STATE OF OKLAHOMA

2nd Session of the 52nd Legislature (2010)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2634 By: McCullough

COMMITTEE SUBSTITUTE

An Act relating to marriage and family; amending 28 O.S. 2001, Section 31, as last amended by Section 1, Chapter 288, O.S.L. 2004 (28 O.S. Supp. 2009, Section 31), which relates to court clerk fees; modifying requirements for certain marriage applications and licenses; amending 43 O.S. 2001, Sections 1, 5, as last amended by Section 1, Chapter 313, O.S.L. 2008, 5.1, as amended by Section 1, Chapter 206, O.S.L. 2006, 6, as amended by Section 3, Chapter 311, O.S.L. 2006 and 101 (43 O.S. Supp. 2009, Sections 5, 5.1 and 6), which relate to marriage; providing for covenant marriages; defining term; specifying conditions and process; requiring premarital counseling prior to covenant marriage; providing for designation of covenant marriages on marriage applications; providing for covenant marriage designation of existing marriages; specifying that common law marriages shall no longer be recognized; providing that certain existing common law marriages shall continue to be recognized; providing certain exception; requiring two hours of premarital counseling prior to any marriage; providing for declarations of intent to contract a covenant marriage; requiring certificate of premarital counseling completion; specifying counseling shall be completed prior to application for covenant marriage; providing for fee reduction for completion of eight hours of premarital counseling; requiring certain counseling; providing contents and attachments of marriage licenses; providing content of covenant marriage declaration; requiring certain affidavits; providing content of affidavits; authorizing certain

exemption; providing for compliance with other marriage laws not in conflict; providing for execution of a declaration of intent to designate an existing marriage as a covenant marriage; providing certain procedure; providing for declaration and contents; specifying certain attachments; specifying requirements for divorce in covenant marriages; allowing certain hearings to be heard in judge's chambers; amending 43 O.S. 2001, Section 107.2, which relates to court authority to require certain educational programs; making certain educational programs mandatory; providing for codification; and providing effective dates.

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

SECTION 1. AMENDATORY 28 O.S. 2001, Section 31, as last amended by Section 1, Chapter 288, O.S.L. 2004 (28 O.S. Supp. 2009, Section 31), is amended to read as follows:

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

Approving bond or undertaking, including

certificate and seal.....$3.00

Making copy of an instrument of record or

on file, first page.....$1.00

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

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

Authentication of court records.....$5.00

Receiving and paying out money in pursuance of law or order of court.....1% provided, however, that such charge shall not exceed $300.00.

Application, issuing, entering return and recording marriage license if the applicants submit a certificate that states the applicants have completed ~~the~~ eight (8) hours or more of an approved premarital counseling program pursuant to Section 5.1 of Title 43 of the Oklahoma Statutes.....$5.00

Application, issuing, entering return and recording marriage license if the applicants ~~do not~~ submit a certificate that states the applicants have completed ~~the~~ at least two (2) hours but less than eight (8) hours of an approved premarital counseling program pursuant to Section 5.1 of Title 43 of the Oklahoma Statutes.....$50.00

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

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

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

For the actual cost of all postage in each case in excess of.....$10.00, or actual expense, whichever is greater.

For filing and indexing of disclaimers other than in pending probate or civil cases pursuant to the provisions of Section 751 et seq. of Title 60 of the Oklahoma Statutes.....$5.00

SECTION 2. AMENDATORY 43 O.S. 2001, Section 1, is amended to read as follows:

Section 1. A. Marriage is a personal relation arising out of a civil contract to which the consent of parties legally competent of contracting and of entering into it is necessary, and the marriage

relation shall only be entered into, maintained or abrogated as provided by law.

B. 1. A covenant marriage is a marriage entered into by a man and woman who understand and agree that the marriage between them is a lifelong relationship. Parties to a covenant marriage shall obtain counseling emphasizing the nature and purposes of marriages and the responsibilities thereof.

2. An unmarried man and woman may contract a covenant marriage by declaring their intent to do so on their application for a marriage license and executing a declaration of intent to contract a covenant marriage, as provided in Section 7 of this act. The application for a marriage license and the declaration of intent shall be filed with the official who issues the marriage license.

