
SENATE BILL 6135

State of Washington 55th Legislature 1998 Regular Session

By Senators Oke, Swecker, Hargrove, Rossi and Anderson

Read first time 01/12/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to covenant marriages; amending RCW 26.04.080,
2 26.04.090, 26.04.160, 26.04.180, and 26.09.030; adding new sections to
3 chapter 26.04 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 26.04.080 and Code 1881 s 2384 are each amended to
6 read as follows:

7 The person solemnizing a marriage shall give to each of the parties
8 thereto, if required, a certificate thereof, specifying therein the
9 names and residence of the parties, and of at least two witnesses
10 present, the time and place of such marriage, and the date of the
11 license thereof, and by whom issued. If applicable, the certificate
12 shall include a designation that the parties entered into a covenant
13 marriage signed by the parties to the marriage.

14 **Sec. 2.** RCW 26.04.090 and 1967 c 26 s 4 are each amended to read
15 as follows:

16 A person solemnizing a marriage shall, within thirty days
17 thereafter, make and deliver to the county auditor of the county
18 wherein the license was issued a certificate for the files of the

1 county auditor, and a certificate for the files of the state registrar
2 of vital statistics. The certificate for the files of the county
3 auditor shall be substantially as follows:

4 STATE OF WASHINGTON }
5 }
6 COUNTY OF |

7 This is to certify that the undersigned, a, by
8 authority of a license bearing date the day of
9 A.D., 19. . ., and issued by the County auditor of the county of
10, did, on the day of A.D., 19. . ., at
11 in this county and state, join in lawful wedlock A.B. of
12 the county of, state of and C.D. of the county
13 of, state of, with their mutual assent, in the
14 presence of F H and E G, witnesses.

15 In Testimony Whereof, witness the signatures of the parties to said
16 ceremony, the witnesses and myself, this day of,
17 A.D., 19. . .

18 (~~The certificate for the files of the state registrar of vital~~
19 ~~statistics shall be in accordance with RCW 70.58.200~~) A designation
20 shall appear on the face of the certificate, if applicable, that the
21 parties entered into a covenant marriage. The certificate forms for
22 the files of the county auditor and for the files of the state
23 registrar of vital statistics shall be provided by the state registrar
24 of vital statistics.

25 **Sec. 3.** RCW 26.04.160 and 1997 c 58 s 909 are each amended to read
26 as follows:

27 (1) Application for a marriage license must be made and filed with
28 the appropriate county auditor upon blanks to be provided by the county
29 auditor for that purpose, which application shall be under the oath of
30 each of the applicants, and each application shall state the name,
31 address at the time of execution of application, age, social security
32 number, birthplace, whether single, widowed or divorced, and whether
33 under control of a guardian, residence during the past six months:
34 PROVIDED, That each county may require such other and further
35 information on said application as it shall deem necessary. In cases
36 where the parties intend to enter into a covenant marriage, the
37 application for a marriage license must also include the following:

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

4 (2) The county legislative authority may impose an additional fee
5 up to fifteen dollars on a marriage license for the purpose of funding
6 family services such as family support centers.

7 **Sec. 4.** RCW 26.04.180 and 1985 c 82 s 4 are each amended to read
8 as follows:

9 The county auditor may issue the marriage license at the time of
10 application, but shall issue such license no later than the third full
11 day following the date of the application. The county auditor shall
12 indicate on each marriage license whether the parties intend to enter
13 into a covenant marriage. A marriage license issued pursuant to the
14 provisions of this chapter may not be used until three days after the
15 date of application and shall become void if the marriage is not
16 solemnized within sixty days of the date of the issuance of the
17 license, and the county auditor shall notify the applicant in writing
18 of this requirement at the time of issuance of the license.

