

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1664

Short Title: Covenant Marriage Act of 2005/Funds. (Public)

Sponsors: Representative Capps.

Referred to: Judiciary I, if favorable, Appropriations.

May 12, 2005

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING THE COVENANT MARRIAGE ACT UNDER THE
3 LAWS PERTAINING TO MARRIAGE, AUTHORIZING THE
4 ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP A PAMPHLET
5 REGARDING THE COVENANT MARRIAGE ACT OF 2005, AND
6 APPROPRIATING FUNDS TO DEVELOP THE PAMPHLET.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Chapter 51 of the General Statutes is amended by adding the
9 following new Article to read:

"Article 1A.

"Covenant Marriage Act of 2005.

10 **"§ 51-5.1. Title.**

11 This Article shall be known as the 'Covenant Marriage Act of 2005'.

12 **"§ 51-5.2. Definitions.**

13 The following definitions shall apply in this Article:

- 14 (1) Authorized counseling. – Marital counseling provided by any of the
15 following:
16 a. A priest.
17 b. A minister.
18 c. A rabbi.
19 d. A clergy member of any religious sect or a designated
20 representative.
21 e. A marriage educator approved by the person who will perform
22 the marriage ceremony.
23 f. A licensed professional counselor or licensed associate
24 counselor.
25 g. A licensed marriage and family therapist or licensed associate
26 marriage and family therapist.
27 h. A licensed clinical psychologist.
28
29

1 (2) Judicial separation. – A judicial proceeding pursuant to G.S. 51-5.9,
2 which results in a court determination that the parties to a covenant
3 marriage live separate and apart.

4 **"§ 51-5.3. Covenant marriage.**

5 (a) Notwithstanding Chapter 51 of the General Statutes, a covenant marriage
6 shall be recognized in this State as a marriage entered into by one male and one female
7 who understand and agree that the marriage between them is a lifelong relationship.
8 Parties to a covenant marriage shall have received authorized counseling emphasizing
9 the nature, purposes, and responsibilities of marriage. Only when there has been a
10 complete and total breach of the marital covenant commitment may a party seek a
11 declaration that the marriage is no longer legally recognized.

12 (b) A man and a woman may contract a covenant marriage by declaring their
13 intent to do so on their application for a marriage license as otherwise required under
14 this Article and executing a declaration of intent to contract a covenant marriage as
15 provided in G.S. 51-5.4. The application for a marriage license and the declaration of
16 intent shall be filed with the official who issues the marriage license.

17 **"§ 51-5.4. Content of declaration of intent.**

18 (a) A declaration of intent to contract a covenant marriage shall contain all of the
19 following:

20 (1) A recitation signed by both parties that states:
21 'A COVENANT MARRIAGE
22 We do solemnly declare that marriage is a covenant between a man
23 and a woman who agree to live together as husband and wife for so
24 long as they both may live. We have chosen each other carefully and
25 disclosed to one another everything that could adversely affect the
26 decision to enter into this marriage. We have received authorized
27 counseling on the nature, purposes, and responsibilities of marriage.
28 We have read the Covenant Marriage Act, and we understand that a
29 covenant marriage is for life. If we experience marital difficulties, we
30 commit ourselves to take all reasonable efforts to preserve our
31 marriage, including marital counseling.
32 With full knowledge of what this commitment means, we do hereby
33 declare that our marriage will be bound by North Carolina law on
34 covenant marriages, and we promise to love, honor, and care for one
35 another as husband and wife for the rest of our lives.'

36 (2) An affidavit by the parties that they have received authorized
37 counseling, which shall include a discussion of the seriousness of
38 covenant marriage, communication of the fact that a covenant
39 marriage is a commitment for life, a discussion of the obligation to
40 seek marital counseling in times of marital difficulties, and a
41 discussion of the exclusive grounds for legally terminating a covenant
42 marriage by divorce.

43 (3) An attestation, signed by the counselor and attached to or included in
44 the parties' affidavit, confirming that the parties received authorized

counseling as to the nature and purpose of the marriage and the grounds for termination of the marriage and an acknowledgment that the counselor provided to the parties the informational pamphlet developed and promulgated by the Administrative Office of the Courts under this Article that provides a full explanation of the terms and conditions of a covenant marriage.

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

(5) If one of the parties is a minor, or both are minors, the written consent or authorization of those persons required under this Chapter to consent to or authorize the marriage of minors.

