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HOUSE BILL NO. 1534

Offered January 28, 2000

A BILL to amend the Code of Virginia by adding in Title 20 a chapter numbered 2.1, consisting of sections numbered 20-37.3 through 20-37.9, relating to covenant marriages.

Patrons—McDonnell and Byron

Consent to introduce

Referred to Committee for Courts of Justice

Whereas, just as the family is the foundation of society, the marital relationship is the foundation of the family; and

Whereas, strengthening marriages can only lead to stronger families, children, and communities as well as a stronger economy; and

Whereas, marriage must be endorsed and encouraged as a means of promoting stability and continuity in society; and

Whereas, a major aspect of the preventive approach to preserving marriage is to acquire necessary skills prior to entering the marriage and to commit to take steps to resolve conflict and avoid divorce; and

Whereas, the Commonwealth has a compelling interest in educating its citizens with regard to the responsibilities of marriage and, if contemplated, the effects of divorce; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 20 a chapter numbered 2.1, consisting of sections numbered 20-37.3 through 20-37.9, as follows:

CHAPTER 2.1.**COVENANT MARRIAGE ACT.****§ 20-37.3. Covenant marriage.**

A covenant marriage is a marriage between a man and a woman who understand and agree that their marriage is a lifelong relationship. As evidence of this commitment, parties to a covenant marriage shall (i) receive premarital counseling pursuant to § 20-37.4 or marital counseling pursuant to § 20-37.6, and (ii) recite and sign a declaration of intent pursuant to § 20-37.5 or § 20-37.6 to enter into a covenant marriage in accordance with the provisions of this chapter.

§ 20-37.4. Premarital counseling; affidavit.

A. No marriage shall constitute a covenant marriage unless the parties jointly receive, prior to the marriage, a minimum of eight hours of counseling concerning the nature and responsibilities of a marital relationship. Such counseling shall be performed in person by a priest, rabbi, minister, or clergy member of any religious society or denomination who is authorized to perform a marriage ceremony or by a licensed professional counselor or marriage and family therapist as defined by § 54.1-3500. Such counseling shall include, at minimum, (i) the nature, purpose, and responsibilities of a marital relationship; (ii) responsibilities regarding children and shared parenting; (iii) conflict management; (iv) financial responsibilities of the parties; and (v) a reading of the grounds for terminating a covenant marriage by divorce contained in § 20-37.8.

B. The clerk or deputy clerk of a circuit court of any county or city issuing a marriage license pursuant to § 20-14 shall, in addition to the oath required under § 20-16 and before issuing the license, require the parties contemplating a covenant marriage to state, under oath, or by affidavit, that they have received counseling pursuant to subsection A within six months preceding the date of their application. In addition, such parties shall present, as part of their application for a marriage license, a notarized attestation, signed by the person performing the counseling, confirming that the parties were counseled as required herein.

§ 20-37.5. Declaration of intent; contents; filing.

A. In addition to the requirements set forth in § 20-37.4, no marriage shall constitute a covenant marriage unless both parties, as part of their application for a marriage license, state, under oath, the following declaration of intent confirming their desire to enter a covenant marriage, and acknowledging that the provisions of this chapter shall apply to such 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 that 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,

60 and we understand that the time period for obtaining a no-fault divorce in a covenant marriage is
61 longer than in a non-covenant marriage. If we experience marital difficulties, we commit to make a
62 good faith effort to preserve our marriage and to seek marital counseling prior to filing for divorce.
63 With full knowledge of what this commitment means, we do hereby declare that our marriage will be
64 bound by Virginia law on covenant marriages, and we promise to love, honor, and care for one another
65 as husband and wife for the rest of our lives." The declaration of intent shall be signed by both parties,
66 notarized and presented to the clerk administering the oath.

67 B. Any marriage certificate issued pursuant to § 20-20 shall include, if applicable, a designation that
68 the parties entered a covenant marriage.

69 § 20-37.6. Covenant marriage; applicability to existing marriages.

70 A. Effective October 1, 2000, married persons who were married in the Commonwealth may
71 redesignate their marriage as a covenant marriage by (i) obtaining marital counseling pursuant to
72 subsection B of this section, and (ii) executing a declaration of intent pursuant to subsection C of this
73 section.

74 B. Married persons who were married in the Commonwealth wishing to redesignate their marriage
75 as a covenant marriage shall receive counseling concerning the nature and responsibilities of a marital
76 relationship within six months preceding their execution of a declaration of intent pursuant to subsection
77 C of this section.

78 1. Counseling conducted pursuant to this section shall be performed in person by a priest, rabbi,
79 minister, or clergy member of any religious society or denomination who is authorized to perform a
80 marriage ceremony or by a licensed professional counselor or marriage and family therapist as defined
81 by § 54.1-3500. Such counseling shall include, at minimum, (i) the nature, purpose, and responsibilities
82 of a marital relationship; (ii) responsibilities regarding children and shared parenting; (iii) conflict
83 management; (iv) financial responsibilities of the parties; and (v) a reading of the grounds for
84 terminating a covenant marriage by divorce contained in § 20-37.8.

85 2. The clerk or deputy clerk of the circuit court of the locality in which the married persons reside
86 shall require the parties contemplating designating their marriage as a covenant marriage to state under
87 oath, or by affidavit, that they have received counseling pursuant to subsection B of this section within
88 six months preceding the date of their application. In addition, such parties shall present to the clerk a
89 notarized attestation, signed by the person performing the counseling, confirming that the parties were
90 counseled as required herein. Married persons redesignating their marriage as a covenant marriage
91 shall present the clerk with proof of counseling pursuant to this subsection on the date on which they
92 execute a declaration of intent to enter a covenant marriage.

