

Regular Session, 1997

HOUSE BILL NO. 756

BY REPRESENTATIVES PERKINS, DONELON, BRUN, DANIEL, DIEZ, DIMOS, DOWNER, FARVE, FAUCHEUX, FLAVIN, FONTENOT, FRUGE, GAUTREAUX, JENKINS, JETSON, JOHNS, KENNARD, LANCASTER, MCCALLUM, MURRAY, ROMERO, ROUSSELLE, THORNHILL, VITTER, WALSWORTH, WESTON, WIGGINS, WILLARD-LEWIS, WINDHORST, AND WRIGHT AND SENATORS DEAN, GREENE, HANKEL, AND SHORT

AN ACT

To amend and reenact Civil Code Articles 102 and 103 and R.S. 9:234 and 245(A)(1) and to enact R.S. 9:224(C) and 225(A)(3), Part VII of Chapter 1 of Code Title IV of Code Book I of Title 9 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:272 through 275, and R.S. 9:307, 308, and 309, all relative to covenant marriages; to provide for a declaration on the application for a marriage license; to provide prerequisites to entering into a covenant marriage, including counseling; to authorize the entering into a covenant marriage by couples already married; to provide for indication thereof on the marriage certificate; to provide the exclusive means to terminate a covenant marriage; to provide with respect to jurisdiction, venue, and incidental relief; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Articles 102 and 103 are hereby amended and reenacted to read as follows:

Art. 102. Judgment of divorce; living apart one hundred eighty days prior to rule

Except in the case of a covenant marriage, a divorce shall be granted upon motion of a spouse when either spouse has filed a petition for divorce and upon proof that one hundred eighty days have elapsed from the service of the petition, or from the execution of written waiver of the service, and that the spouses have lived separate and apart continuously for at least one hundred eighty days prior to the filing of the rule to show cause.

The motion shall be a rule to show cause filed after all such delays have elapsed.

Art. 103. Judgment of divorce; other grounds

Except in the case of a covenant marriage, a divorce shall be granted on the petition of a spouse upon proof that:

(1) The spouses have been living separate and apart continuously for a period of six months or more on the date the petition is filed; or

(2) The other spouse has committed adultery; or

(3) The other spouse has committed a felony and has been sentenced to death or imprisonment at hard labor.

Section 2. R.S. 9:234 and 245(A)(1) are hereby amended and reenacted and R.S. 9:224(C) and 225(A)(3) are hereby enacted to read as follows:

§224. Same; information required

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C. In cases wherein the parties intend to contract a covenant marriage, the application for a marriage license must also include the following:

"We, [name of intended husband] and [name of intended wife], do hereby declare our intent to contract a Covenant Marriage and, accordingly, have executed a declaration of intent attached hereto."

§225. Same; attachments

A. An application for a marriage license shall be accompanied by:

\* \* \*

(3) If applicable, the declaration of intent for a covenant marriage, as provided in Part VII of this Chapter.

\* \* \*

§234. Time and date; indication of covenant marriage

The official who issues the marriage license shall show on the face of it the exact time and date of issuance.

The official shall also indicate on the marriage license whether the parties intend to enter into a covenant marriage.

\* \* \*

§245. Marriage certificate

A.(1) The marriage certificate is the record prepared for every marriage on a form approved by the state registrar of vital records. It shall contain the information prescribed. On the face of the certificate shall appear the certification to the fact of marriage including, if applicable, a designation that the parties entered into a covenant marriage, signed by the parties to the marriage and by the witnesses, and the signature and title of the officiant.

\* \* \*

Section 3. Part VII of Chapter 1 of Code Title IV of Code Book I of Title 9 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:272 through 275, is hereby enacted to read as follows:

## PART VII. COVENANT MARRIAGE

## §272. Covenant marriage; intent; conditions to create

A. A covenant marriage is a marriage entered into by one male and one female who understand and agree that the marriage between them is a lifelong relationship. Parties to a covenant marriage have received counseling emphasizing the nature and purposes of marriage and the responsibilities thereto. Only when there has been a complete and total breach of the marital covenant commitment may the non-breaching party seek a declaration that the marriage is no longer legally recognized.