(b) The declaration shall consist of the following two separate documents:

(1) The recitation as set forth in subdivision (1) of subsection (a) of this section.

(2) The affidavit with the attestation either included within or attached to the document.

(c) The recitation, affidavit, and attestation shall be filed as provided in G.S. 51-5.3(b).

"§ 51-5.5. Form of affidavit.

The following is the suggested form of the affidavit that may be used by the parties, notary, and counselor:

'STATE OF NORTH CAROLINA

COUNTY OF _____

BE IT KNOWN THAT on this _____ day of _____ before me the undersigned notary, personally came and appeared:

_____ and _____ who after being duly sworn by me, a notary, deposed and stated that:

(1) Affiants acknowledge that they have received premarital counseling from a priest, minister, rabbi, any clergyman of any religious sect, or a professional marriage counselor, which marriage counseling included:

a. A discussion of the seriousness of covenant marriage;

b. Communication of the fact that a covenant marriage is a commitment for life;

c. The obligation of a covenant marriage to take reasonable efforts to preserve the marriage if marital difficulties arise; and

d. That affiants both read the pamphlet entitled "Covenant Marriage Act of 2005" developed and promulgated by the Administrative Office of the Courts, which provides a full explanation of a covenant marriage, including the obligation to seek marital counseling in times of marital difficulties and the exclusive grounds for legally terminating a covenant marriage by divorce or divorce after a judgment of separation from bed or board.

(Name of prospective spouse)

(Name of prospective spouse)

SUBSCRIBED AND SWORN TO BEFORE ME THIS DAY OF _____.

NOTARY PUBLIC

ATTESTATION

The undersigned attests that the affiants did receive counseling from me as to the nature and purpose of marriage, which included a discussion of the seriousness of covenant marriage, communication of the fact that a covenant marriage is for life, and the obligation of a covenant marriage to take reasonable efforts to preserve the marriage if marital difficulties arise.

Counselor'

§ 51-5.6. Other applicable rules.

A covenant marriage shall be governed by all of the provisions of Chapter 51 of the General Statutes, except as otherwise specifically provided in this Article.

§ 51-5.7. Applicability to already married couples.

(a) A married couple, upon submission of a copy of its marriage certificate, which need not be certified, may execute a declaration of intent to designate its marriage as a covenant marriage to be governed by this Article.

(b) This declaration of intent in the form and containing the contents required by subsection (c) of this section shall be filed with the register of deeds in the county where the couple resides.

(c) A declaration of intent to redesignate a marriage as a covenant marriage shall contain all of the following:

- (1) A recitation by the parties as set out in G.S. 51-5.4.
- (2) An affidavit by the parties as set out in G.S. 51-5.5, that they have discussed their intent to designate their marriage as a covenant marriage with an authorized counselor that 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.
- (3) An attestation signed by the counselor and attached to the parties' affidavit acknowledging that the counselor provided to the parties the informational pamphlet developed and promulgated by the

1 Administrative Office of the Courts under this Article that provides a
2 full explanation of the terms and conditions of a covenant marriage.

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

4 The declaration shall contain two separate documents: (i) the recitation; and (ii) the
5 affidavit with the attestation either included within or attached to the document. The
6 recitation, affidavit, and attestation shall be filed as provided in subsection (b) of this
7 section.

8 **"§ 51-5.8. Divorce or separation.**

9 (a) Notwithstanding any other law to the contrary and subsequent to the parties'
10 obtaining authorized counseling, a spouse to a covenant marriage may obtain a
11 judgment of divorce only upon proof of one of the following:

12 (1) The other spouse has committed adultery.

13 (2) The other spouse has committed a felony or other infamous crime.

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

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

18 (5) The spouses have been living separate and apart continuously without
19 reconciliation for a period of two years from the date the judgment of
20 judicial separation was signed or, if there is a minor child of the
21 marriage, the spouses have been living separate and apart continuously
22 without reconciliation for a period of two years and six months from
23 the date the judgment of judicial separation was signed. However, if
24 abuse of a child of the marriage or a child of one of the spouses is the
25 basis for which the judgment of judicial separation was obtained, then
26 a judgment of divorce may be obtained if the spouses have been living
27 separate and apart continuously without reconciliation for a period of
28 one year from the date the judgment of judicial separation was signed.

