ENGROSSED HOUSE
BILL NO. 1026

By: Wright (John), Nelson, Reynolds, Faught, Terrill, Kern, Sherrer, Moore, Holland and Sanders of the House

and

Crain of the Senate

An Act relating to marriage and family; amending 43 O.S. 2001, Sections 1, 5, as last amended by Section 1, Chapter 313, O.S.L. 2008, 6, as amended by Section 3, Chapter 311, O.S.L. 2006 and 101 (43 O.S. Supp. 2008, Sections 5 and 6), which relate to marriage; providing for covenant marriages; defining term; specifying conditions and process; providing for designation of covenant marriages on marriage applications; specifying contents; clarifying and updating language; providing for declarations of intent to contract a covenant marriage; providing contents and attachments; requiring certain counseling; providing for construction of section; 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 for procedures; providing for declaration and contents; specifying grounds for termination of a covenant marriage; providing for development and printing of the "Guide for Covenant Marriages" by the Administrative Director of the Courts; providing for contents; providing for codification; and providing effective dates.

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

SECTION 1. 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 a 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 marriage 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 4 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 5 of this act.

SECTION 2. AMENDATORY 43 O.S. 2001, Section 5, as last amended by Section 1, Chapter 313, O.S.L. 2008 (43 O.S. Supp. 2008, Section 5), is amended to read as follows:

Section 5. A. Persons desiring to be married in this state 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 the parties have successfully completed a premarital counseling program~~.~~; 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 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 4 of this act at least fifteen (15) days prior to the application for a marriage license. The declaration of intent to contract a covenant marriage shall comply with the provisions of Section 4 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 3. AMENDATORY 43 O.S. 2001, Section 6, as amended by Section 3, Chapter 311, O.S.L. 2006 (43 O.S. Supp. 2008, 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 and time 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 regarding whether the parties received premarital counseling;

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 4. 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 have read "Guide for Covenant Marriages", developed and printed by the Administrative Director of the Courts, and 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 clergyman of any religious sect, or a qualified mental health provider at least fifteen (15) days prior to the application for a marriage license. The counseling shall 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:

a. the parties were counseled as to the nature and purpose of the covenant marriage and the grounds for termination thereof, and

b. the counselor provided to the parties the informational pamphlet "Guide for Covenant Marriages", developed and printed by the Administrative Director of the Courts, which provides a full explanation of the terms and conditions of a covenant marriage and grounds for termination thereof.

The provisions of this paragraph shall not be construed to require any person to provide counseling to a party for the termination of marriage if such counseling is contrary to the beliefs of such person, provided that such counselor furnishes to the party the "Guide for Covenant Marriages", developed by the Administrative Director of the Courts, and has informed the party to consider all aspects of the conditions for a covenant marriage; 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 5. 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, 2009, 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. 1. This declaration of intent in the form and containing the contents required by subsection C of this section must 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.

2. On or before the fifteenth day of each calendar month, the court clerk shall forward to the State Registrar of Vital Statistics each declaration of intent of a covenant marriage filed with the State Registrar during the preceding calendar month pursuant to this section.

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 have read "Guide for Covenant Marriages", and 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 renew our promise to love, honor, and care for one another as husband and wife for the remainder of our lives.", and

b. (1) an affidavit by the parties that they have discussed their intent to designate their marriage as a covenant marriage with a priest, minister, rabbi, or any clergyman of any religious sect, or 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,

(2) a notarized affidavit, signed by the counselor and included in or attached to the parties' affidavit, acknowledging that the counselor provided to the parties the informational pamphlet entitled "Guide for Covenant Marriages", developed and printed by the Administrative Director of the Courts, which provides a full

explanation of the terms and conditions of a covenant marriage and grounds for termination thereof, and

(3) the notarized signature of both parties.

The provisions of divisions (1) and (2) of this subparagraph shall not be construed to require any person to provide counseling to a party for the termination of marriage if such counseling is contrary to the beliefs of such person, provided that such counselor furnishes to the party the "Guide for Covenant Marriages", developed by the Administrative Director of the Courts, and has informed the party to consider all aspects of the conditions for a covenant marriage.

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

Section 101. A. 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~~.

a. No divorce shall be granted because of insanity until after a thorough examination of such insane person by three physicians~~, one~~. One of ~~which~~ the physicians

shall be a superintendent of the hospital or sanitarium for the insane~~,~~ in which the insane defendant is confined, and the ~~other~~ remaining two physicians ~~to~~ shall be appointed by the court before whom the action is pending~~, any~~.

b. 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~~.

c. 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 state than the State of Oklahoma, unless the person applying for such divorce ~~shall have~~ has 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~~.

d. A decree granted on this ground shall not relieve the successful party from contributing to the support and maintenance of the defendant.

e. 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 eighteen (18) 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 eighteen-month 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 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6.3 of Title 43, unless there is created a duplication in numbering, reads as follows:

The Administrative Director of the Courts shall, prior to November 1, 2009, develop and print an informational pamphlet entitled "Guide for Covenant Marriages", which shall outline in sufficient detail the legal effects of entering into a covenant marriage and grounds for termination thereof. The informational pamphlet shall be made available at cost to any counselor who provides marriage counseling as provided by this act.

SECTION 8. Section 7 of this act shall become effective September 1, 2009.

SECTION 9. Sections 1 through 6 of this act shall become effective November 1, 2009.

Passed the House of Representatives the 3rd day of March, 2009.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2009.

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Presiding Officer of the Senate