

1 **SENATE FLOOR VERSION**

2 February 5, 2013

3 As Amended

4 SENATE BILL NO. 105

5 By: Brecheen of the Senate

6 and

7 Newell of the House

8 **[covenant marriage - specifying conditions and**
9 **process - codification - effective date]**

10
11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. AMENDATORY 43 O.S. 2011, Section 1, is
13 amended to read as follows:

14 Section 1. A. Marriage is a personal relation arising out of a
15 civil contract to which the consent of parties legally competent of
16 contracting and of entering into it is necessary, and the marriage
17 relation shall only be entered into, maintained or abrogated as
18 provided by law.

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

1 2. An unmarried man and woman may contract a covenant marriage
2 by declaring their intent to do so on their application for a
3 marriage license and executing a declaration of intent to contract a
4 covenant marriage, as provided in Section 4 of this act. The
5 application for a marriage license and the declaration of intent
6 shall be filed with the official who issues the marriage license.

7 3. A married man and woman domiciled in Oklahoma may execute a
8 declaration of intent to designate their marriage as a covenant
9 marriage pursuant to Section 5 of this act.

10 SECTION 2. AMENDATORY 43 O.S. 2011, Section 5, is
11 amended to read as follows:

12 Section 5. A. Persons desiring to be married in this state
13 shall submit an application in writing signed and sworn to in person
14 before the clerk of the district court by both of the parties
15 setting forth:

16 1. The place of residence of each party;

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

24

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

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

7 5. Whether the parties have successfully completed a premarital
8 counseling program; and

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

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

1 2. Parties to be married and who present a certificate to the
2 clerk of the district court that states the parties have completed
3 the premarital counseling program pursuant to Section 5.1 of this
4 title shall be entitled to pay a reduced fee for a marriage license
5 in an amount provided in Section 31 of Title 28 of the Oklahoma
6 Statutes.

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

11 D. Any party seeking to obtain a marriage license for a
12 covenant marriage shall be required to obtain the counseling
13 required by Section 4 of this act prior to the application for a
14 marriage license. The declaration of intent to contract a covenant
15 marriage shall comply with the provisions of Section 4 of this act.

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

18 ~~E.~~ F. The provisions hereof are mandatory and not directory
19 except under the circumstances set out in the provisions of Section
20 3 of this title.

21 SECTION 3. AMENDATORY 43 O.S. 2011, Section 6, is
22 amended to read as follows:

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

- 1 1. The date of its issuance;
- 2 2. The name of the court issuing the license, and the name of
3 the city or town and county in which the court is located;
- 4 3. The full legal names of the persons authorized to be married
5 by the license, the full legal names by which the persons will be
6 known after the marriage, their ages, and their places of residence;
- 7 4. Directions to any person authorized by law to perform and
8 solemnize the marriage ceremony;
- 9 5. If applicable, a designation that the parties entered into a
10 covenant marriage;
- 11 6. A designation specifying that the parties have received
12 premarital counseling and the number of hours completed;
- 13 7. The date by which the completed marriage certificate, along
14 with the marriage license, shall be returned to the judge or court,
15 which shall not be more than thirty (30) days from the date of its
16 issuance; and
- 17 ~~6.~~ 8. Any other information, declarations, seals and
18 signatures, as required by law.
- 19 B. The marriage certificate provided for in this title shall
20 contain appropriate wording and blanks to be completed and endorsed,
21 as required by Section 8 of this title, by the person solemnizing or
22 performing the marriage ceremony, the witnesses, and the persons who
23 have been married.
- 24

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 6.1 of Title 43, unless there is
3 created a duplication in numbering, reads as follows:

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

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

8 "A COVENANT MARRIAGE

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

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

23 2. An affidavit by the parties that they have received
24 premarital counseling pursuant to subsection B of Section 5.1 of

1 Title 43 of the Oklahoma Statutes prior to the application for a
2 marriage license. The counseling shall also include a discussion of
3 the seriousness of covenant marriage, communication of the fact that
4 a covenant marriage is a commitment for life, a discussion of the
5 obligation to seek marital counseling in times of marital
6 difficulties, and a discussion of the exclusive grounds for legally
7 terminating a covenant marriage by divorce;

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

12 4. a. the notarized signature of both parties, and
13 b. if one or both of the parties are minors, the written
14 consent or authorization of those persons required by
15 Section 3 of Title 43 of the Oklahoma Statutes to
16 consent to or authorize the marriage of minors.