29 (b) Notwithstanding any other law to the contrary and subsequent to the parties'
30 obtaining authorized counseling, a spouse to a covenant marriage may obtain a
31 judgment of judicial separation only upon proof of one of the following:

32 (1) The other spouse has committed adultery.

33 (2) The other spouse has committed a felony and has been sentenced to
34 death or imprisonment.

35 (3) The other spouse has physically or sexually abused the spouse seeking
36 the legal separation or divorce or a child of one of the spouses.

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

39 (5) The other spouse:

40 a. Has been addicted to habitual drunkenness for one year.

41 b. Is guilty of such cruel and barbarous treatment as to endanger
42 the life of the other.

43 c. Has offered such indignities to the other spouse as to render his
44 or her condition intolerable.

1 **"§ 51-5.9. Suit against spouse; separation.**

2 (a) Unless judicially separated, spouses in a covenant marriage may not sue each
3 other except for the following causes of action:

4 (1) Pertaining to contracts.

5 (2) For restitution of separate property.

6 (3) For judicial separation in covenant marriages.

7 (4) For divorce or for declaration of nullity of the marriage.

8 (5) For causes of action pertaining to spousal support or the support or
9 custody of a child while the spouses are living separate and apart,
10 although not judicially separated.

11 (b) Any court which is competent to preside over divorce proceedings has
12 jurisdiction of an action for judicial separation or divorce in a covenant marriage if:

13 (1) One or both of the spouses reside in this State and the ground for
14 separation or divorce in a covenant marriage was committed or
15 occurred in this State or while the married couple resided in this State.

16 (2) The ground for separation or divorce occurred elsewhere while either
17 or both of the spouses resided elsewhere, provided the person
18 obtaining the separation resided in this State before the time the cause
19 of action accrued and resides in this State at the time the action is filed.

20 An action for a separation in a covenant marriage shall be brought in the county where
21 either party resides or in the county where the parties last resided as a married couple.
22 The venue provided in this section may not be waived, and a judgment of separation
23 rendered by a court of improper venue is an absolute nullity.

24 (c) Judgments on the pleadings and summary judgments shall not be granted in
25 any action for separation in a covenant marriage.

26 (d) In a proceeding for a separation in a covenant marriage or thereafter, a court
27 may award a spouse all incidental relief afforded in a proceeding for divorce, including
28 spousal support, claims for contributions to education, child custody, visitation rights,
29 child support, injunctive relief, and possession and use of a family residence or joint
30 property.

31 **"§ 51-5.10. Effects of separation.**

32 (a) Judicial separation in a covenant marriage does not dissolve the bond of
33 matrimony since the separated husband and wife are not at liberty to marry again.
34 However, this type of separation shall end their conjugal cohabitation and the common
35 concerns which existed between them.

36 (b) Spouses who are judicially separated in a covenant marriage shall retain that
37 status until either reconciliation or divorce.

38 **"§ 51-5.11. Informational pamphlet.**

39 (a) The Administrative Office of the Courts shall develop an informational
40 pamphlet, entitled 'Covenant Marriage Act of 2005', which shall outline in sufficient
41 detail the consequences of entering into a covenant marriage.

42 (b) The informational pamphlet shall be made available to any counselor who
43 provides authorized counseling as provided for by this Article."

1 **SECTION 2.** G.S. 7A-343 is amended by adding the following new
2 subdivision to read:

3 **"§ 7A-343. Duties of Director.**

4 The Director is the Administrative Officer of the Courts, and his duties include the
5 following:

6 ...

7 (11) Develop an informational pamphlet, entitled 'Covenant Marriage Act
8 of 2005', which shall outline in sufficient detail the consequences of
9 entering into a covenant marriage established under the Covenant
10 Marriage Act of 2005 in Article 1A of Chapter 51 of the General
11 Statutes."

12 **SECTION 3.** There is appropriated from the General Fund to the
13 Administrative Office of the Courts the sum of fifteen thousand dollars (\$15,000) for
14 the 2005-2006 fiscal year for the purpose of developing an informational pamphlet,
15 entitled "Covenant Marriage Act of 2005", pursuant to G.S. 51-5.11, enacted in Section
16 1 of this act, and G.S. 7A-343, enacted in Section 2 of this act.

17 **SECTION 4.** This act becomes effective July 1, 2005.