parties are minors, the  
12 written consent or authorization of those persons required under this chapter  
13 to consent to or authorize the marriage of minors.

14 (b) The declaration shall consist of two (2) separate documents:

15 (A) The recitation as set out in subdivision (a)(1) of this  
16 section; and

17 (B) The affidavit with the attestation either included within or  
18 attached to the document.

19 (c) The recitation, affidavit and attestation shall be filed as  
20 provided in § 9-11-803(b).

21  
22 9-11-805. The following is the suggested form of the affidavit which  
23 may be used by the parties, notary, and counselor:

24  
25 STATE OF ARKANSAS

26 COUNTY OF

27 BE IT KNOWN THAT on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me  
28 the undersigned notary, personally came and appeared:

29 \_\_\_\_\_ and \_\_\_\_\_

30 who after being duly sworn by me, a Notary, deposed and stated that:

31 Affiants acknowledge that they have received premarital counseling from  
32 a priest, minister, rabbi, clerk of the Religious Society of Friends, any  
33 clergyman of any religious sect, or a professional marriage counselor, which  
34 marriage counseling included:

35 A discussion of the seriousness of Covenant Marriage;

36 Communication of the fact that a Covenant Marriage is a commitment for

1 life;

2 The obligation of a Covenant Marriage to take reasonable efforts to  
3 preserve the marriage if marital difficulties arise, and

4 That the affiants both read the pamphlet entitled "The Covenant Marriage  
5 Act" developed and promulgated by the Administrative Office of the Courts,  
6 which provides a full explanation of a Covenant Marriage, including the  
7 obligation to seek marital counseling in times of marital difficulties and the  
8 exclusive grounds for legally terminating a Covenant Marriage by divorce or  
9 divorce after a judgment of separation from bed or board.

10 \_\_\_\_\_  
11 \_\_\_\_\_  
12 (Name of prospective spouse)

13 \_\_\_\_\_  
14 (Name of prospective spouse)

15 \_\_\_\_\_  
16 SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_\_ DAY OF

17 \_\_\_\_\_, \_\_\_\_\_.

18 \_\_\_\_\_  
19 \_\_\_\_\_  
20 NOTARY PUBLIC

21 \_\_\_\_\_  
22 ATTESTATION

23 The undersigned attests that the affiants did receive counseling from me  
24 as to the nature and purpose of marriage, which included a discussion of the  
25 seriousness of Covenant Marriage, communication of the fact that a Covenant  
26 Marriage is for life, and the obligation of a Covenant Marriage to take  
27 reasonable efforts to preserve the marriage if marital difficulties arise.

28 \_\_\_\_\_  
29 \_\_\_\_\_  
30 Counselor

31 \_\_\_\_\_  
32 9-11-806. Other applicable rules.

33 A covenant marriage shall be governed by all of the provisions of Title  
34 9, except as otherwise specifically provided in this subchapter.

35 \_\_\_\_\_  
36 9-11-807. Applicability to already married couples.

1        (a) On or after the effective date of this subchapter, married couples,  
2 upon submission of a copy of their marriage certificate, which need not be  
3 certified, may execute a declaration of intent to designate their marriage as  
4 a covenant marriage to be governed by this subchapter.

5        (b) This declaration of intent in the form and containing the contents  
6 required by subsection (c) must be filed with the officer who issues marriage  
7 licenses in the county in which the couple is domiciled.

8        (c)(1) A declaration of intent to redesignate a marriage as a covenant  
9 marriage shall contain all of the following:

10                (A) A recitation by the parties as set out in § 9-11-804;

11                (B)(i) An affidavit by the parties as set out in § 9-11-  
12 805 that they have discussed their intent to designate their marriage as a  
13 covenant marriage with an authorized counselor, which included a discussion of  
14 the obligation to seek marital counseling in times of marital difficulties and  
15 the exclusive grounds for legally terminating a covenant marriage by divorce.

16                (ii) An attestation, signed by the counselor and  
17 attached to the parties' affidavit, acknowledging that the counselor provided  
18 to the parties the information pamphlet developed and promulgated by the  
19 Administrative Office of the Courts under this subchapter, which pamphlet  
20 provides a full explanation of the terms and conditions of a covenant  
21 marriage.

22                (iii) The signature of both parties witnessed by a  
23 notary.

