

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 876

By: Brecheen

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5
6 AS INTRODUCED

7 An Act relating to covenant marriage; amending 43
8 O.S. 2011, Sections 1, 5, as amended by Section 1,
9 Chapter 192, O.S.L. 2013, 6 and 101, as amended by
10 Section 1, Chapter 428, O.S.L. 2014 (43 O.S. Supp.
11 2015, Sections 5 and 101), which relate to marriage;
12 providing for covenant marriages; defining term;
13 specifying conditions and process; providing for
14 designation of covenant marriages on marriage
15 applications; providing for covenant marriage
16 designation of existing marriages; providing for
17 declarations of intent to contract a covenant
18 marriage; providing contents and attachments of
19 marriage licenses; providing content of covenant
20 marriage declaration; requiring certain affidavits;
21 authorizing certain exemption; providing for
22 compliance with other marriage laws not in conflict;
23 providing for execution of a declaration of intent to
24 designate an existing marriage as a covenant
25 marriage; providing certain procedure; providing for
26 declaration and contents; specifying certain
27 attachments; specifying requirements for divorce in
28 covenant marriages; allowing certain hearings to be
29 heard in judge's chambers; providing for
30 codification; and providing an effective date.

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

32 SECTION 1. AMENDATORY 43 O.S. 2011, Section 1, is
33 amended to read as follows:
34

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

6 B. 1. An unmarried couple who understands and agrees that the
7 marriage between them is a lifelong commitment may contract a
8 covenant marriage. Parties to a covenant marriage shall obtain
9 counseling emphasizing the nature and purposes of marriages and the
10 responsibilities thereof.

11 2. An unmarried couple may contract a covenant marriage by
12 declaring their intent to do so on their application for a marriage
13 license and executing a declaration of intent to contract a covenant
14 marriage, as provided in Section 4 of this act. The application for
15 a marriage license and the declaration of intent shall be filed with
16 the official who issues the marriage license.

17 3. A married couple domiciled in Oklahoma may execute a
18 declaration of intent to designate their marriage as a covenant
19 marriage pursuant to Section 5 of this act.

20 SECTION 2. AMENDATORY 43 O.S. 2011, Section 5, as
21 amended by Section 1, Chapter 192, O.S.L. 2013 (43 O.S. Supp. 2015,
22 Section 5), is amended to read as follows:

23 Section 5. A. Persons desiring to be married in this state
24 shall submit an application in writing signed and sworn to in person

1 before the clerk of the district court by both of the parties
2 setting forth:

3 1. The place of residence of each party;

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

11 3. For each party, the full name by which the party will be
12 known after the marriage, which shall become the full legal name of
13 the party upon the filing of the marriage license and certificate
14 with the court, as required by law; provided, however, a marriage
15 certificate issued prior to June 8, 2006, shall be reissued upon
16 request by the certificate holder to include the information
17 required by this paragraph. Such reissued certificate shall reflect
18 the original marriage date and shall be signed by the court clerk.
19 Signatures of the officiant and original witnesses shall not be
20 required;

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

23 5. Whether the parties have successfully completed a premarital
24 counseling program; and

1 6. Whether the application is for a covenant marriage. If the
2 application is for a covenant marriage, the application for a
3 marriage license shall include the following statement: "We, (name
4 of intended spouse) and (name of intended spouse), do hereby declare
5 our intent to contract a covenant marriage and, accordingly, have
6 executed a declaration of intent attached hereto."

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

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

23 C. In the event that one or both of the parties are under legal
24 age, the application shall have been on file in the court clerk's

1 office for a period of not less than seventy-two (72) hours prior to
2 issuance of the marriage license.

3 D. Any party seeking to obtain a marriage license for a
4 covenant marriage shall be required to obtain the counseling
5 required by Section 4 of this act prior to the application for a
6 marriage license. The declaration of intent to contract a covenant
7 marriage shall be in compliance with the provisions of Section 4 of
8 this act.

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

11 ~~E.~~ F. The provisions hereof are mandatory and not directory
12 except under the circumstances set out in the provisions of Section
13 3 of this title.

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

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

- 18 1. The date of its issuance;
- 19 2. The name of the court issuing the license, and the name of
20 the city or town and county in which the court is located;
- 21 3. The full legal names of the persons authorized to be married
22 by the license, the full legal names by which the persons will be
23 known after the marriage, their ages, and their places of residence;

24

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

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

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

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

11 ~~6.~~ 8. Any other information, declarations, seals and
12 signatures, as required by law.