19 **Sec. 5.** RCW 26.09.030 and 1996 c 23 s 1 are each amended to read
20 as follows:

21 Except in the case of a covenant marriage, when a party who ((+1))
22 is a resident of this state, or ((+2)) is a member of the armed forces
23 and is stationed in this state, or ((+3)) is married to a party who is
24 a resident of this state or who is a member of the armed forces and is
25 stationed in this state, petitions for a dissolution of marriage, and
26 alleges that the marriage is irretrievably broken and when ninety days
27 have elapsed since the petition was filed and from the date when
28 service of summons was made upon the respondent or the first
29 publication of summons was made, the court shall proceed as follows:

30 (1) If the other party joins in the petition or does not deny that
31 the marriage is irretrievably broken, the court shall enter a decree of
32 dissolution.

33 (2) If the other party alleges that the petitioner was induced to
34 file the petition by fraud, or coercion, the court shall make a finding
35 as to that allegation and, if it so finds shall dismiss the petition.

36 (3) If the other party denies that the marriage is irretrievably
37 broken the court shall consider all relevant factors, including the

1 circumstances that gave rise to the filing of the petition and the
2 prospects for reconciliation and shall:

3 (a) Make a finding that the marriage is irretrievably broken and
4 enter a decree of dissolution of the marriage; or

5 (b) At the request of either party or on its own motion, transfer
6 the cause to the family court, refer them to another counseling service
7 of their choice, and request a report back from the counseling service
8 within sixty days, or continue the matter for not more than sixty days
9 for hearing. If the cause is returned from the family court or at the
10 adjourned hearing, the court shall:

11 (i) Find that the parties have agreed to reconciliation and dismiss
12 the petition; or

13 (ii) Find that the parties have not been reconciled, and that
14 either party continues to allege that the marriage is irretrievably
15 broken. When such facts are found, the court shall enter a decree of
16 dissolution of the marriage.

17 (4) If the petitioner requests the court to decree legal separation
18 in lieu of dissolution, the court shall enter the decree in that form
19 unless the other party objects and petitions for a decree of
20 dissolution or declaration of invalidity.

21 NEW SECTION. **Sec. 6.** (1) A covenant marriage is a marriage
22 entered into by one man and one woman who understand and agree that the
23 marriage between them is a lifelong relationship. Parties to a
24 covenant marriage have received counseling emphasizing the nature and
25 purposes of marriage and the responsibilities thereto. Only when there
26 has been a complete and total breach of the marital covenant commitment
27 may the nonbreaching party seek a declaration that the marriage is no
28 longer legally recognized.

29 (2) A man and woman may contract a covenant marriage by declaring
30 their intent to do so on their application for a marriage license, as
31 provided in RCW 26.04.160, and executing a declaration of intent to
32 contract a covenant marriage, as provided in section 7 of this act.
33 The application for a marriage license and the declaration of intent
34 shall be filed with the appropriate county auditor.

35 NEW SECTION. **Sec. 7.** (1) A declaration of intent to contract a
36 covenant marriage shall contain the following:

37 (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 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, purposes, 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 Washington law on covenant marriages and we promise to love, honor, and care for one another as husband and wife for the rest of our lives.";

(b)(i) An affidavit by the parties that they have received premarital counseling from a clergy member of any religious sect or a marriage counselor, which 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 dissolution or by dissolution after a legal separation;

(ii) A notarized attestation, 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 marriage and the grounds for termination thereof and an acknowledging that the counselor provided to the parties an informational pamphlet developed by the office of the attorney general, which pamphlet provides a full explanation of the terms and conditions of a covenant marriage;

(c)(i) The signature of both parties witnessed by a notary; and

(ii) If one or both of the parties are minors, the written consent or authorization of a superior court judge as required by RCW 26.04.010.

(2) The declaration shall contain two separate documents, the recitation and the affidavit. The affidavit must either include the attestation or the attestation must be attached to it. The recitation shall be prepared in duplicate originals, one of which shall be

1 retained by the parties and the other, together with the affidavit and
2 attestation, shall be filed with the appropriate county auditor.

3 NEW SECTION. **Sec. 8.** (1) After the effective date of this
4 section, married couples may execute a declaration of intent to
5 designate their marriage as a covenant marriage.

