

1999 DRAFTING REQUEST

Bill

Received: **09/30/98**

Received By: **kahlepj**

Wanted: **As time permits**

Identical to LRB:

For: **Carol Owens (608) 267-7990**

By/Representing: **herself**

This file may be shown to any legislator: **NO**

Drafter: **kahlepj**

May Contact:

Alt. Drafters:

Subject: **Dom. Rel. - marriage**

Extra Copies:

Topic:

Providing procedure for covenant marriage

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kahlepj 10/1/98	gilfokm 10/13/98		_____			S&L
/1		gilfokm 11/19/98	jfrantze 10/15/98 jfrantze 11/20/98	_____	lrb_docadmin 11/20/98		S&L
/2	kahlepj 01/7/99	gilfokm 01/7/99	jfrantze 01/8/99	_____	lrb_docadmin 01/8/99		S&L
/3	kahlepj 01/11/99	gilfokm 01/11/99	ismith 01/12/99	_____	lrb_docadmin 01/12/99	lrb_docadmin 01/14/99	

FE Sent For:

02-04-99

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FE Sent For: *13-1-11-99*
Kmg *IS* *IS/HH*
1/12/99 *1/12/99*
<END>

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/1		gilfokm 11/19/98	jfrantze 10/15/98	_____	lrb_docadmin 11/20/98		S&L
			jfrantze 11/20/98	_____			
/2	kahlepj 01/7/99	gilfokm 01/7/99	lrb_wpo	_____			

FE Sent For:

Handwritten notes and signatures:
 01-11-99
 8/1/8
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 8

1999 DRAFTING REQUEST

Bill

Received: **09/30/98**

Received By: **kahlepj**

Wanted: **As time permits**

Identical to LRB: **97-3740** ✓

For: **Carol Owens (608) 267-7990**

By/Representing: **herself**

This file may be shown to any legislator: **NO**

Drafter: **kahlepj**

May Contact:

Alt. Drafters:

Subject: **Dom. Rel. - marriage**

Extra Copies:

Topic:

Providing procedure for covenant marriage

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kahlepj 10/1/98	gilfokm 10/13/98		_____			S&L
/1		gilfokm 11/19/98	jfrantze 10/15/98	_____	lrb_docadmin 11/20/98		
		<i>12-1-99 King</i>	jfrantze 11/20/98	_____			

FE Sent For:

<END>

1999 DRAFTING REQUEST

Bill

Received: 09/30/98

Received By: kahlepj

Wanted: As time permits

Identical to LRB: 97-3740

For: Carol Owens (608) 267-7990

By/Representing: herself

This file may be shown to any legislator: NO

Drafter: kahlepj

May Contact:

Alt. Drafters:

Subject: Dom. Rel. - marriage

Extra Copies:

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1?	kahlepj	1-11-19 kg	2/10/14	[Signature] 6/14			

FE Sent For:

<END>

B I L L
REQUEST FORM

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

Use of this form is optional. It is often better to talk directly with the LRB attorney who will draft the bill.

Use this form only for **BILL** drafts. Attach more pages if necessary.

Legislator, agency or other body requesting this draft: CAROL OWENS

Date: 9/29/98 Person submitting request (name, phone number): CAROL OWENS 267-7990

Persons to contact for questions about this draft (names, phone numbers): _____

267-7990 SACHUE ZIBROWSKI or CAROL 589-4262

Describe the problem, including any helpful examples. Covenant ⁹²⁰ Marriages
How do you want to solve the problem?

Redraft LRB 3740/2 - 8/5/97 - 3/13/98

Please attach a copy of any correspondence or other material that may help us.