3. A married man and woman domiciled in Oklahoma may execute a declaration of intent to designate their marriage as a covenant marriage pursuant to Section 8 of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3.2 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided for in this section, on and after November 1, 2010, a common law marriage shall not be recognized as a valid form of marriage in Oklahoma.

B. Any common law marriage recognized as valid by an Oklahoma court of competent jurisdiction in this state prior to November 1, 2010, shall continue to be recognized as valid in this state.

SECTION 4. AMENDATORY 43 O.S. 2001, Section 5, as last amended by Section 1, Chapter 313, O.S.L. 2008 (43 O.S. Supp. 2009, Section 5), is amended to read as follows:

Section 5. A. Persons desiring to be married in this state shall complete no less than two (2) hours of an approved premarital counseling program and shall submit an application in writing signed and sworn to in person before the clerk of the district court by both of the parties setting forth:

1. The place of residence of each party;

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

3. For each party, the full name by which the party will be known after the marriage, which shall become the full legal name of the party upon the filing of the marriage license and certificate with the court, as required by law;

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

5. ~~Whether~~ That the parties have successfully completed a premarital counseling program consisting of no less than two (2) hours. The parties shall submit a certificate of completion to be filed with the application; and

6. Whether the application is for a covenant marriage. If the application is for a covenant marriage, the application for a marriage license must also include the following statement: "We, (name of intended husband) and (name of intended wife), do hereby declare our intent to contract a covenant marriage and, accordingly, have executed a declaration of intent attached hereto".

B. 1. Upon application pursuant to this section and the payment of fees as provided in Section 31 of Title 28 of the Oklahoma Statutes, if the clerk of the district court is satisfied of the truth and sufficiency of the application and that there is no legal impediment to such marriage, the court clerk shall issue the marriage license authorizing the marriage and a marriage certificate, which shall be incorporated as one document. As required by law, the marriage certificate shall be completed immediately following the marriage, and the marriage license and certificate shall be returned to the court clerk.

2. Parties to be married and who present a certificate to the clerk of the district court that states the parties have completed

~~the~~ no less than eight (8) hours of an approved premarital counseling program pursuant to Section 5.1 of this title shall be entitled to pay a reduced fee for a marriage license in an amount provided in Section 31 of Title 28 of the Oklahoma Statutes.

C. In the event that one or both of the parties are under legal age, the application shall have been on file in the court clerk's office for a period of not less than seventy-two (72) hours prior to issuance of the marriage license.

D. Any party seeking to obtain a marriage license for a covenant marriage shall be required to obtain the counseling required by Section 7 of this act prior to the application for a marriage license. The declaration of intent to contract a covenant marriage shall comply with the provisions of Section 7 of this act.

E. The marriage license shall be valid in any county within the state.

~~E.~~ F. The provisions hereof are mandatory and not directory except under the circumstances set out in the provisions of Section 3 of this title.

SECTION 5. AMENDATORY 43 O.S. 2001, Section 5.1, as amended by Section 1, Chapter 206, O.S.L. 2006 (43 O.S. Supp. 2009, Section 5.1), is amended to read as follows:

Section 5.1 A. The clerk of the district court shall reduce the fee for a marriage license as prescribed by Section 31 of Title 28 of the Oklahoma Statutes to persons who have successfully

completed ~~a~~ no less than eight (8) hours of an approved premarital counseling program meeting the conditions specified by this section.

B. 1. A premarital counseling program shall be conducted by a health professional, an official representative of a religious institution, or a person trained by the principal authors or duly authorized agents of the principal authors of nationally recognized marriage education curriculum including, but not limited to, Prevention & Relationship Enhancement Program (PREP). Upon successful completion of the program, the counseling program provider shall issue to the persons a certificate signed by the instructor of the counseling program. The certificate shall state that the named persons have successfully completed the premarital counseling requirements. ~~A minimum of four (4) hours of education or counseling shall be necessary for successful completion of the marriage education curriculum.~~ The certificate shall be provided to the clerk of the district court upon application for marriage.