6 (2)(a) The declaration of intent to designate a marriage a covenant
7 marriage must be in the form and fulfill the requirements of subsection
8 (3) of this section. The declaration of intent shall be presented to
9 the county auditor who issued the couple's marriage license and with
10 whom the couple's marriage certificate is filed. If the couple was not
11 married in Washington, a copy of the foreign marriage certificate, with
12 the declaration of intent attached thereto, shall be filed with the
13 county auditor in the county in which the couple is domiciled. The
14 county auditor shall make a notation on the marriage certificate of the
15 declaration of intent of a covenant marriage and attach a copy of the
16 declaration to the certificate.

17 (b) On or before the fifteenth day of each calendar month, the
18 county auditor shall forward to the state registrar of vital statistics
19 each declaration of intent of a covenant marriage filed with him or her
20 during the preceding calendar month in accordance with this section.

21 (3)(a) A declaration of intent to designate a marriage as a
22 covenant marriage shall contain all of the following:

23 (i) 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 understand the nature, purpose, and
28 responsibilities of marriage. We understand that a covenant marriage
29 is for life. If we experience marital difficulties, we commit
30 ourselves to take all reasonable efforts to preserve our marriage,
31 including marital counseling.

32 With full knowledge of what this commitment means, we do hereby
33 declare that our marriage will be bound by Washington law on covenant
34 marriage, and we renew our promise to love, honor, and care for one
35 another as husband and wife for the rest of our lives.";

36 (ii)(A) An affidavit by the parties that they have discussed their
37 intent to designate their marriage as a covenant marriage with a clergy
38 member of any religious sect or a marriage counselor, which included a

1 discussion of the obligation to seek marital counseling in times of
2 marital difficulties and the exclusive grounds for legally terminating
3 a covenant marriage by dissolution or by dissolution after a legal
4 separation;

5 (B) A notarized attestation, signed by the counselor and attached
6 to the parties' affidavit, acknowledging that the counselor provided to
7 the parties an informational pamphlet developed by the office of the
8 attorney general, which pamphlet provides a full explanation of the
9 terms and conditions of a covenant marriage; and

10 (C) The signature of both parties witnessed by a notary.

11 (b) The declaration shall contain two separate documents, the
12 recitation and the affidavit. The affidavit must either include the
13 attestation or the attestation must be attached to it. The recitation
14 shall be prepared in duplicate originals, one of which shall be
15 retained by the parties and the other, together with the affidavit and
16 attestation, shall be filed as provided in subsection (2) of this
17 section.

18 NEW SECTION. **Sec. 9.** (1) Subsequent to the parties obtaining
19 counseling, a spouse to a covenant marriage may obtain a decree of
20 dissolution of marriage only upon proof of any of the following:

21 (a) The other spouse has committed adultery;

22 (b) The other spouse has committed a felony and has been sentenced
23 to death or a life sentence;

24 (c) The other spouse has abandoned the matrimonial domicile for a
25 period of one year and constantly refuses to return;

26 (d) The other spouse has physically or sexually abused the spouse
27 seeking the dissolution or a child of one of the spouses;

28 (e) The spouses have been living separate and apart continuously
29 without reconciliation for a period of two years; or

30 (f)(i) The spouses have been living separate and apart continuously
31 without reconciliation for a period of one year from the date a decree
32 of legal separation was signed;

33 (ii) If there is a minor child or children of the marriage, the
34 spouses have been living separate and apart continuously without
35 reconciliation for a period of one year and six months from the date a
36 decree of legal separation was signed; however, if abuse of a child of
37 the marriage or a child of one of the spouses is the basis for which
38 the decree of legal separation was obtained, then a decree of

1 dissolution of marriage may be obtained, if the spouses have been
2 living separate and apart continuously without reconciliation for a
3 period of one year from the date the decree of legal separation was
4 signed.

