

HOUSE BILL No. 2254

By Representatives Howell, Arpke, Boman, Brown, Brunk, Calloway, Collins, DeGraaf, Garber, Goico, Gonzalez, Goodman, Gregory, Hedke, Hermanson, M. Holmes, Huebert, Kelley, Kiegerl, Kinzer, Mast, McLeland, Meier, Mesa, Montgomery, O'Hara, Osterman, Otto, Patton, Peck, Rhoades, Ryckman, Scapa, Seiwert, Siegfried, Vickrey and Weber

2-9

1 AN ACT concerning marriage; relating to covenant marriage; amending
2 K.S.A. 23-105, 23-109, 60-1601 and 60-1627 and K.S.A. 2010 Supp.
3 23-106 and repealing the existing sections.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. (a) A covenant marriage is a marriage entered into
7 by one male and one female who understand and agree that the marriage
8 between them is a lifelong relationship. Parties to a covenant marriage
9 have received counseling emphasizing the nature and purposes of
10 marriage and the responsibilities thereto. Only when there has been a
11 complete and total breach of the marital covenant commitment may the
12 nonbreaching party seek a declaration that the marriage is no longer
13 legally recognized.

14 (b) A man and woman may contract a covenant marriage by
15 declaring their intent to do so on their application for a marriage license
16 as provided in K.S.A. 23-106, and amendments thereto, and executing a
17 declaration of intent to contract a covenant marriage, as provided in
18 subsection (c). The application for a marriage license and the declaration
19 of intent shall be filed with the district court which issues the marriage
20 license.

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

23 (1) A recitation by the parties to the following effect:

24 "A COVENANT MARRIAGE

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

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

5 (2) (A) An affidavit by the parties that they have received
6 premarital counseling from a priest, minister, rabbi, clergy person or
7 organized ministry of any religious denomination or sect, including a
8 Christian Science practitioner, or a licensed marriage and family
9 therapist, which counseling shall include a discussion of the seriousness
10 of covenant marriage, communication of the fact that a covenant marriage
11 is a commitment for life, a discussion of the obligation to seek marital
12 counseling in times of marital difficulties, and a discussion of the
13 exclusive grounds for legally terminating a covenant marriage by divorce
14 or by divorce after separate maintenance.

15 (B) A notarized attestation, signed by the counselor and attached to
16 or included in the parties' affidavit, confirming that the parties were
17 counseled as to the nature and purpose of the marriage and the grounds
18 for termination thereof and acknowledging that the counselor provided to
19 the parties the informational pamphlet developed and promulgated by the
20 office of the attorney general, pursuant to section 4, and amendments
21 thereto, which pamphlet entitled "covenant marriage act" provides a full
22 explanation of the terms and conditions of a covenant marriage.

23 (3) (A) The signature of both parties witnessed by a notary.

24 (B) If one or both of the parties are minors, the written consent or
25 authorization of those persons required by law to consent to or authorize
26 the marriage of minors.

27 (d) The declaration shall contain two separate documents, the
28 recitation and the affidavit, the latter of which shall include the attestation
29 either included therein or attached thereto. The recitation shall be
30 prepared in duplicate originals, one of which shall be retained by the
31 parties and the other, together with the affidavit and attestation, shall be
32 registered and recorded as provided in article 1 of chapter 23 of the
33 Kansas Statutes Annotated, and amendments thereto.

34 (e) In addition to any fee for a marriage license, the supreme court
35 shall establish by rule a covenant marriage fee not to exceed \$25.

36 New Sec. 2. (a) A covenant marriage shall be governed by all of the
37 provisions of article 1 of chapter 23 of the Kansas Statutes Annotated and
38 article 16 of chapter 60 of the Kansas Statutes Annotated, and
39 amendments thereto.

40 (b) As used in this act, "counselor" includes, but is not limited to, a
41 priest, minister, rabbi, clergy person or organized ministry of any
42 religious denomination or sect, including Christian Science practitioner,
43 or a licensed marriage and family therapist.

1 New Sec. 3. (a) On or after July 1, 2011, married couples may
2 execute a declaration of intent to designate their marriage as a covenant
3 marriage to be governed by the laws relative thereto.