13 B. The marriage certificate provided for in this title shall
14 contain appropriate wording and blanks to be completed and endorsed,
15 as required by Section 8 of this title, by the person solemnizing or
16 performing the marriage ceremony, the witnesses, and the persons who
17 have been married.

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

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

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

1 "A COVENANT MARRIAGE

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

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

15 2. An affidavit by the parties that they have received
16 premarital counseling pursuant to subsection B of Section 5.1 of
17 Title 43 of the Oklahoma Statutes prior to the application for a
18 marriage license. The counseling shall also include a discussion of
19 the seriousness of covenant marriage, communication of the fact that
20 a covenant marriage is a commitment for life, a discussion of the
21 obligation to seek marital counseling in times of marital
22 difficulties, and a discussion of the exclusive grounds for legally
23 terminating a covenant marriage by divorce;

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

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

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

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

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

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

23 A. On or after November 1, 2016, a married couple domiciled in
24 Oklahoma may also execute a declaration of intent to designate their

1 marriage as a covenant marriage to be governed by the laws related
2 thereto.

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

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

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

17 "A COVENANT MARRIAGE

18 We do solemnly declare that marriage is a covenant between two
19 people who agree to live together as spouses for so long as they
20 both may live. We understand the nature, purpose, and
21 responsibilities of marriage. We understand that covenant marriage
22 is for life. If we experience marital difficulties, we commit
23 ourselves to take all reasonable efforts to preserve our marriage,
24 including marital counseling.

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

5 b. an affidavit by the parties that they have discussed
6 their intent to designate their marriage as a covenant
7 marriage with a qualified person as provided in
8 Section 5.1 of Title 43 of the Oklahoma Statutes. The
9 counseling included a discussion of the obligation to
10 seek marital counseling in times of marital
11 difficulties and the grounds and conditions for
12 legally terminating a covenant marriage by divorce.

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

17 SECTION 6. AMENDATORY 43 O.S. 2011, Section 101, as
18 amended by Section 1, Chapter 428, O.S.L. 2014 (43 O.S. Supp. 2015,
19 Section 101), is amended to read as follows:

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

23 First. Abandonment for one (1) year.

24 Second. Adultery.

1 Third. Impotency.

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

4 Fifth. Extreme cruelty.

5 Sixth. Fraudulent contract.

6 Seventh. Incompatibility. Provided, however, where the
7 interest of a child under eighteen (18) years of age is involved,
8 the adult parties shall attend an educational program concerning the
9 impact of divorce on children as provided in subsection B of Section
10 107.2 of this title.

11 Eighth. Habitual drunkenness.

12 Ninth. Gross neglect of duty.

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

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

19 Twelfth. Insanity for a period of five (5) years, the insane
20 person having been an inmate of a state institution for the insane
21 in the State of Oklahoma, or inmate of a state institution for the
22 insane in some other state for such period, or of a private
23 sanitarium, and affected with a type of insanity with a poor
24 prognosis for recovery; provided, that no divorce shall be granted

1 because of insanity until after a thorough examination of such
2 insane person by three physicians, one of whom shall be a
3 superintendent of the hospital or sanitarium for the insane in which
4 the insane defendant is confined, and the other two to be appointed
5 by the court before whom the action is pending, and any two of such
6 physicians shall agree that such insane person, at the time the
7 petition in the divorce action is filed, has a poor prognosis for
8 recovery; provided, further, however, that no divorce shall be
9 granted on this ground to any person whose husband or wife is an
10 inmate of a state institution in any other than the State of
11 Oklahoma, unless the person applying for such divorce shall have
12 been a resident of the State of Oklahoma for at least five (5) years
13 prior to the commencement of an action; and provided further, that a
14 decree granted on this ground shall not relieve the successful party
15 from contributing to the support and maintenance of the defendant.
16 The court shall appoint a guardian ad litem to represent the insane
17 defendant, which appointment shall be made at least ten (10) days
18 before any decree is entered.

19 B. The district court may grant a divorce of a covenant
20 marriage for any of the causes provided in subsection A of this
21 section; provided, however, spouses seeking a divorce of a covenant
22 marriage on the grounds of incompatibility shall be subject to the
23 following procedures:

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

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

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

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

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

8 SECTION 7. This act shall become effective November 1, 2016.

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