B. A man and woman may contract a covenant marriage by declaring their intent to do so on their application for a marriage license, as provided in R.S. 9:224(C), and executing a declaration of intent to contract a covenant marriage, as provided in R.S. 9:273. The application for a marriage license and the declaration of intent shall be filed with the official who issues the marriage license.

## §273. Covenant marriage; contents of declaration of intent

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

(1) 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 have read the Covenant Marriage Act, and 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 Louisiana 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."

(2)(a) An affidavit by the parties that they have received premarital counseling from a priest, minister, rabbi, clerk of the Religious Society of Friends, any clergyman 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 divorce or by divorce after a judgment of separation from bed and board.

(b) 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 the informational pamphlet developed and promulgated by the office of the attorney general, which pamphlet entitled the Covenant Marriage Act provides a full explanation of the terms and conditions of a covenant marriage.

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

(b) If one or both of the parties are minors, the written consent or authorization of those persons required under the Children's Code to consent to or authorize the marriage of minors.

B. The declaration shall contain two separate documents, the recitation and the affidavit, the latter of which shall include the attestation either included therein or attached thereto. The recitation shall be prepared in duplicate originals, one of which shall be retained by the parties and the other, together with the affidavit and attestation, shall be filed as provided in R.S. 9:272(B).

§274. Covenant marriage; other applicable rules

A covenant marriage shall be governed by all of the provisions of Chapters 1 through 4 of Title IV of Book I of the Louisiana Civil Code and the provisions of Code Title IV of Code Book I of Title 9 of the Louisiana Revised Statutes of 1950.

§275. Covenant marriage; applicability to already married couples

A. On or after August 15, 1997, married couples may execute a declaration of intent to designate their marriage as a covenant marriage to be governed by the laws relative thereto.

B.(1) This declaration of intent in the form and containing the contents required by Subsection C of this Section must be presented to the officer who 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 officer who issues marriage licenses in the parish in which the couple is domiciled. The officer 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.

(2) On or before the fifteenth day of each calendar month, the officer shall forward to the state registrar of vital records each declaration of intent of a covenant marriage filed with him during the preceding calendar month pursuant to this Section.

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 a man and a woman who agree to live together as husband and wife for so long as they both may live. We understand the nature, purpose, and responsibilities of marriage. We have read the Covenant Marriage Act, and 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 Louisiana law on Covenant Marriage, and we renew our 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 discussed their intent to designate their marriage as a covenant marriage with a priest, minister, rabbi, clerk of the Religious Society of Friends, any clergyman of any religious sect, or a marriage counselor, which included a discussion of the obligation to seek marital counseling in times of marital difficulties and the exclusive grounds for legally terminating a covenant marriage by divorce or by divorce after a judgment of separation from bed and board.

(ii) A notarized attestation, signed by the counselor and attached to the parties' affidavit, acknowledging that the counselor provided to the parties the information pamphlet developed and promulgated by the office of the attorney general, which pamphlet entitled the Covenant Marriage Act provides a full explanation of the terms and conditions of a covenant marriage.

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

(2) The declaration shall contain two separate documents, the recitation and the affidavit, the latter of which shall include the attestation either included therein or attached thereto. The recitation shall be prepared in duplicate originals, one of which shall be retained by the parties and the other, together with the affidavit and attestation, shall be filed as provided in Subsection B of this Section.

Section 4. R.S. 9:307, 308, and 309 are hereby enacted to read as follows:

§307. Divorce or separation from bed and board in a covenant marriage; exclusive grounds

A. Notwithstanding any other law to the contrary and subsequent to the parties obtaining counseling, a spouse to a covenant marriage may obtain a judgment of divorce only upon proof of any of the following:

(1) The other spouse has committed adultery.

(2) The other spouse has committed a felony and has been sentenced to death or imprisonment at hard labor.

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

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

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

(6)(a) The spouses have been living separate and apart continuously without reconciliation for a period of one year from the date the judgment of separation from bed and board was signed.