4 (b) (1) This declaration of intent, in the form and containing the
5 contents required by subsection (c), shall be presented to the district court
6 who issued the couple's marriage license and the secretary of health and
7 environment with whom the couple's marriage license is filed. If the
8 couple were married outside of this state, a copy of the foreign marriage
9 certificate, with the declaration of intent attached thereto, shall be filed
10 with the district court who issues marriage licenses in the county in which
11 the couple is domiciled. The court shall make a notation on the marriage
12 certificate of the declaration of intent of a covenant marriage and attach a
13 copy of the declaration to the certificate.

14 (2) On or before the 15th day of each calendar month, the court shall
15 forward to the secretary of health and environment each declaration of
16 intent of a covenant marriage filed with the court during the preceding
17 calendar month pursuant to this section.

18 (c) (1) A declaration of intent to designate a marriage as a
19 covenant marriage shall contain all of the following:

20 (A) A recitation by the parties to the following effect:

21 "A COVENANT MARRIAGE

22 We do solemnly declare that marriage is a covenant between a man
23 and a woman who agree to live together as husband and wife for so long
24 as they both may live. We understand the nature, purpose and
25 responsibilities of marriage. We have read the covenant marriage act and
26 we understand that a covenant marriage is for life. If we experience
27 marital difficulties, we commit ourselves to take all reasonable efforts to
28 preserve our marriage, including marital counseling. With full knowledge
29 of what this commitment means, we do hereby declare that our marriage
30 will be bound by Kansas law on covenant marriage, and we renew our
31 promise to love, honor and care for one another as husband and wife for
32 the rest of our lives."

33 (B) (i) An affidavit by the parties that they have discussed their
34 intent to designate their marriage as a covenant marriage with a priest,
35 minister, rabbi, clergy person or organized ministry of any religious
36 denomination or sect, including a Christian Science practitioner, or a
37 licensed marriage and family therapist, which included a discussion of the
38 obligation to seek marital counseling in times of marital difficulties and
39 the exclusive grounds for legally terminating a covenant marriage by
40 divorce or by divorce after separate maintenance.

41 (ii) A notarized attestation, signed by the counselor and attached to
42 the parties' affidavit, acknowledging that the counselor provided to the
43 parties the information pamphlet developed and promulgated by the

1 office of the attorney general, pursuant to section 4, and amendments
2 thereto, which pamphlet entitled "covenant marriage act" provides a full
3 explanation of the terms and conditions of a covenant marriage.

4 (iii) The signature of both parties witnessed by a notary.

5 (2) The declaration shall contain two separate documents, the
6 recitation and the affidavit, the latter of which shall include the attestation
7 either included therein or attached thereto. The recitation shall be
8 prepared in duplicate originals, one of which shall be retained by the
9 parties and the other, together with the affidavit and attestation, shall be
10 filed as provided in subsection (b).

11 (d) The court shall collect a declaration of intent of a covenant
12 marriage fee as established by the supreme court by rule in an amount not
13 to exceed \$50.

14 New Sec. 4. On or before September 1, 2011, the office of the
15 attorney general shall develop and promulgate an informational pamphlet
16 entitled "covenant marriage act." Such pamphlet shall outline in sufficient
17 detail the consequences of entering into a covenant marriage. Such
18 pamphlet shall be made available to any counselor who provides marriage
19 counseling as provided for by this act.

20 Sec. 5. K.S.A. 23-105 is hereby amended to read as follows: 23-105.
21 All marriages, *including covenant marriages*, occurring within the state
22 shall be registered under the supervision of the secretary of health and
23 environment as provided in K.S.A. 65-102, *and amendments thereto*.

24 Sec. 6. K.S.A. 2010 Supp. 23-106 is hereby amended to read as
25 follows: 23-106. (a) The clerks of the district courts or judges thereof,
26 when applied to for a marriage license by any person who is one of the
27 parties to the proposed marriage and who is legally entitled to a marriage
28 license, shall issue a marriage license in substance as follows:

29
30 MARRIAGE LICENSE (Name of place where office located, month, day
31 and year.)

32 TO ANY PERSON authorized by law to perform the marriage ceremony,
33 Greeting:

34 You are hereby authorized to join in marriage A B of _____,
35 date of birth _____, and C D of _____, date of birth _____,
36 (and name of parent or guardian consenting), and of this license, duly
37 endorsed, you will make due return to this office immediately after
38 performing the ceremony.

