STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

SENATE BILL 810 By: Brecheen

AS INTRODUCED

An Act relating to covenant marriage; amending 43 O.S. 2011, Sections 1, 5, as amended by Section 1, Chapter 192, O.S.L. 2013, 6 and 101, as amended by Section 1, Chapter 428, O.S.L. 2014 (43 O.S. Supp. 2014, Sections 5 and 101), which relate to marriage; providing for covenant marriages; defining term; specifying conditions and process; providing for designation of covenant marriages on marriage applications; providing for covenant marriage designation of existing marriages; providing for declarations of intent to contract a covenant marriage; providing contents and attachments of marriage licenses; providing content of covenant marriage declaration; requiring certain 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; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 43 O.S. 2011, 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. An unmarried couple who understands and agrees that the marriage between them is a lifelong commitment may contract a covenant marriage. Parties to a covenant marriage shall obtain counseling emphasizing the nature and purposes of marriages and the responsibilities thereof.

2. An unmarried couple 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 couple 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. 2011, Section 5, as amended by Section 1, Chapter 192, O.S.L. 2013 (43 O.S. Supp. 2014, 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; provided, however, a marriage certificate issued prior to June 8, 2006, shall be reissued upon request by the certificate holder to include the information required by this paragraph. Such reissued certificate shall reflect the original marriage date and shall be signed by the court clerk. Signatures of the officiant and original witnesses shall not be required;

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 shall include the following statement: "We, (name of intended spouse) and (name of intended spouse), 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 prior to the application for a marriage license. The declaration of intent to contract a covenant marriage shall be in compliance 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. 2011, 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 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 two people who agree to live together as spouses 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 for the remainder of our lives.";

2. An affidavit by the parties that they have received premarital counseling pursuant to subsection B of 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 Section 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, 2015, 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 two people who agree to live together as spouses 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 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 qualified person as provided in Section 5.1 of Title 43 of the Oklahoma Statutes. The counseling included a discussion of the obligation to seek marital counseling in times of marital difficulties and the grounds and conditions for legally terminating a covenant marriage by divorce.

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. 2011, Section 101, as amended by Section 1, Chapter 428, O.S.L. 2014 (43 O.S. Supp. 2014, 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. Abandonment for one (1) year.

Second. Adultery.

Third. Impotency.

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

Fifth. Extreme cruelty.

Sixth. Fraudulent contract.

Seventh. Incompatibility. Provided, however, where the interest of a child under eighteen (18) years of age is involved, the adult parties shall attend an educational program concerning the impact of divorce on children as provided in subsection B of Section 107.2 of this title.

Eighth. Habitual drunkenness.

Ninth. Gross neglect of duty.

Tenth. 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. 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.

Twelfth. 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 whom shall be a superintendent of the hospital or sanitarium for the insane in which the insane defendant is confined, and the other two to be appointed by the court before whom the action is pending, and 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 of a covenant marriage for any of the causes provided in subsection A of this section; provided, however, spouses seeking a divorce from a covenant marriage on the grounds of incompatibility shall be subject to the following procedures:

1. Upon the filing of a petition for divorce of a covenant

marriage, the court shall order the parties to participate in a minimum of six (6) hours of counseling to be completed within three (3) months of filing the petition. The counseling shall follow the requirements of subsection B of Section 5.1 of this title. In the event the parties agree on a counselor, the court shall order the counseling to proceed with the agreed counselor. In the event the parties are unable to agree on a counselor, the court shall appoint one for them. The cost of the counseling shall be paid by the parties in the proportions set by the court;

2. During the pendency of the covenant marriage divorce proceedings, the court may take evidence and issue any temporary order or other order permitted by law pertaining to the divorce, the property of the parties, the children of the marriage or any other issue before the court, except the court shall not issue a final decree of divorce except as set forth in this subsection;

3. A final decree of divorce shall not be entered until one (1) year from the date of the completion of the counseling requirement set forth in this subsection and certified by the individual providing the counseling; provided, however, the court may grant a decree of divorce after the passage of fifteen (15) months from the date of the filing of the petition, upon good cause shown to the court. For purposes of this section, "good cause shown" shall be in the discretion of the court, and shall include proof that the respondent is not complying with the counseling requirement; and

4. Upon application by either party to the divorce, and upon completion of the required six (6) hours of counseling, the court may waive the required waiting period and immediately enter a divorce decree if the court finds, after reviewing the recommendations of the individual providing the counseling, that the waiver of the required waiting period would be in the best interest of the parties.

SECTION 7. This act shall become effective November 1, 2015.

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