

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999

A Bill

HOUSE BILL 2102

4
5 By: Representative Womack
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For An Act To Be Entitled

8
9 "AN ACT TO BE KNOWN AS THE 'COVENANT MARRIAGE ACT';
10 AND FOR OTHER PURPOSES."

Subtitle

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12
13 "AN ACT TO BE KNOWN AS THE 'COVENANT
14 MARRIAGE ACT'."

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16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code Title 9, Chapter 11 is amended by adding the
20 following new subchapter:

21 "9-11-801. Title.

22 This subchapter shall be known and may be cited as the 'Covenant
23 Marriage Act.'

24
25 9-11-802. Definitions.

26 As used in this subchapter:

27 (1) 'Authorized counseling' means marital counseling provided by a
28 priest, minister, rabbi, clerk of the Society of Friends, any clergy member of
29 any religious sect, or a 'licensed professional counselor', 'licensed
30 associate counselor', 'licensed marriage and family therapist' or 'licensed
31 associate marriage and family therapist' as defined by § 17-27-102.

32 (2) 'Judicial separation' means a judicial proceeding pursuant to
33 § 9-11-808 which results in a court determination that the parties of a
34 covenant marriage live separate and apart.

35
36 9-11-803. Covenant marriage.

1 (a) A covenant marriage is a marriage entered into by one (1) male and
 2 one (1) female who understand and agree that the marriage between them is a
 3 lifelong relationship. Parties to a covenant marriage have received
 4 authorized counseling emphasizing the nature and purposes of marriage and the
 5 responsibilities thereto. Only when there has been a complete and total
 6 breach of the marital covenant commitment may the non-breaching party seek a
 7 declaration that the marriage is no longer legally recognized.

8 (b) A man and woman may contract a covenant marriage by declaring their
 9 intent to do so on their application for a marriage license, as otherwise
 10 required under this chapter, and executing a declaration of intent to contract
 11 a covenant marriage as provided in § 9-11-804. The application for a marriage
 12 license and the declaration of intent shall be filed with the official who
 13 issues the marriage license.

14
 15 9-11-804. Content of declaration of intent.

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

18 (1) A recitation by the parties to the following effect:

19 ' A COVENANT MARRIAGE

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

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

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

1 in times of marital difficulties, and a discussion of the exclusive grounds
 2 for legally terminating a covenant marriage by divorce.

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

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

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

15 (b) The declaration shall contain two (2) separate documents, the
 16 recitation and the affidavit, the latter of which shall include the
 17 attestation either included therein or attached thereto. The recitation shall
 18 be prepared in duplicate originals, one (1) of which shall be retained by the
 19 parties and the other, together with the affidavit and attestation, shall be
 20 filed as provided in § 9-11-803 (b).

21
 22 9-11-805. Other applicable rules.

23 A covenant marriage shall be governed by all of the provisions of this
 24 title, except as otherwise specifically provided in this subchapter.

25
 26 9-11-806. Applicability to already married couples.

27 (a) Married couples may execute a declaration of intent to designate
 28 their marriage as a covenant marriage to be governed by this subchapter.

29 (b)(1) This declaration of intent in the form and containing the
 30 contents required by subsection (c) must be presented to the officer who
 31 issued the couple's marriage license and with whom the couple's marriage
 32 certificate is filed. If the couple was married outside of this state, a copy
 33 of the foreign marriage certificate, with the declaration of intent attached
 34 thereto, shall be filed with the officer who issues marriage licenses in the
 35 county in which the couple is domiciled. The officer shall make a notation on
 36 the marriage certificate of the declaration of intent of a covenant marriage

1 and attach a copy of the declaration to the certificate.

2 (2) On or before the fifteenth day of each calendar month, the
 3 officer shall forward to the state registrar of vital records each declaration
 4 of intent of a covenant marriage filed with said officer during the preceding
 5 calendar month pursuant to this Section.

6 (c)(1) A declaration of intent to designate a marriage as a covenant
 7 marriage shall contain all of the following:

8 (A) A recitation by the parties to the following effect:

9 'A COVENANT MARRIAGE

10 We do solemnly declare that marriage is a covenant between a
 11 man and a woman who agree to live together as husband and wife for so long as
 12 they both may live. We understand the nature, purpose, and responsibilities
 13 of marriage. We have read the Covenant Marriage Act, and we understand that a
 14 covenant marriage is for life. If we experience marital difficulties, we
 15 commit ourselves to take all reasonable efforts to preserve our marriage,
 16 including marital counseling.