5 (2) Subsequent to the parties obtaining counseling, a spouse to a
6 covenant marriage may obtain a decree of legal separation only upon
7 proof of any of the following:

8 (a) The other spouse has committed adultery;

9 (b) The other spouse has committed a felony and has been sentenced
10 to death or a life sentence;

11 (c) The other spouse has abandoned the matrimonial domicile for a
12 period of one year and constantly refuses to return;

13 (d) The other spouse has physically or sexually abused the spouse
14 seeking the dissolution or a child of one of the spouses;

15 (e) The spouses have been living separate and apart continuously
16 without reconciliation for a period of two years; or

17 (f) On account of habitual intemperance of the other spouse, or
18 excesses, cruel treatment, or outrages of the other spouse, if such
19 habitual intemperance, or such ill treatment is of such a nature as to
20 render their living together insupportable.

21 NEW SECTION. Sec. 10. (1) Unless judicially separated, spouses in
22 a covenant marriage may not sue each other except for causes of action
23 pertaining to restitution of separate property; for legal separation in
24 covenant marriages, for dissolution, or for declaration of invalidity
25 of the marriage; and for causes of action pertaining to spousal
26 maintenance or the support or custody of a child while the spouses are
27 living separate and apart, although not judicially separated.

28 (2)(a) Any court that is competent to preside over dissolution
29 proceedings has jurisdiction of an action for legal separation in a
30 covenant marriage, if:

31 (i) One or both of the spouses are domiciled in this state and the
32 ground for dissolution was committed or occurred in this state or while
33 the matrimonial domicile was in this state;

34 (ii) The ground for dissolution occurred in another state while
35 either or both of the spouses were domiciled in another state if the
36 person petitioning for the legal separation was domiciled in this state
37 before the time the cause of action accrued and is domiciled in this
38 state at the time the action is filed.

1 (b) An action for legal separation in a covenant marriage shall be
2 brought in a county where either party is domiciled, or in the county
3 of the last matrimonial domicile.

4 (c) The venue provided in this section may not be waived, and a
5 decree of legal separation rendered by a court of improper venue is
6 void.

7 (3) Judgments on the pleadings and summary judgments may not be
8 granted in any action for legal separation in a covenant marriage.

9 (4) In a proceeding for a legal separation in a covenant marriage,
10 a court may award a spouse all incidental relief afforded in a
11 proceeding for dissolution of marriage, including but not limited to
12 spousal maintenance, child support, parenting plans, injunctive relief,
13 and possession and use of a family residence or community property.

14 NEW SECTION. **Sec. 11.** (1)(a) Legal separation in a covenant
15 marriage does not dissolve the bond of matrimony, since the separated
16 husband and wife are not at liberty to marry again; but it puts an end
17 to their conjugal cohabitation and to the common concerns that existed
18 between them.

19 (b) Spouses who are legally separated in a covenant marriage retain
20 that status until either reconciliation or dissolution of marriage.

21 (2)(a) The decree of legal separation carries with it the
22 separation of goods and effects and is retroactive to the date on which
23 the original petition was filed in the action in which the decree is
24 rendered, but such retroactive effect is without prejudice (i) to the
25 liability of the community for the attorneys' fees and costs incurred
26 by the spouses in the action in which the decree is rendered or (ii) to
27 rights validly acquired in the interim between commencement of the
28 action and recording of the decree.

29 (b) Upon reconciliation of the spouses, the community shall be
30 reestablished between the spouses, as of the date of filing of the
31 original petition in the action in which the decree was rendered,
32 unless the spouses execute before the reconciliation a matrimonial
33 agreement that the community shall not be reestablished upon
34 reconciliation. This matrimonial agreement does not require court
35 approval.

36 (c) Reestablishment of the community under this section is
37 effective toward third persons only upon recording notice of the
38 reestablishment. The reestablishment of the community does not

1 prejudice the rights of third persons validly acquired before recording
2 notice of the reestablishment nor does it affect a prior community
3 property partition between the spouses.

4 NEW SECTION. **Sec. 12.** By August 15, 1998, the office of the
5 attorney general shall prepare an informational pamphlet that outlines
6 in sufficient detail the consequences of entering into a covenant
7 marriage. The informational pamphlet shall be made available to any
8 counselor who provides marriage counseling as provided for in section
9 7 or 8 of this act.

10 NEW SECTION. **Sec. 13.** Sections 6 through 11 of this act are each
11 added to chapter 26.04 RCW.

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