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

SECTION 6. AMENDATORY 43 O.S. 2001, Section 6, as amended by Section 3, Chapter 311, O.S.L. 2006 (43 O.S. Supp. 2009, Section 6), is amended to read as follows:

Section 6. A. ~~The~~ A marriage license ~~provided for in this title~~ shall contain:

1. The date of its issuance;

2. The name of the court issuing the license, and the name of the city or town and county in which the court is located;

3. The full legal names of the persons authorized to be married by the license, the full legal names by which the persons will be known after the marriage, their ages, and their places of residence;

4. Directions to any person authorized by law to perform and solemnize the marriage ceremony;

5. If applicable, a designation that the parties entered into a covenant marriage;

6. A designation specifying that the parties have received premarital counseling and the number of hours completed;

7. The date by which the completed marriage certificate, along with the marriage license, shall be returned to the judge or court, which shall not be more than thirty (30) days from the date of its issuance; and

~~6.~~ 8. Any other information, declarations, seals and signatures, as required by law.

B. The marriage certificate provided for in this title shall contain appropriate wording and blanks to be completed and endorsed, as required by Section 8 of this title, by the person solemnizing or

performing the marriage ceremony, the witnesses, and the persons who have been married.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6.1 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. A declaration of intent to contract a covenant marriage shall contain all of the following:

1. A recitation by the parties in substantially the following form:

"A COVENANT MARRIAGE

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

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

2. An affidavit by the parties that they have received premarital counseling from a priest, minister, rabbi, or any clergy of any religious sect, or a qualified mental health provider as required by Section 5.1 of Title 43 of the Oklahoma Statutes prior to the application for a marriage license. The counseling shall also include a discussion of the seriousness of covenant marriage, communication of the fact that a covenant marriage is a commitment for life, a discussion of the obligation to seek marital counseling in times of marital difficulties, and a discussion of the exclusive grounds for legally terminating a covenant marriage by divorce;

3. A notarized affidavit, signed by the counselor and attached to or included in the parties' affidavit, confirming that the parties were counseled as to the nature and purpose of the covenant marriage and the grounds for the termination thereof; and

4. a. the notarized signature of both parties, and

b. if one or both of the parties are minors, the written consent or authorization of those persons required by Section 3 of Title 43 of the Oklahoma Statutes to consent to or authorize the marriage of minors.

B. The declaration of intent shall contain the recitation and the affidavit. The declaration of intent shall be prepared in duplicate originals, one of which shall be retained by the parties and the other filed as provided in Sections 7 and 9 of Title 43 of the Oklahoma Statutes.

C. A covenant marriage shall be governed by all of the provisions of Title 43 of the Oklahoma Statutes and any other provision of Oklahoma law relating to marriage and the marriage contract which is not inconsistent with the provisions of Title 43 of the Oklahoma Statutes pertaining to covenant marriages.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6.2 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. On or after November 1, 2010, a married couple domiciled in Oklahoma may also execute a declaration of intent to designate their marriage as a covenant marriage to be governed by the laws related thereto.

B. This declaration of intent in the form and containing the contents required by subsection C of this section shall be presented to the court clerk of the district court which issued the couple's marriage license and with whom the couple's marriage certificate is filed. If the couple was married outside of this state, a copy of the foreign marriage certificate, with the declaration of intent attached thereto, shall be filed with the court clerk of the district court which issues marriage licenses in the county in which the couple is domiciled. The court clerk shall make a notation on the marriage certificate of the declaration of intent of a covenant marriage and attach a copy of the declaration to the certificate.

C. 1. A declaration of intent to designate a marriage as a covenant marriage shall contain all of the following:

a. a recitation by the parties to the following effect:

"A COVENANT MARRIAGE

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

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

b. an affidavit by the parties that they have discussed their intent to designate their marriage as a covenant marriage with a person designated in Section 5.1 of Title 43 of the Oklahoma Statutes as a qualified mental health provider. The counseling included a discussion of the obligation to seek marital counseling in times of marital difficulties and the exclusive grounds for legally terminating a covenant marriage by divorce; and

2. The declaration of intent shall contain the recitation and the affidavit. The declaration of intent shall be prepared in duplicate originals, one of which shall be retained by the parties and the other filed as provided in subsection B of this section.