17 With full knowledge of what this commitment means, we do
 18 hereby declare that our marriage will be bound by Arkansas law on covenant
 19 marriage, and we renew our promise to love, honor, and care for one another as
 20 husband and wife for the rest of our lives.'; and

21 (B)(i) An affidavit by the parties that they have discussed
 22 their intent to designate their marriage as a covenant marriage with an
 23 authorized counselor, which included a discussion of the obligation to seek
 24 marital counseling in times of marital difficulties and the exclusive grounds
 25 for legally terminating a covenant marriage by divorce.

26 (ii) A notarized attestation, signed by the counselor
 27 and attached to the parties' affidavit, acknowledging that the counselor
 28 provided to the parties the information pamphlet developed and promulgated by
 29 the office of the Attorney General under this subchapter, which pamphlet
 30 provides a full explanation of the terms and conditions of a covenant
 31 marriage.

32 (iii) The signature of both parties witnessed by a
 33 notary.

34 (2) The declaration shall contain two (2) separate documents, the
 35 recitation and the affidavit, the latter of which shall include the
 36 attestation either included therein or attached thereto. The recitation shall

1 be prepared in duplicate originals, one (1) of which shall be retained by the
2 parties and the other, together with the affidavit and attestation, shall be
3 filed as provided in subsection (b) of this section.

4
5 9-11-807. Divorce or separation.

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

9 (1) The other spouse has committed adultery;

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

12 (3) The other spouse has abandoned the matrimonial domicile for a
13 period of one (1) year and constantly refuses to return;

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

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

18 (6)(A) The spouses have been living separate and apart
19 continuously without reconciliation for a period of one (1) year from the date
20 the judgment of judicial separation was signed.

21 (B) If there is a minor child or children of the marriage,
22 the spouses have been living separate and apart continuously without
23 reconciliation for a period of one (1) year and six (6) months from the date
24 the judgment of judicial separation was signed; however, if abuse of a child
25 of the marriage or a child of one (1) of the spouses is the basis for which
26 the judgment of judicial separation was obtained, then a judgment of divorce
27 may be obtained if the spouses have been living separate and apart
28 continuously without reconciliation for a period of one (1) year from the date
29 the judgment of judicial separation was signed.

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

34 (1) The other spouse has committed adultery;

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

1 (3) The other spouse has abandoned the matrimonial domicile for a
 2 period of one (1) year and constantly refuses to return;

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

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

7 (6) On account of habitual intemperance of the other spouse or
 8 excesses, cruel treatment, or outrages of the other spouse, if such habitual
 9 intemperance or such ill-treatment is of such a nature as to render their
 10 living together insupportable.

11
 12 9-11-808. Suit against spouse - separation.

13 (a) Unless judicially separated, spouses in a covenant marriage may not
 14 sue each other except for causes of action pertaining to contracts; for
 15 restitution of separate property; for judicial separation in covenant
 16 marriages; for divorce, or for declaration of nullity of the marriage; and for
 17 causes of action pertaining to spousal support or the support or custody of a
 18 child while the spouses are living separate and apart, although not judicially
 19 separated.

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

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

26 (B) The ground therefor occurred elsewhere while either or
 27 both of the spouses were domiciled elsewhere, provided the person obtaining
 28 the judicial separation was domiciled in this state prior to the time the
 29 cause of action accrued and is domiciled in this state at the time the action
 30 is filed.

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

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

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

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

9
10 9-11-809. Effects of separation.

11 (a) Judicial separation in a covenant marriage does not dissolve the
12 bond of matrimony, since the separated husband and wife are not at liberty to
13 marry again; but it puts an end to their conjugal cohabitation and to the
14 common concerns which existed between them.

15 (b) Spouses who are judicially separated in a covenant marriage shall
16 retain that status until either reconciliation or divorce.

17
18 9-11-810. Informational pamphlet.

19 The office of Attorney General shall promulgate an informational
20 pamphlet, entitled 'Covenant Marriage Act,' which shall outline in sufficient
21 detail the consequences of entering into a covenant marriage. The
22 informational pamphlet shall be made available to any counselor who provides
23 authorized counseling as provided for by this subchapter."

24
25 SECTION 2. If another act of the 1999 Regular Session of the General
26 Assembly adds a new Subchapter 8 to Arkansas Code Title 9, Chapter 11, then
27 the subchapter added by this act shall be appropriately renumbered by the
28 Arkansas Code Revision Commission.

29
30 SECTION 3. All provisions of this act of a general and permanent nature
31 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
32 Revision Commission shall incorporate the same in the Code.

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34 SECTION 4. If any provision of this act or the application thereof to
35 any person or circumstance is held invalid, such invalidity shall not affect
36 other provisions or applications of the act which can be given effect without

1 the invalid provision or application, and to this end the provisions of this
2 act are declared to be severable.

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4 SECTION 5. All laws and parts of laws in conflict with this act are
5 hereby repealed.

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