

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

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
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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.

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

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

7
8 9-11-811. Informational pamphlet.

9 (a) The Administrative Office of the Courts shall promulgate an
10 informational pamphlet, entitled "Covenant Marriage Act of 2001", which shall
11 outline in sufficient detail the consequences of entering into a covenant
12 marriage.

13 (b) The informational pamphlet shall be made available to any counselor
14 who provides authorized counseling as provided for by this subchapter.

15 /s/ Hunt
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