39 E F, (title of person issuing the license).

40 (b) *If such parties intend the marriage to be a covenant marriage, a*
41 *declaration of intent to contract a covenant marriage, as established in*
42 *section 1, and amendments thereto, shall be attached to the marriage*
43 *license and the license shall also include the following:*

1 *"We, (name of intended wife) and (name of intended husband), do*
2 *hereby declare our intent to contract a covenant marriage and,*
3 *accordingly, have executed a declaration of intent attached hereto."*

4 ~~(b)~~(c) No clerk or judge of the district court shall issue a marriage
5 license before the third calendar day (Sunday, holidays, and days on
6 which the office of the clerk of the court is not accessible included)
7 following the date of the filing of the application therefor in such clerk's
8 or judge's office except that in cases of emergency or extraordinary
9 circumstances, a judge of the district court may upon proper showing
10 being made, permit by order of the court the issuance of such marriage
11 license without waiting three days. Each district court shall keep a record
12 of all marriages resulting from licenses issued by the court, which record
13 shall show the names of the persons who were married and the date of the
14 marriage.

15 ~~(e)~~(d) No clerk or judge shall issue a license authorizing the
16 marriage of any person:

17 (1) Under the age of 16 years, except that a judge of the district
18 court may, after due investigation, give consent and issue the license
19 authorizing the marriage of a person 15 years of age when the marriage is
20 in the best interest of the person 15 years of age; or

21 (2) who is 16 or 17 years of age without the express consent of such
22 person's father, mother or legal guardian and the consent of the judge
23 unless consent of both the mother and father and any legal guardian or all
24 then living parents and any legal guardian is given in which case the
25 consent of the judge shall not be required. If not given in person at the
26 time of the application, the consent shall be evidenced by a written
27 certificate subscribed thereto and duly attested. Where the applicants or
28 either of them are 16 or 17 years of age and their parents are dead and
29 there is no legal guardian then a judge of the district court may after due
30 investigation give consent and issue the license authorizing the marriage.

31 ~~(d)~~(e) The judge or clerk may issue a license upon the affidavit of
32 the party personally appearing and applying therefor, to the effect that the
33 parties to whom such license is to be issued are of lawful age, as required
34 by this section, and the judge or clerk is hereby authorized to administer
35 oaths for that purpose.

36 ~~(e)~~(f) Every person swearing falsely in such affidavit shall be guilty
37 of a misdemeanor and shall be punished by a fine not exceeding \$500. A
38 clerk or judge of the district court shall state in every license the birth
39 dates of the parties applying for the same, and if either or both are 16 or
40 17 years of age, the name of the father, mother, or guardian consenting to
41 such marriage.

42 ~~(f)~~(g) Every marriage license shall expire at the end of six months
43 from the date of issuance if the marriage for which the license was issued

1 does not take place within the six-month period of time.

2 Sec. 7. K.S.A. 23-109 is hereby amended to read as follows: 23-109.

3 (a) Every person who performs a marriage ceremony under the provisions
4 of *article 1 of chapter 23 of the Kansas Statutes Annotated, and*
5 *amendments thereto, this act* shall endorse the person's certificate of the
6 marriage on the license, give the duplicate copy of the license to the
7 parties to the marriage and return the license, *along with a copy of the*
8 *declaration of intent to contract a covenant marriage, if applicable,*
9 within 10 days after the marriage, to the judge or clerk of the district
10 court who issued it. The judge or clerk shall record the marriage on the
11 marriage record in the office of the judge or clerk and shall forward, not
12 later than the third day of the following month, to the secretary of health
13 and environment the license and certificate of marriage, *along with a*
14 *copy of the declaration of intent to contract a covenant marriage, if*
15 *applicable,* together with a statement of the names of the parties and the
16 name and address of the person who performed the marriage ceremony.

17 (b) If no marriage license has been issued by the judge or clerk of
18 the district court during a month, the judge or clerk shall promptly notify
19 the secretary of health and environment to that effect on a form provided
20 for that purpose.