If you know of any statute sections that might be affected, list them or provide a marked-up (not re-typed) copy. _____

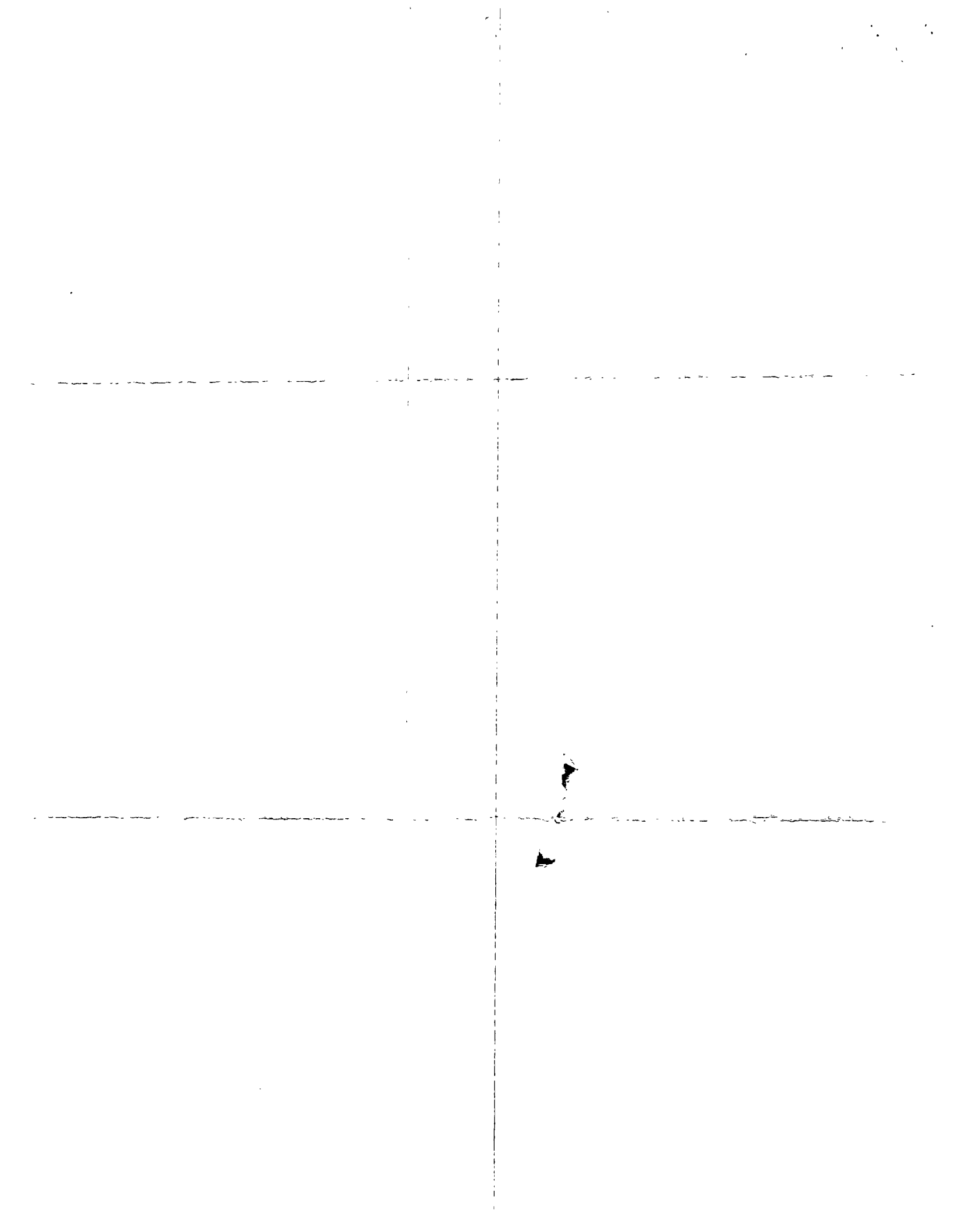
You may attach a marked-up (not re-typed) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67): _____

Requests are confidential unless stated otherwise.