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

22 C. A covenant marriage shall be governed by all of the
23 provisions of Title 43 of the Oklahoma Statutes and any other
24 provision of Oklahoma law relating to marriage and the marriage

1 contract which is not inconsistent with the provisions of Title 43
2 of the Oklahoma Statutes pertaining to covenant marriages.

3 SECTION 5. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 6.2 of Title 43, unless there is
5 created a duplication in numbering, reads as follows:

6 A. On or after November 1, 2013, a married couple domiciled in
7 Oklahoma may also execute a declaration of intent to designate their
8 marriage as a covenant marriage to be governed by the laws related
9 thereto.

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

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

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

24 "A COVENANT MARRIAGE

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

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

- 16 b. an affidavit by the parties that they have discussed
17 their intent to designate their marriage as a covenant
18 marriage with a qualified person as provided in
19 Section 5.1 of Title 43 of the Oklahoma Statutes. The
20 counseling included a discussion of the obligation to
21 seek marital counseling in times of marital
22 difficulties and the exclusive grounds for legally
23 terminating a covenant marriage by divorce.

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

5 SECTION 6. AMENDATORY 43 O.S. 2011, Section 101, is
6 amended to read as follows:

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

10 ~~First.~~ 1. Abandonment for one (1) year-; i

11 ~~Second.~~ 2. Adultery-; i

12 ~~Third.~~ 3. Impotency-; i

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

15 ~~Fifth.~~ 5. Extreme cruelty-; i

16 ~~Sixth.~~ 6. Fraudulent contract-; i

17 ~~Seventh.~~ 7. Incompatibility-; i

18 ~~Eighth.~~ 8. Habitual drunkenness-; i

19 ~~Ninth.~~ 9. Gross neglect of duty-; i

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

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1 ~~Eleventh.~~ 11. The procurement of a final divorce decree ~~without~~
2 outside this state by a husband or wife which does not in this state
3 release the other party from the obligations of the marriage; and
4 ~~Twelfth.~~ 12. Insanity for a period of five (5) years, the
5 insane person having been an inmate of a state institution for the
6 insane in the State of Oklahoma, or inmate of a state institution
7 for the insane in some other state for such period, or of a private
8 sanitarium, and affected with a type of insanity with a poor
9 prognosis for recovery; provided, that no divorce shall be granted
10 because of insanity until after a thorough examination of such
11 insane person by three physicians, one of which physicians shall be
12 a superintendent of the hospital or sanitarium for the insane, in
13 which the insane defendant is confined, and the other two physicians
14 to be appointed by the court before whom the action is pending, any
15 two of such physicians shall agree that such insane person, at the
16 time the petition in the divorce action is filed, has a poor
17 prognosis for recovery; provided, further, however, that no divorce
18 shall be granted on this ground to any person whose husband or wife
19 is an inmate of a state institution in any other than the State of
20 Oklahoma, unless the person applying for such divorce shall have
21 been a resident of the State of Oklahoma for at least five (5) years
22 prior to the commencement of an action; and provided further, that a
23 decree granted on this ground shall not relieve the successful party
24 from contributing to the support and maintenance of the defendant.

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

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

6 1. The other spouse has committed adultery;

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

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

12 4. The spouses have been living separate and apart continuously
13 without successful reconciliation for a period of one (1) year.

14 Written notification of the intent of a spouse to live apart sent by
15 certified mail, return receipt requested, to the premarital
16 counselor or any other marriage counselor agreed to by the husband
17 and wife and to the other spouse shall initiate the period specified
18 by this paragraph; or

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

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

1 with children of the marriage or of either spouse, the court shall
2 hold a hearing to determine whether there exists any of the causes
3 for divorce set out in subsection B of this section. This hearing
4 shall be held in camera upon the request of either spouse.

5 SECTION 7. This act shall become effective November 1, 2013.

6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-5-13 - DO PASS,
7 As Amended and Coauthored.
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