21 Sec. 8. K.S.A. 60-1601 is hereby amended to read as follows: 60-
22 1601. (a) *(1) Except in the case of a covenant marriage,* the district court
23 shall grant a decree of divorce or separate maintenance for any of the
24 following grounds: ~~(1)~~*(A)* Incompatibility; ~~(2)~~*(B)* failure to perform a
25 material marital duty or obligation; or ~~(3)~~*(C)* incompatibility by reason of
26 mental illness or mental incapacity of one or both spouses.

27 ~~(b)~~*(2)* The ground of incompatibility by reason of mental illness or
28 mental incapacity of one or both spouses shall require a finding of either:
29 ~~(1)~~*(A)* Confinement of the spouse in an institution by reason of mental
30 illness for a period of two years, which confinement need not be
31 continuous; or ~~(2)~~*(B)* an adjudication of mental illness or mental
32 incapacity of the spouse by a court of competent jurisdiction while the
33 spouse is confined in an institution by reason of mental illness. In either
34 case, there must be a finding by at least two of three physicians,
35 appointed by the court before which the action is pending, that the
36 mentally ill or mentally incapacitated spouse has a poor prognosis for
37 recovery from the mental illness or mental incapacity, based upon general
38 knowledge available at the time. A decree granted on the ground of
39 incompatibility by reason of mental illness or mental incapacity of one or
40 both spouses shall not relieve a party from contributing to the support and
41 maintenance of the mentally ill or mentally incapacitated spouse. If both
42 spouses are confined to institutions because of mental illness or mental
43 incapacity, the guardian of either spouse may file a petition for divorce

1 and the court may grant the divorce on the ground of incompatibility by
2 reason of mental illness or mental incapacity.

3 *(b) Notwithstanding any other law to the contrary and subsequent to*
4 *the parties obtaining counseling, the district court shall grant a decree of*
5 *divorce to a spouse of a covenant marriage only upon proof of any of the*
6 *following grounds:*

7 *(1) The other spouse has committed adultery.*

8 *(2) The other spouse has been convicted of capital murder, as*
9 *defined in K.S.A. 21-3439, prior to its repeal, or section 36 of chapter*
10 *136 of the 2010 Session Laws of Kansas, and amendments thereto,*
11 *murder in the first degree, as defined in K.S.A. 21-3401, prior to its*
12 *repeal, or section 37 of chapter 136 of the 2010 Session Laws of Kansas,*
13 *and amendments thereto, murder in the second degree, as defined in*
14 *K.S.A. 21-3402, prior to its repeal, or section 38 of chapter 136 of the*
15 *2010 Session Laws of Kansas, and amendments thereto, voluntary*
16 *manslaughter, as defined in K.S.A. 21-3403, prior to its repeal, or section*
17 *39 of chapter 136 of the 2010 Session Laws of Kansas, and amendments*
18 *thereto, involuntary manslaughter, as defined in K.S.A. 21-3404 or 21-*
19 *3442, prior to their repeal, or section 40 of chapter 136 of the 2010*
20 *Session Laws of Kansas, and amendments thereto, rape, as defined in*
21 *K.S.A. 21-3502, prior to its repeal, or section 67 of chapter 136 of the*
22 *2010 Session Laws of Kansas, and amendments thereto, indecent liberties*
23 *with a child, as defined in K.S.A. 21-3503, prior to its repeal, or*
24 *subsection (a) of section 70 of chapter 136 of the 2010 Session Laws of*
25 *Kansas, and amendments thereto, aggravated indecent liberties with a*
26 *child as defined in K.S.A. 21-3504, prior to its repeal, or subsection (b)*
27 *of section 70 of chapter 136 of the 2010 Session Laws of Kansas, and*
28 *amendments thereto, criminal sodomy as defined in subsection (a)(2) and*
29 *(a)(3) of K.S.A. 21-3505, prior to its repeal, or subsection (a)(3) or (a)(4)*
30 *of section 68 of chapter 136 of the 2010 Session Laws of Kansas, and*
31 *amendments thereto, aggravated criminal sodomy, as defined in K.S.A.*
32 *21-3506, prior to its repeal, or subsection (b) of section 68 of chapter*
33 *136 of the 2010 Session Laws of Kansas, and amendments thereto,*
34 *indecent solicitation of a child, as defined in K.S.A. 21-3510, prior to its*
35 *repeal, or subsection (a) of section 72 of chapter 136 of the 2010 Session*
36 *Laws of Kansas, and amendments thereto, aggravated indecent*
37 *solicitation of a child, as defined in K.S.A. 21-3511, prior to its repeal, or*
38 *subsection (b) of section 72 of chapter 136 of the 2010 Session Laws of*
39 *Kansas, and amendments thereto, sexual exploitation of a child as*
40 *defined in K.S.A. 21-3516, prior to its repeal, or section 74 of chapter*
41 *136 of the 2010 Session Laws of Kansas, and amendments thereto,*
42 *aggravated sexual battery as defined in K.S.A. 21-3518, prior to its*
43 *repeal, or subsection (b) of section 69 of chapter 136 of the 2010 Session*

