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HOUSE BILL NO. 1056

Offered January 26, 1998

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 20-37.7, relating to covenant marriages.*

Patrons—McDonnell, Bryant, Devolites, Griffith, Jones, S.C., Katzen, Landes, McClure and Wagner;
Senator: Newman

Referred to Committee for Courts of Justice

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 20-37.7, 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 § 20-37.7, and (ii) recite and sign a declaration of intent pursuant to §§ 20-37.5 or 20-37.7 to enter into a contract of covenant marriage for which the provisions of this chapter apply.

§ 20.37.4. Premarital counseling; affidavit.

A. No marriage shall constitute a covenant marriage unless each marital party receives, prior to the marriage, counseling concerning the nature and responsibilities of a marital relationship. Counseling conducted pursuant to this section shall be performed by persons authorized to perform marriage ceremonies pursuant to §§ 20-23 and 20-26 or by licensed professional counselors or marriage and family therapists as defined by § 54.1-3500. Such counseling shall include, at minimum, a discussion of (i) the nature, purpose, and responsibilities of a marital relationship and (ii) the legal grounds for terminating a covenant marriage by divorce.

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 this section within six months preceding the date of their application. In addition, such parties shall submit, as part of their application for a marriage license, a notarized attestation, signed by the counselor confirming that the parties were counseled as to the nature and purpose of the marriage and the grounds for termination thereof.

§ 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 contract of 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 which could adversely affect the decision to enter into this marriage. We have received premarital counseling on the nature, purposes, and responsibilities of marriage. We have read the Covenant Marriage Act, and we understand that the legal grounds for obtaining a no-fault divorce in a covenant marriage are more difficult to establish than in a non-covenant marriage. 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 Virginia 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."

B. The declaration of intent shall be signed by both parties and notarized by the clerk administering the oath. The clerk shall file and preserve the original declaration of intent with the original marriage license and certificate filed pursuant to § 20-20. A copy of the declaration of intent shall be provided to each party.

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

§ 20-37.6. Grounds for divorce from bond of covenant matrimony; contents of decree; grounds for divorce from bed and board in covenant marriage.

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HB1056

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

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

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

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

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

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

87 c. A decree of divorce granted pursuant to this subdivision shall in no way lessen any obligation any
88 party may otherwise have to support the spouse unless such party shall prove that there exists in the
89 favor of such party some other ground of divorce under this section or § 20-95.

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

92 C. A divorce from bed and board in a covenant marriage shall be governed by § 20-95.
93 § 20-37.7. Covenant marriage; applicability to existing marriages.

94 A. Effective July 1, 1998, married persons may redesignate their marriage as a covenant marriage
95 by (i) obtaining marital counseling pursuant to subsection B of this section and (ii) executing a
96 declaration of intent pursuant to subsection C of this section.

97 B. Married persons wishing to redesignate their marriage as a covenant marriage shall receive
98 counseling concerning the nature and responsibilities of a marital relationship within six months
99 preceding their execution of a declaration of intent pursuant to subsection C of this section.

100 1. Counseling conducted pursuant to this section shall be performed by persons authorized to
101 perform marriage ceremonies pursuant to §§ 20-23 and 20-26 or by licensed professional counselors or
102 marriage and family therapists as defined by § 54.1-3500. Such counseling shall include, at minimum, a
103 discussion of (i) the nature, purpose, and responsibilities of a marital relationship and (ii) the legal
104 grounds for terminating a covenant marriage by divorce.

105 2. The clerk or deputy clerk of the circuit court of the locality in which the married persons reside,
106 shall require the parties contemplating designating their marriage as a covenant marriage to state under
107 oath, or by affidavit, that they have received counseling pursuant to this section. In addition, such
108 parties shall submit to the clerk a notarized attestation, signed by the counselor confirming that the
109 parties were counseled as to the nature and purpose of the marriage and the grounds for termination
110 thereof. Married persons redesignating their marriage as a covenant marriage shall provide the clerk
111 with proof of counseling pursuant to this subsection on the date in which they execute a declaration of
112 intent to enter a contract of covenant marriage.

113 3. Persons married in a jurisdiction of the Commonwealth other than the one in which they reside or
114 in a jurisdiction outside of the Commonwealth, shall provide to the clerk a certified copy of their
115 marriage certificate at the time in which they provide proof of counseling and execute a declaration of
116 intent pursuant to this section.

117 C. In addition to the requirements set forth in subsection B, married persons intending to redesignate
118 their marriage as a covenant marriage shall state, under oath, the following declaration of intent
119 confirming their desire to redesignate their marriage as a covenant marriage and acknowledging that
120 the provisions of this chapter shall apply to such marriage: "We do solemnly declare that marriage is a
121 covenant between a man and a woman who agree to live together as husband and wife for so long as

122 they both may live. We have received marital counseling on the nature, purposes, and responsibilities of
123 marriage. We have read the Covenant Marriage Act, and we understand that the legal grounds for
124 obtaining a no-fault divorce in a covenant marriage are more difficult to establish than in a
125 non-covenant marriage. If we experience marital difficulties, we commit ourselves to take all reasonable
126 efforts to preserve our marriage, including marital counseling. With full knowledge of what this
127 commitment means, we do hereby declare that our marriage will be bound by Virginia law on covenant
128 marriages and we renew our promise to love, honor, and care for one another as husband and wife for
129 the rest of our lives." The declaration of intent shall be signed by both parties and notarized by the
130 clerk administering the oath. In addition, the clerk shall provide each party with a copy of the
131 declaration of intent.

132 D. For all persons satisfying the requirements of this section to redesignate their marriage as a
133 covenant marriage, the clerk shall (i) designate on the face of the original or certified copy of the
134 marriage certificate, whichever is applicable, that the marriage is a covenant marriage, (ii) file and
135 preserve the original or certified copy of the marriage certificate, (iii) file and preserve a copy of the
136 declaration of intent, and (iv) forward the original declaration of intent to the Bureau of Vital Statistics.