SECTION 9. AMENDATORY 43 O.S. 2001, Section 101, is amended to read as follows:

Section 101. ~~The~~ A. Except as provided in subsection B of this section, the district court may grant a divorce for a marriage, other than a covenant marriage, for any of the following causes:

~~First~~ 1. Abandonment for one (1) year~~.~~;

~~Second~~ 2. Adultery~~.~~;

~~Third~~ 3. Impotency~~.~~;

~~Fourth~~ 4. When the wife at the time of her marriage, was pregnant by ~~another~~ a person other than her husband~~.~~;

~~Fifth~~ 5. Extreme cruelty~~.~~;

~~Sixth~~ 6. Fraudulent contract~~.~~;

~~Seventh~~ 7. Incompatibility~~.~~;

~~Eighth~~ 8. Habitual drunkenness~~.~~;

~~Ninth~~ 9. Gross neglect of duty~~.~~;

~~Tenth~~ 10. Imprisonment of the other party in a state or federal penal institution under sentence thereto for the commission of a felony at the time the petition is filed~~.~~;

~~Eleventh~~ 11. The procurement of a final divorce decree ~~without~~ outside this state by a husband or wife which does not in this state release the other party from the obligations of the marriage~~.~~; and

~~Twelfth~~ 12. Insanity for a period of five (5) years, the insane person having been an inmate of a state institution for the insane in the State of Oklahoma, or inmate of a state institution for the insane in some other state for such period, or of a private sanitarium, and affected with a type of insanity with a poor prognosis for recovery; provided, that no divorce shall be granted because of insanity until after a thorough examination of such insane person by three physicians, one of which physicians shall be a superintendent of the hospital or sanitarium for the insane, in which the insane defendant is confined, and the other two physicians to be appointed by the court before whom the action is pending, any two of such physicians shall agree that such insane person, at the time the petition in the divorce action is filed, has a poor prognosis for recovery; provided, further, however, that no divorce shall be granted on this ground to any person whose husband or wife is an inmate of a state institution in any other than the State of Oklahoma, unless the person applying for such divorce shall have been a resident of the State of Oklahoma for at least five (5) years prior to the commencement of an action; and provided further, that a decree granted on this ground shall not relieve the successful party from contributing to the support and maintenance of the defendant.

The court shall appoint a guardian ad litem to represent the insane defendant, which appointment shall be made at least ten (10) days before any decree is entered.

B. The district court may grant a divorce for a covenant marriage for any of the following causes:

1. The other spouse has committed adultery;

2. The other spouse has physically abused the spouse seeking the divorce, or a child of one or both of the spouses;

3. The other spouse has abandoned the matrimonial home for a period of one (1) year;

4. The spouses have been living separate and apart continuously without successful reconciliation for a period of six (6) months. Written notification of the intent of a spouse to live apart sent by certified mail, return receipt requested, to the premarital counselor or any other marriage counselor agreed to by the husband and wife and to the other spouse shall initiate the period specified by this paragraph; or

5. Fraud in entering into the marriage contract or into a covenant marriage.

C. If there are children of the marriage or of either spouse, a petition for divorce of a covenant marriage shall set forth the names of the children, but shall not allege specific grounds for divorce. Prior to the granting of a divorce in a covenant marriage with children of the marriage or of either spouse, the court shall

hold a hearing to determine whether there exists any of the causes for divorce set out in subsection B of this section. This hearing shall be held in camera upon the request of either spouse.

SECTION 10. AMENDATORY 43 O.S. 2001, Section 107.2, is amended to read as follows:

Section 107.2 A. In all actions for divorce, separate maintenance, guardianship, paternity, custody or visitation, including modifications or enforcements of a prior court order, where the interest of a child under eighteen (18) years of age is involved, the court ~~may~~ shall require all adult parties to attend an educational program concerning, as appropriate, the impact of separate parenting and coparenting on children, the implications for visitation and conflict management, development of children, separate financial responsibility for children and such other instruction as deemed necessary by the court before any other issues are addressed in the action. The program shall be educational in nature and not designed for individual therapy.

B. Each judicial district may adopt its own local rules governing the program.

SECTION 11. Section 9 of this act shall become effective September 1, 2010.

SECTION 12. Sections 1 through 8 and Sections 10 and 11 of this act shall become effective November 1, 2010.

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