- May we tell others that we are working on this for you? Yes No
- If yes: Anyone who asks? Yes No Any legislator? Yes No Only the following persons: _____

Do you consider this request urgent? Yes No If yes, please indicate why: _____

Should we give this request priority over any other pending request of this legislator, agency or body? Yes No If yes, sign your name here: _____





1997 BILL

~~11/24~~

KG

changes on
pp. 2, 3, 4 & 5

Due Tues
11/24

wpo: ① Proof all amended stats. w/ stats. ② check auto refs.

Ken Cat.

1 AN ACT *to renumber 765.13; to renumber and amend 767.07 and 767.13 (5)*
2 (a); *to amend 765.09 (3) and 765.12 (2); and to create 765.09 (4), 765.12 (3),*
3 *765.13 (2), 765.26, 767.07 (2m), 767.07 (3m), 767.085 (1) (bm), 767.085 (1) (cr),*
4 *767.12 (4) and 767.13 (5) (a) 1. b. of the statutes; relating to: covenant marriage*
5 *and granting rule-making authority.*

Analysis by the Legislative Reference Bureau

Under current law, married persons may be divorced or legally separated without showing either party to be at fault for a breakdown in the marriage. For a divorce, the court must find that the marriage is irretrievably broken, which may be based on the statement of one of the parties and the court's determination that reconciliation is not reasonably likely. For a legal separation, the court must find that the marital relationship is broken. The court may convert a judgment of legal separation into a judgment of divorce if at least one year has elapsed since the judgment of legal separation was entered and at least one of the parties requests it.

This bill establishes covenant marriage as an option for persons entering into a marriage and for persons already married. If the parties to a covenant marriage, or one of them, decides to seek a divorce or a legal separation and at least one of the parties has a minor child, the court must make certain findings that do not apply in other marriages. In addition to finding that the marriage is irretrievably broken, or that the marital relationship is broken in the case of legal separation, the court must find that the parties have undergone marriage counseling, in an attempt to save the marriage, and that at least one of the following grounds applies:

- 1) The respondent has committed adultery.
- 2) The respondent has committed a felony and has been sentenced to imprisonment.
- 3) The respondent has abandoned the petitioner for at least one year.
- 4) The respondent has abused the petitioner or a child of either or both parties.
- 5) The parties have been living apart without reconciliation for ~~2~~ ^{two} years or more.
- 6) The respondent is habitually intemperate or treats the petitioner so cruelly that living together is impossible. (This ground applies only for a legal separation.)

If neither of the parties to a covenant marriage has a minor child and the wife is not pregnant, the court may grant the parties a divorce or legal separation upon the same basis as in a marriage that is not a covenant marriage. As in other marriages, the parties to a covenant marriage may stipulate as to any issues that the court would have to decide (such as property division, child custody and child support), including the grounds on which the divorce or legal separation is based. The family court commissioner may preside at the hearing and grant a judgment of divorce or legal separation in any marriage if the parties stipulate as to all issues that must be decided.

In order to enter into a covenant marriage, the parties must execute a declaration of intent to contract a covenant marriage, which must be signed by the parties and notarized, and which must include a recitation regarding their marriage as a commitment for life and the stated commitment to obtain marriage counseling if they experience marital difficulties. In addition, the parties must receive premarital counseling from a member of the clergy or a person designated by a member of the clergy. The person providing the counseling must sign, and have notarized, an attestation that he or she provided counseling.

When the parties apply for a marriage license, they must inform the county clerk, as part of their marriage license application, that they intend to contract a covenant marriage. The parties must submit to the county clerk a duplicate original of their declaration of intent to contract a covenant marriage, which the clerk attaches to the marriage license. Parties who indicate to the county clerk that they intend to contract a covenant marriage may marry no sooner than 31 days and no later than 45 days after their marriage license is issued. This extra time affords the parties an opportunity to rescind their decision to contract a covenant marriage. (For other marriages, the parties must marry within 30 days after their marriage license is issued.) The person officiating at the marriage of the parties designates on the marriage document, which when completed is sent to the register of deeds, whether the parties entered into a covenant marriage.