93 3. Persons married in a jurisdiction outside of the Commonwealth who wish to redesignate their
94 marriage as a covenant marriage shall comply with the provisions of §§ 20-37.3 through 20-37.5.

95 C. In addition to the requirements set forth in subsection B, married persons intending to redesignate
96 their marriage as a covenant marriage shall state, under oath, the following declaration of intent
97 confirming their desire to redesignate their marriage as a covenant marriage and acknowledging that
98 the provisions of this chapter shall apply to such marriage: "We do solemnly declare that marriage is a
99 covenant between a man and a woman who agree to live together as husband and wife for so long as
100 they both may live. We have received marital counseling on the nature, purposes, and responsibilities of
101 marriage. We have read the Covenant Marriage Act, and we understand that the time period for
102 obtaining a no-fault divorce in a covenant marriage is longer than in a non-covenant marriage. If we
103 experience marital difficulties, we commit to make a good faith effort to preserve our marriage and to
104 seek marriage counseling prior to filing for divorce. With full knowledge of what this commitment
105 means, we do hereby declare that our marriage will be bound by Virginia law on covenant marriages,
106 and we renew our promise to love, honor, and care for one another as husband and wife for the rest of
107 our lives." The declaration of intent shall be signed by both parties, notarized and presented to the clerk
108 administering the oath.

109 D. For all persons satisfying the requirements of this section to redesignate their marriage as a
110 covenant marriage, the clerk shall (i) designate on the face of the original or certified copy of the
111 marriage certificate, whichever is applicable, that the marriage is a covenant marriage; (ii) file and
112 preserve the original or certified copy of the marriage certificate; (iii) file and preserve a copy of the
113 declaration of intent; and (iv) forward a copy of the covenant marriage license to the Bureau of Vital
114 Statistics.

115 § 20-37.7. Counseling required prior to filing for divorce from bond of covenant matrimony.

116 A. No complaint for divorce from the bond of covenant matrimony on the grounds specified in
117 subdivision A (4) of § 20-37.8 shall be accepted by the clerk's office for filing unless accompanied by a
118 notarized attestation, signed by the person performing the counseling, confirming that the parties were
119 counseled as required herein within six months preceding the date of filing.

120 B. No decree of divorce from the bond of covenant matrimony shall be granted unless the parties
121 receive a minimum of eight hours of counseling to make a good faith attempt to preserve the marriage.

The counseling shall be conducted in person and shall be provided by a priest, rabbi, minister, or clergy member of any religious society or denomination who is authorized to perform a marriage ceremony or by a licensed professional counselor or marriage and family therapist as defined by § 54.1-3500.

C. Counseling conducted pursuant to this section shall include, at a minimum a discussion of (i) the marital difficulties experienced by the parties and various options for resolving such difficulties, including the use of mediation; (ii) the obligations of the parties in the event of divorce, including child support, visitation, spousal support and property settlement; and (iii) the availability of community resources to address marital difficulties, or to assist parents and children through the process of divorce.

§ 20-37.8. Grounds for divorce from bond of covenant matrimony; contents of decree; grounds for divorce from bed and board in covenant marriage.

A. Notwithstanding § 20-91, a divorce from the bond of covenant matrimony may be decreed:

1. For adultery; or for sodomy or buggery committed outside the marriage;

2. Where either of the parties subsequent to the marriage has been convicted of a felony, sentenced to confinement for more than one year and confined for such felony subsequent to such conviction, and cohabitation has not been resumed after knowledge of such confinement (in which case no pardon granted to the party so sentenced shall restore such party to his or her conjugal rights);

3. Where either party has been guilty of cruelty, caused reasonable apprehension of bodily hurt, or willfully deserted or abandoned the other, such divorce may be decreed to the innocent party after a period of one year from the date of such act; or

4. a. On the application of either party if and when the husband and wife have lived separate and apart without any cohabitation and without interruption for two years. In any case where the parties have entered into a separation agreement and there are no minor children either born of the parties, born of either party and adopted by the other or adopted by both parties, a divorce may be decreed on application if and when the husband and wife have lived separately and apart without cohabitation and without interruption for one year and six months. A plea of *res adjudicata* or of recrimination with respect to any other provision of this section shall not be a bar to either party obtaining a divorce on this ground; nor shall it be a bar that either party has been adjudged insane, either before or after such separation has commenced, but at the expiration of two years or one year and six months, whichever is applicable, from the commencement of such separation, the grounds for divorce shall be deemed to be complete, and the committee of the insane defendant, if there is one, shall be made a party to the cause, or if there is no committee, then the court shall appoint a guardian ad litem to represent the insane defendant.

b. This subdivision shall apply whether the separation commenced prior to its enactment or shall commence thereafter. Where otherwise valid, any decree of divorce herein before entered by any court having equity jurisdiction pursuant to this subdivision, not appealed to the Supreme Court of Virginia, is hereby declared valid according to the terms of said decree notwithstanding the insanity of a party thereto.

c. A decree of divorce granted pursuant to this subdivision shall in no way lessen any obligation any party may otherwise have to support the spouse.

B. A decree of divorce shall include each party's social security number, or other control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.

C. A divorce from bed and board in a covenant marriage shall be governed by § 20-95.

§ 20-37.9 Provisions of general law applicable if not in conflict and in event covenant marriage void or voidable.

In the event that a covenant marriage is declared void or voidable for any reason, the marriage shall continue to be valid under the general provisions for the celebration and dissolution of marriage contained in this title. When not in conflict with the provisions of this chapter, the general provisions for celebration and dissolution of marriage contained in this title shall apply to a covenant marriage.

2. That the Registrar of Vital Records, in conjunction with the Supreme Court of Virginia and the Virginia Court Clerks Association, shall design a suitable form or forms and institute appropriate procedures to implement this act.