(b) If there is a minor child or children of the marriage, the spouses have been living separate and apart continuously without reconciliation for a period of one year and six months from the date the judgment of separation from bed and board was signed; however, if abuse of a child of the marriage or a child of one of the spouses is the basis for which the judgment of separation from bed and board was obtained, then a judgment of divorce may be obtained if the spouses have been living separate and apart continuously without reconciliation for a period of one year from the date the judgment of separation from bed and board was signed.

B. Notwithstanding any other law to the contrary and subsequent to the parties obtaining counseling, a spouse to a covenant marriage may obtain a judgment of separation from bed and board only upon proof of any of the following:

(1) The other spouse has committed adultery.

(2) The other spouse has committed a felony and has been sentenced to death or imprisonment at hard labor.

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

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

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

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

§308. Separation from bed and board in covenant marriage; suit against spouse; jurisdiction, procedure, and incidental relief

A. Unless judicially separated, spouses in a covenant marriage may not sue each other except for causes of action pertaining to contracts or arising out of the provisions of Book III, Title VI of the Civil Code; for restitution of separate property; for separation from bed and board in covenant marriages, for divorce, or for declaration of nullity of the marriage; and for causes of action pertaining to spousal support or the support or custody of a child while the spouses are living separate and apart, although not judicially separated.

B.(1) Any court which is competent to preside over divorce proceedings, including the family court for the parish of East Baton Rouge, has jurisdiction of an action for separation from bed and board in a covenant marriage, if:

(a) One or both of the spouses are domiciled in this state and the ground therefor was committed or occurred in this state or while the matrimonial domicile was in this state.

(b) The ground therefor occurred elsewhere while either or both of the spouses were domiciled elsewhere, provided the person obtaining the separation from bed and board was domiciled in this state prior to the time the cause of action accrued and is domiciled in this state at the time the action is filed.

(2) An action for a separation from bed and board in a covenant marriage shall be brought in a parish where either party is domiciled, or in the parish of the last matrimonial domicile.

(3) The venue provided herein may not be waived, and a judgment of separation rendered by a court of improper venue is an absolute nullity.

C. Judgments on the pleadings and summary judgments shall not be granted in any action for separation from bed and board in a covenant marriage.

D. In a proceeding for a separation from bed and board in a covenant marriage or thereafter, a court may award a spouse all incidental relief afforded in a proceeding for divorce, including but not limited to spousal support, claims for contributions to education, child custody, visitation rights, child support, injunctive relief and possession and use of a family residence or community movables or immovables.

§309. Separation from bed and board in a covenant marriage; effects

A.(1) Separation from bed and board in a covenant marriage does not dissolve the bond of matrimony, since the separated husband and wife are not at liberty to marry again; but it puts an end to their conjugal cohabitation, and to the common concerns, which existed between them.

(2) Spouses who are judicially separated from bed and board in a covenant marriage shall retain that status until either reconciliation or divorce.

B.(1) The judgment of separation from bed and board carries with it the separation of goods and effects and is retroactive to the date on which the original petition was filed in the action in which the judgment is rendered, but such retroactive effect shall be without

prejudice (a) to the liability of the community for the attorney fees and costs incurred by the spouses in the action in which the judgment is rendered, or (b) to rights validly acquired in the interim between commencement of the action and recordation of the judgment.

(2) Upon reconciliation of the spouses, the community shall be reestablished between the spouses, as of the date of filing of the original petition in the action in which the judgment was rendered, unless the spouses execute prior to the reconciliation a matrimonial agreement that the community shall not be reestablished upon reconciliation. This matrimonial agreement shall not require court approval.

(3) Reestablishment of the community under the provisions of this Section shall be effective toward third persons only upon filing notice of the reestablishment for registry in accordance with the provisions of Civil Code Article 2332. The reestablishment of the community shall not prejudice the rights of third persons validly acquired prior to filing notice of the reestablishment nor shall it affect a prior community property partition between the spouses.

Section 5. The office of attorney general, Department of Justice shall, prior to August 15, 1997, promulgate an informational pamphlet, entitled "Covenant Marriage Act", which shall outline in sufficient detail the consequences of entering into a covenant marriage. The informational pamphlet shall be made available to any counselor who provides marriage counseling as provided for by this Act.

Section 6. The provisions of Section 5 of this Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided in Article III, Section 18 of the Constitution of

Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_