Persons who are already married may designate their marriage as a covenant marriage by executing a declaration of intent to designate an existing marriage as a covenant marriage, which must be signed by the parties and notarized, and which must include a recitation regarding their marriage as a commitment for life and the stated commitment to obtain marriage counseling if they experience marital difficulties. A duplicate original of the declaration of intent must be filed with the register of deeds in this state with whom the parties' marriage certificate is filed. If the parties were married in another state, they must file a duplicate original of the

declaration of intent, along with a copy with their marriage certificate, with the register of deeds of the county in which they reside.

The bill requires the department of health and family services (DHFS) to develop by rule and prepare an informational pamphlet on covenant marriage that DHFS must provide free of charge upon request to persons who, under the bill, may provide premarital counseling to persons who wish to enter into a covenant marriage, as well as to any other person who requests a copy.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 765.09 (3) of the statutes is amended to read:

2 765.09 (3) Each party shall present satisfactory, documentary proof of
3 identification and residence and shall swear (or affirm) to the application before the
4 clerk who is to issue the marriage license or the person authorized to accept such
5 applications in the county and state where the party resides. ~~The Subject to sub. (4),~~
6 ~~the~~ application shall contain such informational items as the department of health
7 and family services directs. The portion of the marriage application form that is
8 collected for statistical purposes only shall indicate that the address of the marriage
9 license applicant may be provided by a county clerk to a law enforcement officer
10 under the conditions specified under s. 765.20 (2). Each applicant under 30 years of
11 age shall exhibit to the clerk a certified copy of a birth certificate, and any applicants
12 shall submit a copy of any judgments or a death certificate affecting the marital
13 status. If such certificate or judgment is unobtainable, other satisfactory
14 documentary proof of the requisite facts therein may be presented in lieu thereof.
15 Whenever the clerk is not satisfied with the documentary proof presented, he or she
16 shall submit the same, for an opinion as to the sufficiency of the proof, to a judge of
17 a court of record in the county of application.

Section #. 765.09 (3) of the statutes is amended to read:

765.09 (3) Each party shall present satisfactory, documentary proof of identification and residence and shall swear (or affirm) to the application before the clerk who is to issue the marriage license or the person authorized to accept such applications in the county and state where the party resides. The application shall contain the social security number of each party, as well as any other informational items that the department of health and family services directs. The portion of the marriage application form that is collected for statistical purposes only shall indicate that the address of the marriage license applicant may be provided by a county clerk to a law enforcement officer under the conditions specified under s. 765.20 (2). Each applicant under 30 years of age shall exhibit to the clerk a certified copy of a birth certificate, and any applicants shall submit a copy of any judgments or a death certificate affecting the marital status. If such certificate or judgment is unobtainable, other satisfactory documentary proof of the requisite facts therein may be presented in lieu thereof. Whenever the clerk is not satisfied with the documentary proof presented, he or she shall submit the same, for an opinion as to the sufficiency of the proof, to a judge of a court of record in the county of application.

History: 1977 c. 418; 1979 c. 32 s. 48; 1979 c. 221; Stats. 1979 s. 765.09; 1981 c. 20; 1985 a. 103; 1995 a. 27 s. 9126 (19); 1995 a. 469; 1997 a. 191.

subject to sub. (4)

1 SECTION 2. 765.09 (4) of the statutes is created to read:

2 765.09 (4) If the parties intend to contract a covenant marriage under s. 765.26,
3 the marriage license application shall include a separate form with the following
4 declaration:

5 We, (name of intended husband) and (name of intended wife), do hereby
6 declare that we intend to contract a covenant marriage and have executed and do
7 submit for attachment to the marriage license a declaration of intent under section
8 765.26 (1) (b), Wisconsin Statutes.

