

FIRST REGULAR SESSION

HOUSE BILL NO. 154

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ROARK, KELLY (144), RECTOR, CROWELL, STEVENSON, EMERY, PHILLIPS, HUNTER, JETTON (Co-sponsors), REINHART, DEMPSEY, BEARDEN, ERVIN, MYERS, COOPER (155), MOORE, HOLAND, QUINN, WRIGHT AND CRAWFORD.

Read 1st time January 9, 2003, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

0540L.011

AN ACT

To repeal sections 451.040, 451.080, 451.110, 452.305, 452.310, and 452.320, RSMo, and to enact in lieu thereof thirteen new sections relating to covenant marriage.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 451.040, 451.080, 451.110, 452.305, 452.310 and 452.320, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 451.040, 451.080, 451.110, 451.500, 451.503, 451.506, 451.509, 451.512, 451.515, 451.518, 452.305, 452.310 and 452.320, to read as follows:

451.040. 1. Previous to any marriage in this state, a license for that purpose shall be obtained from the officer authorized to issue the same, and no marriage contracted shall be recognized as valid unless the license has been previously obtained, and unless the marriage is solemnized by a person authorized by law to solemnize marriages.

2. Before applicants for a marriage license shall receive a license, and before the recorder of deeds shall be authorized to issue a license, the parties to the marriage shall present an application for the license, duly executed and signed in the presence of the recorder of deeds or their deputy. **In the case of a covenant marriage, the parties shall indicate their intent to enter into a covenant marriage on the application.** Each application for a license shall contain the Social Security number of the applicant, provided that the applicant in fact has a Social Security number, or the applicant shall sign a statement provided by the recorder that the applicant does not have a Social Security number. The Social Security number contained in an application for a marriage license shall be exempt from examination and copying pursuant to section 610.024, RSMo. Upon the expiration of three days after the receipt of the application the recorder of deeds shall issue the license, unless one of the parties withdraws the application.

16 **The license shall, if applicable, designate that the parties entered into a covenant marriage.**

17 The license shall be void after thirty days from the date of issuance.

18 3. Provided, however, that such license may be issued on order of a circuit or associate
19 circuit judge of the county in which the license is applied for, without waiting three days, such
20 license being issued only for good cause shown and by reason of such unusual conditions as to
21 make such marriage advisable.

22 4. Any person violating the provisions of this section shall be deemed guilty of a
23 misdemeanor.

24 5. Common-law marriages shall be null and void.

25 6. Provided, however, that no marriage shall be deemed or adjudged invalid, nor shall
26 the validity be in any way affected for want of authority in any person so solemnizing the
27 marriage pursuant to section 451.100, if consummated with the full belief on the part of the
28 persons, so married, or either of them, that they were lawfully joined in marriage.

451.080. 1. The recorders of the several counties of this state, and the recorder of the
2 city of St. Louis, shall, when applied to by any person legally entitled to a marriage license, issue
3 the same which may be in the following form:

4 State of Missouri)
5) ss.
6)
7 County of)

8 This license authorizes any judge, associate circuit judge, licensed or ordained preacher
9 of the gospel, or other person authorized under the laws of this state, to solemnize marriage
10 between A B of, county of and state of, who is the age of eighteen years, and
11 C D of, in the county of, state of, who is the age of eighteen years.

12 2. If the man is under eighteen or the woman under eighteen, add the following:

13 The custodial parent or guardian, as the case may be, of the said A B or C D (A B or C
14 D, as the case may require), has given his or her assent to the said marriage.

15 Witness my hand as recorder, with the seal of office hereto affixed, at my office, in,
16 the day of, 20.., recorder.

17 3. On which such license the person solemnizing the marriage shall, within fifteen days
18 after the issuing thereof, make as near as may be the following return, and return such license to
19 the officer issuing the same:

20 State of Missouri)
21) ss.
22)
23 County of)

24 This is to certify that the undersigned did at, in said county, on the day of
25 A.D. 20.., unite in marriage the above-named persons.

26 **4. In the case of a covenant marriage, the person solemnizing the marriage shall,**
27 **within fifteen days after the issuing thereof, make as near as may be the following return,**
28 **and return such license to the officer issuing the same:**

29 State of Missouri)
30) ss.
31)
32 County of)

33 This is to certify that the undersigned did at, in said county, on the day
34 of A.D. 20.., unite in covenant marriage the above-named persons.

