

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, with penalty provisions.

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Section A. Section 451.040, 451.080, 451.110, 452.305, 452.310 and 452.320, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 451.040, 451.080, 451.110, 451.500, 451.503, 451.506, 451.509, 451.512, 451.515,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. The license shall, if applicable, designate that the parties entered into a covenant marriage. The license shall be void after thirty days from the date of issuance.

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

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

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

6. Provided, however, that no marriage shall be deemed or adjudged invalid, nor shall the validity be in any way affected for want of authority in any person so solemnizing the marriage

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

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

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

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recorder.

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

State of Missouri)
) ss.
)
County of)

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

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

State of Missouri)
) ss.
)
County of)

This is to certify that the undersigned did at
....., in said county, on the day 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 to the parties to such marriage a

certificate thereof, which shall be furnished in blank by the officer who issues such license, setting forth the names and residence of the parties and the date of such marriage, and the county from which the license was issued and the date of same, and, if applicable, a designation that the parties entered into a covenant marriage; and such 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 female who understand and agree that the marriage between them is a lifelong relationship. Parties to a covenant marriage shall receive counseling emphasizing the nature and purposes of marriage and the responsibilities thereto prior to entering into a covenant marriage. Only when there has been a complete and total breach of the marital covenant commitment may the nonbreaching party seek a declaration that the marriage is no longer legally recognized.

2. 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 section 451.040, and executing a declaration of intent to contract a covenant marriage, as provided in section 451.503. The application for a marriage license and the declaration of intent shall be filed with the official who issues the marriage license.

451.503. 1. A declaration of intent to contract a covenant marriage shall contain 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 of 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 Missouri 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, or any clergy of any religious sect, or a marriage counselor. Such 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 judgment of separation; and

(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 acknowledgment that the counselor provided to the parties the informational pamphlet developed and promulgated by the office of the attorney general. Such pamphlet shall be entitled the "Covenant of Marriage Act" and shall provide a full explanation of the terms and conditions of a covenant marriage; and

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

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 section 451.500.

451.506. 1. Beginning August 28, 2004, married couples may execute a declaration of intent to designate their marriage as a covenant marriage.

2. The declaration of intent shall be presented to the officer who issued the couple's marriage certificate and with whom the couple's marriage certificate is filed. If the couple was married outside the state of Missouri, 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 county 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. 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 the officer during the preceding calendar month pursuant to this section.

3. (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 of 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 Missouri 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) a. An affidavit by the parties that they have discussed their intent to designate their marriage as a covenant marriage with a priest, minister, rabbi, or any clergy of any religious sect, or a marriage counselor. Such counseling shall include 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 dissolution or by dissolution after a judgment of separation; and

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

(c) 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 2 of this section.

451.509. 1. 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 dissolution of marriage 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 in any federal, state, county, or municipal correctional facility;

(3) The other spouse has abandoned the marital domicile for a period of two years and constantly refuses to return. A party may file a petition based on such ground by alleging that the respondent spouse has left the marital domicile and is expected to remain absent for the required period. If the respondent spouse has not abandoned the marital domicile for the required period at the time of filing the petition, the action shall not be dismissed for failure to state sufficient grounds and the action shall be stayed for the period of time remaining to meet the grounds based on abandonment; except that, the court may enter and enforce temporary orders pursuant to section 452.310, RSMo, during the time that the action is pending;

(4) The other spouse has committed an act of abuse, as defined in section 455.010, RSMo, against the spouse seeking the

dissolution, a child, a relative of either spouse permanently living in the marital domicile, or has committed domestic assault under section 565.072, 565.073, or 565.074, RSMo;

(5) The spouses have been living separate and apart continuously without reconciliation for a period of two years. A party may file a petition based on such ground by alleging that the respondent spouse has left the marital domicile and is expected to remain absent for the required period. If the respondent spouse has not abandoned the marital domicile for the required period at the time of filing of the petition, the action shall not be dismissed for failure to state sufficient grounds and the action shall be stayed for the period of time remaining to meet the grounds based on abandonment; except that, the court may enter and enforce temporary orders pursuant to section 452.310, RSMo, during the time that the action is pending;

(6) The spouses have been living separate and apart continuously without reconciliation for a period of two years from the date the judgment of separation was signed. 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 two years and six months from the date the judgment of separation 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 was obtained, then a judgment of dissolution 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 was signed;

(7) The spouses have been living separate and apart continuously without reconciliation for at least one year from the date the decree of legal separation is entered;

(8) The respondent spouse is a habitual drunkard or has abused drugs.