1 *Laws of Kansas, and amendments thereto, or any conviction for a felony*
2 *offense that is comparable to a crime listed above, or any federal or*
3 *other state conviction for a felony offense that under the laws of this state*
4 *would be an offense as listed above.*

5 (3) *The other spouse has abandoned the matrimonial domicile for a*
6 *period of one year and constantly refuses to return.*

7 (4) *The other spouse has physically or sexually abused the spouse*
8 *seeking the divorce or a child of one of the spouses.*

9 (5) *The spouses have been living separate and apart continuously*
10 *without reconciliation for a period of two years.*

11 (6) (A) *The spouses have been living separate and apart*
12 *continuously without reconciliation for a period of one year from the date*
13 *the judgment of separate maintenance was signed.*

14 (B) *If there is a minor child or children of the marriage, the spouses*
15 *have been living separate and apart continuously without reconciliation*
16 *for a period of one year and six months from the date the judgment of*
17 *separate maintenance was signed. However, if abuse of a child of the*
18 *marriage or a child of one of the spouses is the basis for which the*
19 *judgment of separate maintenance was obtained, then a judgment of*
20 *divorce may be obtained if the spouses have been living separate and*
21 *apart continuously without reconciliation for a period of one year from*
22 *the date the judgment of separate maintenance was signed.*

23 (C) *Notwithstanding any other law to the contrary and subsequent*
24 *to the parties obtaining counseling, the district court shall grant a decree*
25 *of separate maintenance to a spouse of a covenant marriage upon proof*
26 *of any of the following grounds:*

27 (1) *The other spouse has committed adultery.*

28 (2) *The other spouse has been convicted of a crime specified in*
29 *subsection (b)(2).*

30 (3) *The other spouse has abandoned the matrimonial domicile for a*
31 *period of one year and constantly refuses to return.*

32 (4) *The other spouse has physically or sexually abused the spouse*
33 *seeking the divorce or a child of one of the spouses.*

34 (5) *The spouses have been living separate and apart continuously*
35 *without reconciliation for a period of two years.*

36 (6) *On account of habitual intemperance of the other spouse, or*
37 *excesses, cruel treatment, or outrages of the other spouse, if habitual*
38 *intemperance, or such ill-treatment is of such a nature as to render their*
39 *living together insupportable.*

40 Sec. 9. K.S.A. 60-1627 is hereby amended to read as follows: 60-
41 1627. (a) An action for interspousal tort shall not be consolidated with an
42 action under K.S.A. 60-1601, *et seq.*, and amendments thereto, unless the
43 parties agree to consolidation and consolidation is approved by the court.

1 (b) A decree of divorce or separate maintenance granted under
2 subsections (a)(1) ~~or (2)(A)~~ or (a)(1)(C) of K.S.A. 60-1601, and
3 amendments thereto, shall not preclude an action for interspousal tort.

4 (c) A decree of divorce or separate maintenance granted under
5 subsection (a)(2)(B) of K.S.A. 60-1601, and amendments thereto, shall
6 preclude an action for interspousal tort based upon the same factual
7 allegations. An action for interspousal tort which has been finally
8 determined shall preclude an action under subsection (a)(2)(B) of K.S.A.
9 60-1601, and amendments thereto, based upon the same factual
10 allegations.

11 Sec. 10. K.S.A. 23-105, 23-109, 60-1601 and 60-1627 and K.S.A.
12 2010 Supp. 23-106 are hereby repealed.

13 Sec. 11. This act shall take effect and be in force from and after its
14 publication in the statute book.

15