451.110. Every person solemnizing marriages under this chapter shall issue and deliver
2 to the parties to such marriage a certificate thereof, which shall be furnished in blank by the
3 officer who issues such license, setting forth the names and residence of the parties and the date
4 of such marriage, and the county from which the license was issued and the date of same, **and,**
5 **if applicable, a designation that the parties entered into a covenant marriage;** and such
6 certificates shall be prima facie evidence of the facts therein stated in all courts of this state.

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

7 **2. A man and woman may contract a covenant marriage by declaring their intent**
8 **to do so on their application for a marriage license, as provided in section 451.040, and**
9 **executing a declaration of intent to contract a covenant marriage, as provided in section**
10 **451.503. The application for a marriage license and the declaration of intent shall be filed**
11 **with the official who issues the marriage license.**

451.503. 1. A declaration of intent to contract a covenant marriage shall contain
2 **the following:**

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

4 **"A COVENANT MARRIAGE**

5 **We do solemnly declare that marriage is a covenant between a man and a woman**
6 **who agree to live together as husband and wife for so long as they both may live. We have**
7 **chosen each other carefully and disclosed to one another everything which could adversely**
8 **affect the decision to enter into this marriage. We have received premarital counseling on**

9 the nature, purposes and responsibilities of marriage. We have read the Covenant of
10 Marriage Act, and we understand that a covenant marriage is for life. If we experience
11 marital difficulties, we commit ourselves to take all reasonable efforts to preserve our
12 marriage, including marital counseling.

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

16 (2) (a) An affidavit by the parties that they have received premarital counseling
17 from a priest, minister, rabbi, or any clergy of any religious sect, or a marriage counselor.
18 Such counseling shall include a discussion of the seriousness of covenant marriage,
19 communication of the fact that a covenant marriage is a commitment for life, a discussion
20 of the obligation to seek marital counseling in times of marital difficulties, and a discussion
21 of the exclusive grounds for legally terminating a covenant marriage by dissolution or by
22 dissolution after a judgment of separation; and

23 (b) A notarized attestation, signed by the counselor and attached to or included in
24 the parties' affidavit, confirming that the parties were counseled as to the nature and
25 purpose of the marriage and the grounds for termination thereof and an acknowledgment
26 that the counselor provided to the parties the informational pamphlet developed and
27 promulgated by the office of the attorney general. Such pamphlet shall be entitled the
28 "Covenant of Marriage Act" and shall provide a full explanation of the terms and
29 conditions of a covenant marriage; and

30 (3) The signature of both parties witnessed by a notary. If one or both of the
31 parties are minors, the written consent or authorization of the persons required to consent
32 to or authorize the marriage of minors pursuant to section 451.090.

33 2. The declaration shall contain two separate documents, the recitation and the
34 affidavit, the latter of which shall include the attestation either included therein or attached
35 thereto. The recitation shall be prepared in duplicate originals, one of which shall be
36 retained by the parties and the other, together with the affidavit and attestation, shall be
37 filed as provided in section 451.500.

451.506. 1. Beginning August 28, 2003, married couples may execute a declaration
2 of intent to designate their marriage as a covenant marriage.

3 2. The declaration of intent shall be presented to the officer who issued the couple's
4 marriage certificate and with whom the couple's marriage certificate is filed. If the couple
5 was married outside the state of Missouri, a copy of the foreign marriage certificate, with
6 the declaration of intent attached thereto, shall be filed with the officer who issues
7 marriage licenses in the county in which the couple is domiciled. The officer shall make

8 a notation on the marriage certificate of the declaration of intent of a covenant marriage
9 and attach a copy of the declaration to the certificate. On or before the fifteenth day of
10 each calendar month, the officer shall forward to the state registrar of vital records each
11 declaration of intent of a covenant marriage filed with the officer during the preceding
12 calendar month pursuant to this section.

13 3. (1) A declaration of intent to designate a marriage as a covenant marriage shall
14 contain all of the following:

15 (a) A recitation by the parties to the following effect:

16 "A COVENANT MARRIAGE

17 We do solemnly declare that marriage is a covenant between a man and a woman
18 who agree to live together as husband and wife for so long as they both may live. We
19 understand the nature, purpose and responsibilities of marriage. We have read the
20 Covenant of Marriage Act, and we understand that a covenant marriage is for life. If we
21 experience marital difficulties, we commit ourselves to take all reasonable efforts to
22 preserve our marriage, including marital counseling.