2. 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 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 in any federal, state, county, or municipal correctional facility;

(3) The other spouse has abandoned the marital domicile for a period of two years and constantly refuses to return. A party may file a petition based on such ground by alleging that the respondent spouse has left the marital domicile and is expected to remain absent for the required period. If the respondent spouse has not abandoned the marital domicile for the required period at the time of filing the petition, the action shall not be dismissed for failure to state sufficient grounds and the action shall be stayed for the period of time remaining to meet

the grounds based on abandonment; except that, the court may enter and enforce temporary orders pursuant to section 452.310, RSMo, during the time that the action is pending;

(4) The other spouse has committed an act of abuse, as defined in section 455.010, RSMo, against the spouse seeking the dissolution, a child, a relative of either spouse permanently living in the marital domicile, or has committed domestic assault under section 565.072, 565.073, or 565.074, RSMo;

(5) The spouses have been living separate and apart continuously without reconciliation for a period of two years. A party may file a petition based on such ground by alleging that the respondent spouse has left the marital domicile and is expected to remain absent for the required period. If the respondent spouse has not abandoned the marital domicile for the required period at the time of filing of the petition, the action shall not be dismissed for failure to state sufficient grounds and the action shall be stayed for the period of time remaining to meet the grounds based on abandonment; except that, the court may enter and enforce temporary orders pursuant to section 452.310, RSMo, during the time that the action is pending;

(6) The respondent spouse's habitual drunkenness or ill treatment of the other spouse is of such a nature as to render their living together insupportable;

(7) The respondent spouse is a habitual drunkard or has abused drugs.

451.512. 1. Unless legally separated, spouses in a covenant marriage may not sue each other except for causes of action pertaining to contracts, restitution of separate property, separation, dissolution or declaration of nullity of the covenant 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 but not legally separated.

2. (1) Any court which is competent to preside over dissolution of marriage proceedings shall have jurisdiction of an action for separation 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 marital 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 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 separation in a covenant marriage shall be brought in a county where either party is domiciled, or in the county of their last marital 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.

3. Judgments on the pleadings and summary judgments shall

not be granted in any action for separation in a covenant marriage.

4. In a proceeding for legal separation in a covenant marriage or thereafter, a court may award a spouse all incidental relief afforded in a proceeding for dissolution, 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 marital property.

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

2. The judgment of legal separation 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 to:

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

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

3. Upon reconciliation of the spouses, the relationship between the spouses shall be reestablished as of the date of

filing of the original petition in the action in which the judgment was rendered, unless prior to the reconciliation the spouses execute a marital agreement that the relationship shall not be reestablished upon reconciliation. Such marital agreement shall not require court approval.

451.518. The office of attorney general shall, prior to August 28, 2004, promulgate an information 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 at every county recorder of deeds office. The county recorder of deeds shall make every couple requesting an application for a marriage license aware of the availability of covenant marriage in this state.

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

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

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

(3) To the extent it has jurisdiction, the court has

considered and made provision for child custody, the support of each child, the maintenance of either spouse and the disposition of property.

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

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

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

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

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

452.310. 1. In any proceeding commenced pursuant to this chapter, the petition, a motion to modify, a motion for a family access order and a motion for contempt shall be verified. Except in the case of a covenant marriage, the petition in a proceeding for dissolution of marriage shall allege that the marriage is

irretrievably broken and that therefore there remains no reasonable likelihood that the marriage can be preserved. Except in the case of a covenant marriage, the petition in a proceeding for legal separation shall allege that the marriage is not irretrievably broken and that therefore there remains a reasonable likelihood that the marriage can be preserved.

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

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

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

(3) The date on which the parties separated;

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

(5) Whether the wife is pregnant;

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

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

(8) The relief sought.

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

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

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

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

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

(3) The relief sought.

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

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

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

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

(b) School holidays for school-age children;

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

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

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

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

(g) Appropriate times for telephone access;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Child care expenses, if any;

(f) Transportation expenses, if any.

8. If the proposed parenting plans of the parties differ and the parties cannot resolve the differences or if any party fails to file a proposed parenting plan, upon motion of either party and an opportunity for the parties to be heard, the court shall enter a temporary order containing a parenting plan setting forth the arrangements specified in subsection 7 of this section

which will remain in effect until further order of the court. The temporary order entered by the court shall not create a preference for the court in its adjudication of final custody, child support or visitation.

9. Within one hundred twenty days after August 28, 1998, the Missouri supreme court shall have in effect guidelines for a parenting plan form which may be used by the parties pursuant to this section in any dissolution of marriage, legal separation or modification 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 otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after considering the aforesaid petition or statement, and after a hearing thereon shall make a finding whether or not the marriage is irretrievably broken and shall enter an order of dissolution or dismissal accordingly.

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

(1) Make a finding whether or not the marriage is

irretrievably broken, and in order for the court to find that the marriage is irretrievably broken, the petitioner shall satisfy the court of one or more of the following facts:

(a) That the respondent has committed adultery and the petitioner finds it intolerable to live with the respondent;

(b) That the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;

(c) That the respondent has abandoned the petitioner for a continuous period of at least six months preceding the presentation of the petition;

(d) That the parties to the marriage have lived separate and apart by mutual consent for a continuous period of twelve months immediately preceding the filing of the petition;

(e) That the parties to the marriage have lived separate and apart for a continuous period of at least twenty-four months preceding the filing of the petition; or

(2) Continue the matter for further hearing not less than thirty days or more than six months later, or as soon thereafter as the matter may be reached on the court's calendar, and may suggest to the parties that they seek counseling. No court shall require counseling as a condition precedent to a decree, nor shall any employee of any court, or of the state or any political subdivision of the state, be utilized as a marriage counselor. At the adjourned hearing, the court shall make a finding whether

the marriage is irretrievably broken as set forth in subdivision (1) above and shall enter an order of dissolution or dismissal accordingly.