24        (2) The declaration shall contain two (2) separate documents:

25                (A) The recitation; and

26                (B) The affidavit with the attestation either included  
27 within or attached to the document

28                (C) The recitation, affidavit and attestation shall be  
29 filed as provided in subsection (b) of this section.

30  
31        9-11-808. Divorce or separation.

32        (a) Notwithstanding any other law to the contrary and subsequent to the  
33 parties obtaining authorized counseling, a spouse to a covenant marriage may  
34 obtain a judgment of divorce only upon proof of any of the following:

35                (1) The other spouse has committed adultery;

36                (2) The other spouse has committed a felony or other infamous

1 crime;

2 (3) The other spouse has physically or sexually abused the spouse  
3 seeking the divorce or a child of one (1) of the spouses;

4 (4) The spouses have been living separate and apart continuously  
5 without reconciliation for a period of two (2) years; or

6 (5)(A) The spouses have been living separate and apart  
7 continuously without reconciliation for a period of two (2) years from the  
8 date the judgment of judicial separation was signed.

9 (B)(i) If there is a minor child or children of the  
10 marriage, the spouses have been living separate and apart continuously without  
11 reconciliation for a period of two (2) years and six (6) months from the date  
12 the judgment of judicial separation was signed.

13 (ii) However, if abuse of a child of the marriage or  
14 a child of one (1) of the spouses is the basis for which the judgment of  
15 judicial separation was obtained, then a judgment of divorce may be obtained  
16 if the spouses have been living separate and apart continuously without  
17 reconciliation for a period of one (1) year from the date the judgment of  
18 judicial separation was signed.

19 (b) Notwithstanding any other law to the contrary and subsequent to the  
20 parties obtaining authorized counseling, a spouse to a covenant marriage may  
21 obtain a judgment of judicial separation only upon proof of any of the  
22 following:

23 (1) The other spouse has committed adultery;

24 (2) The other spouse has committed a felony and has been  
25 sentenced to death or imprisonment;

26 (3) The other spouse has physically or sexually abused the spouse  
27 seeking the legal separation or divorce or a child of one (1) of the spouses;

28 (4) The spouses have been living separate and apart continuously  
29 without reconciliation for a period of two (2) years; or

30 (5) The other spouse shall be addicted to habitual drunkenness  
31 for one (1) year, shall be guilty of such cruel and barbarous treatment as to  
32 endanger the life of the other, or shall offer such indignities to the person  
33 of the other as shall render his or her condition intolerable.

34

35 9-11-809. Suit against spouse - separation.

36 (a) Unless judicially separated, spouses in a covenant marriage may not

1 sue each other except for causes of action:

2 (1) Pertaining to contracts;

3 (2) For restitution of separate property;

4 (3) For judicial separation in covenant marriages;

5 (4) For divorce, or for declaration of nullity of the marriage;

6 and

7 (5) For causes of action pertaining to spousal support or the  
8 support or custody of a child while the spouses are living separate and apart,  
9 although not judicially separated.

10 (b)(1) Any court which is competent to preside over divorce proceedings  
11 has jurisdiction of an action for judicial separation or divorce in a covenant  
12 marriage, if:

13 (A) One (1) or both of the spouses are domiciled in this  
14 state and the ground therefor was committed or occurred in this state or while  
15 the matrimonial domicile was in this state; or

16 (B) The ground therefor occurred elsewhere while either or  
17 both of the spouses were domiciled elsewhere, provided the person obtaining  
18 the judicial separation was domiciled in this state prior to the time the  
19 cause of action accrued and is domiciled in this state at the time the action  
20 is filed.

21 (2) An action for a judicial separation in a covenant marriage  
22 shall be brought in a county where either party is domiciled, or in the county  
23 of the last matrimonial domicile.

24 (3) The venue provided in this section may not be waived, and a  
25 judgment of separation rendered by a court of improper venue is an absolute  
26 nullity.

27 (c) Judgments on the pleadings and summary judgments shall not be  
28 granted in any action for judicial separation in a covenant marriage.

29 (d) In a proceeding for a judicial separation in a covenant marriage or  
30 thereafter, a court may award a spouse all incidental relief afforded in a  
31 proceeding for divorce, including but not limited to spousal support, claims  
32 for contributions to education, child custody, visitation rights, child  
33 support, injunctive relief, and possession and use of a family residence or  
34 joint property.

35  
36 9-11-810. Effects of separation.