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

26 (b) a. An affidavit by the parties that they have discussed their intent to designate
27 their marriage as a covenant marriage with a priest, minister, rabbi, or any clergy of any
28 religious sect, or a marriage counselor. Such counseling shall include a discussion of the
29 obligation to seek marital counseling in times of marital difficulties and the exclusive
30 grounds for legally terminating a covenant marriage by dissolution or by dissolution after
31 a judgment of separation; and

32 b. A notarized attestation, signed by the counselor and attached to the parties'
33 affidavit, acknowledging that the counselor provided to the parties the Covenant of
34 Marriage Act pamphlet developed and promulgated by the office of the attorney general
35 which provides an explanation of the terms and conditions of a covenant marriage; and

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

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

451.509. 1. Notwithstanding any other law to the contrary and subsequent to the
2 parties obtaining counseling, a spouse to a covenant marriage may obtain a judgment of

3 dissolution of marriage only upon proof of any of the following:

4 (1) The other spouse has committed adultery;

5 (2) The other spouse has been convicted of a felony;

6 (3) The other spouse has abandoned the matrimonial domicile for a period of two
7 years and constantly refuses to return;

8 (4) The other spouse has physically or sexually abused the spouse seeking the
9 dissolution or a child of one of the spouses;

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

12 (6) The spouses have been living separate and apart continuously without
13 reconciliation for a period of two years from the date the judgment of separation was
14 signed. If there is a minor child or children of the marriage, the spouses have been living
15 separate and apart continuously without reconciliation for a period of two years and six
16 months from the date the judgment of separation was signed; however, if abuse of a child
17 of the marriage or a child of one of the spouses is the basis for which the judgment of
18 separation was obtained, then a judgment of dissolution may be obtained if the spouses
19 have been living separate and apart continuously without reconciliation for a period of one
20 year from the date the judgment of separation was signed.

21 2. Notwithstanding any other law to the contrary and subsequent to the parties
22 obtaining counseling, a spouse to a covenant marriage may obtain a judgment of
23 separation only upon proof of any of the following:

24 (1) The other spouse has committed adultery;

25 (2) The other spouse has been convicted of a felony;

26 (3) The other spouse has abandoned the matrimonial domicile for a period of two
27 years and constantly refuses to return;

28 (4) The other spouse has physically or sexually abused the spouse seeking the
29 dissolution or a child of one of the spouses;

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

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

451.512. 1. Unless judicially separated, spouses in a covenant marriage may not sue
2 each other except for causes of action pertaining to contracts, restitution of separate
3 property, separation, dissolution or declaration of nullity of the covenant marriage, and
4 for causes of action pertaining to spousal support or the support or custody of a child while

5 the spouses are living separate and apart but not judicially separated.

6 2. (1) Any court which is competent to preside over dissolution of marriage
7 proceedings shall have jurisdiction of an action for separation in a covenant marriage, if:

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

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

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

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

18 3. Judgments on the pleadings and summary judgments shall not be granted in any
19 action for separation in a covenant marriage.

20 4. In a proceeding for separation in a covenant marriage or thereafter, a court may
21 award a spouse all incidental relief afforded in a proceeding for dissolution, including but
22 not limited to spousal support, claims for contributions to education, child custody,
23 visitation rights, child support, injunctive relief and possession and use of a family
24 residence or community movables or immovables.

451.515. 1. Separation in a covenant marriage shall not dissolve the bond of
2 matrimony, but it ends their conjugal cohabitation and common concerns which existed
3 between them. Spouses who are judicially separated in a covenant marriage shall retain
4 that status until either reconciliation or dissolution.

5 2. The judgment of separation carries with it the separation of goods and effects
6 and is retroactive to the date on which the original petition was filed in the action in which
7 the judgment is rendered, but such retroactive effect shall be without prejudice to:

8 (1) The liability for attorney fees and costs incurred by the spouses in the action in
9 which the judgment is rendered; or

10 (2) Rights validly acquired in the interim between commencement of the action and
11 recordation of the judgment.

12 3. Upon reconciliation of the spouses, the relationship between the spouses shall be
13 reestablished as of the date of filing of the original petition in the action in which the
14 judgment was rendered, unless prior to the reconciliation the spouses execute a
15 matrimonial agreement that the relationship shall not be reestablished upon reconciliation.
16 Such matrimonial agreement shall not require court approval.

2 **451.518. The office of attorney general shall, prior to August 28, 2003, promulgate**
3 **an information pamphlet entitled "Covenant Marriage Act" which shall outline in**
4 **sufficient detail the consequences of entering into a covenant marriage. The informational**
5 **pamphlet shall be made available at every county recorder of deeds office. The county**
6 **recorder of deeds shall make every couple requesting an application for a marriage license**
7 **aware of the availability of covenant marriage in this state.**

2 452.305. 1. **Except in the case of a covenant marriage**, the court shall enter a
3 judgment of dissolution of marriage if:

3 (1) The court finds that one of the parties has been a resident of this state, or is a member
4 of the armed services who has been stationed in this state, for ninety days immediately preceding
5 the commencement of the proceeding and that thirty days have elapsed since the filing of the
6 petition; and

7 (2) The court finds that there remains no reasonable likelihood that the marriage can be
8 preserved and that therefore the marriage is irretrievably broken; and

9 (3) To the extent it has jurisdiction, the court has considered and made provision for
10 child custody, the support of each child, the maintenance of either spouse and the disposition of
11 property.

12 2. **Except in the case of a covenant marriage**, the court shall enter a judgment of legal
13 separation if:

14 (1) The court finds that one of the parties has been a resident of this state, or is a member
15 of the armed services who has been stationed in this state, for ninety days immediately preceding
16 the commencement of the proceeding and that thirty days have elapsed since the filing of the
17 petition; and

18 (2) The court finds that there remains a reasonable likelihood that the marriage can be
19 preserved and that therefore the marriage is not irretrievably broken; and

20 (3) To the extent it has jurisdiction, the court has considered and made provision for the
21 custody and the support of each child, the maintenance of either spouse and the disposition of
22 property.

23 3. Any judgment of dissolution of marriage or legal separation shall include the Social
24 Security numbers of the parties.

2 452.310. 1. In any proceeding commenced pursuant to this chapter, the petition, a
3 motion to modify, a motion for a family access order and a motion for contempt shall be verified.
4 **Except in the case of a covenant marriage**, the petition in a proceeding for dissolution of
5 marriage shall allege that the marriage is irretrievably broken and that therefore there remains
6 no reasonable likelihood that the marriage can be preserved. **Except in the case of a covenant**
7 **marriage**, the petition in a proceeding for legal separation shall allege that the marriage is not

7 irretrievably broken and that therefore there remains a reasonable likelihood that the marriage
8 can be preserved.

9 2. **Except in the case of a covenant marriage**, the petition in a proceeding for
10 dissolution of marriage or legal separation shall set forth:

11 (1) The residence of each party, including the county, and the length of residence of each
12 party in this state and in the county of residence;

13 (2) The date of the marriage and the place at which it is registered;

14 (3) The date on which the parties separated;

15 (4) The name, date of birth and address of each child, and the parent with whom each
16 child has primarily resided for the sixty days immediately preceding the filing of the petition for
17 dissolution of marriage or legal separation;

18 (5) Whether the wife is pregnant;

19 (6) The Social Security number of the petitioner, respondent and each child;

20 (7) Any arrangements as to the custody and support of the children and the maintenance
21 of each party; and

22 (8) The relief sought.

23 3. Upon the filing of the petition in a proceeding for dissolution of marriage or legal
24 separation **pursuant to this section**, each child shall immediately be subject to the jurisdiction
25 of the court in which the proceeding is commenced, unless a proceeding involving allegations
26 of abuse or neglect of the child is pending in juvenile court. Until permitted by order of the
27 court, neither parent shall remove any child from the jurisdiction of the court or from any parent
28 with whom the child has primarily resided for the sixty days immediately preceding the filing
29 of a petition for dissolution of marriage or legal separation.

30 4. The mere fact that one parent has actual possession of the child at the time of filing
31 shall not create a preference in favor of such parent in any judicial determination regarding
32 custody of the child.

33 5. The respondent shall be served in the manner provided by the rules of the supreme
34 court and applicable court rules and, to avoid an interlocutory judgment of default, shall file a
35 verified answer within thirty days of the date of service which shall not only admit or deny the
36 allegations of the petition, but shall also set forth:

37 (1) The Social Security number of the petitioner, respondent and each child;

38 (2) Any arrangements as to the custody and support of the child and the maintenance of
39 each party; and

40 (3) The relief sought.

41 6. Previously existing defenses to divorce and legal separation, including but not limited
42 to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

43 7. The petitioner and respondent shall submit a proposed parenting plan, either
44 individually or jointly, within thirty days after service of process or the filing of the entry of
45 appearance, whichever event first occurs of a motion to modify or a petition involving custody
46 or visitation issues. The proposed parenting plan shall set forth the arrangements that the party
47 believes to be in the best interest of the minor children and shall include but not be limited to:

48 (1) A specific written schedule detailing the custody, visitation and residential time for
49 each child with each party including:

50 (a) Major holidays stating which holidays a party has each year;

51 (b) School holidays for school-age children;

52 (c) The child's birthday, Mother's Day and Father's Day;

53 (d) Weekday and weekend schedules and for school-age children how the winter, spring,
54 summer and other vacations from school will be spent;

55 (e) The times and places for transfer of the child between the parties in connection with
56 the residential schedule;

57 (f) A plan for sharing transportation duties associated with the residential schedule;

58 (g) Appropriate times for telephone access;

59 (h) Suggested procedures for notifying the other party when a party requests a temporary
60 variation from the residential schedule;

61 (i) Any suggested restrictions or limitations on access to a party and the reasons such
62 restrictions are requested;

63 (2) A specific written plan regarding legal custody which details how the
64 decision-making rights and responsibilities will be shared between the parties including the
65 following:

66 (a) Educational decisions and methods of communicating information from the school
67 to both parties;

68 (b) Medical, dental and health care decisions including how health care providers will
69 be selected and a method of communicating medical conditions of the child and how emergency
70 care will be handled;

71 (c) Extracurricular activities, including a method for determining which activities the
72 child will participate in when those activities involve time during which each party is the
73 custodian;

74 (d) Child care providers, including how such providers will be selected;

75 (e) Communication procedures including access to telephone numbers as appropriate;

76 (f) A dispute resolution procedure for those matters on which the parties disagree or in
77 interpreting the parenting plan;

78 (g) If a party suggests no shared decision-making, a statement of the reasons for such a

79 request;

80 (3) How the expenses of the child, including child care, educational and extraordinary
81 expenses as defined in the child support guidelines established by the supreme court, will be paid
82 including:

83 (a) The suggested amount of child support to be paid by each party;

84 (b) The party who will maintain or provide health insurance for the child and how the
85 medical, dental, vision, psychological and other health care expenses of the child not paid by
86 insurance will be paid by the parties;

87 (c) The payment of educational expenses, if any;

88 (d) The payment of extraordinary expenses of the child, if any;

89 (e) Child care expenses, if any;

90 (f) Transportation expenses, if any.

91 8. If the proposed parenting plans of the parties differ and the parties cannot resolve the
92 differences or if any party fails to file a proposed parenting plan, upon motion of either party and
93 an opportunity for the parties to be heard, the court shall enter a temporary order containing a
94 parenting plan setting forth the arrangements specified in subsection 7 of this section which will
95 remain in effect until further order of the court. The temporary order entered by the court shall
96 not create a preference for the court in its adjudication of final custody, child support or
97 visitation.

98 9. Within one hundred twenty days after August 28, 1998, the Missouri supreme court
99 shall have in effect guidelines for a parenting plan form which may be used by the parties
100 pursuant to this section in any dissolution of marriage, legal separation or modification
101 proceeding involving issues of custody and visitation relating to the child.

452.320. 1. **Except in a covenant marriage**, if both of the parties by petition or
2 otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one
3 of the parties has so stated and the other has not denied it, the court, after considering the
4 aforesaid petition or statement, and after a hearing thereon shall make a finding whether or not
5 the marriage is irretrievably broken and shall enter an order of dissolution or dismissal
6 accordingly.

7 2. **Except in the case of a covenant marriage**, if one of the parties has denied under
8 oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant
9 factors, including the circumstances that gave rise to the filing of the petition and the prospect
10 of reconciliation, and after hearing the evidence shall

11 (1) Make a finding whether or not the marriage is irretrievably broken, and in order for
12 the court to find that the marriage is irretrievably broken, the petitioner shall satisfy the court of
13 one or more of the following facts:

- 14 (a) That the respondent has committed adultery and the petitioner finds it intolerable to
15 live with the respondent;
- 16 (b) That the respondent has behaved in such a way that the petitioner cannot reasonably
17 be expected to live with the respondent;
- 18 (c) That the respondent has abandoned the petitioner for a continuous period of at least
19 six months preceding the presentation of the petition;
- 20 (d) That the parties to the marriage have lived separate and apart by mutual consent for
21 a continuous period of twelve months immediately preceding the filing of the petition;
- 22 (e) That the parties to the marriage have lived separate and apart for a continuous period
23 of at least twenty-four months preceding the filing of the petition; or
- 24 (2) Continue the matter for further hearing not less than thirty days or more than six
25 months later, or as soon thereafter as the matter may be reached on the court's calendar, and may
26 suggest to the parties that they seek counseling. No court shall require counseling as a condition
27 precedent to a decree, nor shall any employee of any court, or of the state or any political
28 subdivision of the state, be utilized as a marriage counselor. At the adjourned hearing, the court
29 shall make a finding whether the marriage is irretrievably broken as set forth in subdivision (1)
30 above and shall enter an order of dissolution or dismissal accordingly.