9 SECTION 3. 765.12 (2) of the statutes is amended to read:

10 765.12 (2) The Except as provided in sub. (3), the marriage license shall
11 authorize the marriage ceremony to be performed in any county of this state within
12 30 days of issuance, excepting that where both parties are nonresidents of the state,
13 the ceremony shall be performed only in the county in which the marriage license is
14 issued. The officiating person shall determine that the parties presenting
15 themselves to be married are the parties named in the marriage license. If aware
16 of any legal impediment to such marriage, the person shall refuse to perform the
17 ceremony. The issuance of a marriage license shall not be deemed to remove or
18 dispense with any legal disability, impediment or prohibition rendering marriage
19 between the parties illegal, and the marriage license shall contain a statement to
20 that effect.

as provided in A. 765.09(4),

21 SECTION 4. 765.12 (3) of the statutes is created to read:

22 765.12 (3) If the parties indicate ~~under s. 765.09(4)~~ that they intend to contract
23 a covenant marriage, the parties shall submit to the clerk a declaration of intent to
24 contract a covenant marriage that complies with s. 765.26 (1) (b). The clerk shall
25 attach the declaration of intent to the marriage license. The marriage license shall

on their marriage license application

on their marriage license application

1 authorize the marriage ceremony of parties who indicate ~~under 765.09(4)~~ that they
 2 intend to contract a covenant marriage to be performed not sooner than 31 days nor
 3 later than 45 days after the license is issued. ~~The~~ parties may rescind their intention
 4 to contract a covenant marriage ~~before the marriage ceremony takes place.~~

5 SECTION 5. 765.13 of the statutes is renumbered 765.13 (1).

6 SECTION 6. 765.13 (2) of the statutes is created to read:

7 765.13 (2) The marriage document shall provide for a designation by the
 8 officiating person, or by the parties to the marriage if the marriage ceremony is
 9 performed without an officiating person, as to whether the parties entered into a
 10 covenant marriage. The designation shall be signed by the parties to the marriage,
 11 the witnesses and the officiating person, if any.

12 SECTION 7. 765.26 of the statutes is created to read:

13 **765.26 Covenant marriage. (1) REQUIREMENTS FOR NEW MARRIAGES.** (a) A
 14 covenant marriage may be contracted between one male and one female who, in
 15 addition to complying with the other requirements of this chapter, have done all of
 16 the following:

17 1. Received premarital counseling on the nature, purposes and responsibilities
 18 of marriage from a member of the clergy or a person designated by a member of the
 19 clergy.

20 2. Executed a declaration of intent that complies with par. (b).

21 3. ~~Declared their intent~~ to contract a covenant marriage on their marriage
 22 license application and provided the county clerk with a duplicate original of their
 23 declaration of intent.

24 (b) A declaration of intent to contract a covenant marriage shall include all of
 25 the following:

At any time before the marriage ceremony takes place, the

Indicated their intention

1 1. The following recitation by the parties:

2 ✓ “We do solemnly declare that marriage is a covenant between a man and a
3 woman who agree to live together as husband and wife for as long as they both may
4 live. We have chosen each other carefully and disclosed to one another everything
5 that could adversely affect the decision to enter into this marriage. We have received
6 premarital counseling on the nature, purposes and responsibilities of marriage. We
7 have read the pamphlet entitled “Covenant Marriage” and we understand that a
8 covenant marriage is for life. If we experience marital difficulties, we commit
9 ourselves to taking all reasonable efforts, including marriage counseling, to preserve
10 our marriage.

11 ✓ With full knowledge of what this commitment means, we do hereby declare that
12 our marriage will be bound by Wisconsin law on covenant marriage and we promise
13 to love, honor and care for one another as husband and wife for the rest of our lives.” ✓

14 2. An affidavit by the parties that they have received premarital counseling
15 from a member of the clergy or a person designated by a member of the clergy, and
16 that the counseling included a discussion of the seriousness of covenant marriage,
17 communication of the fact that a covenant marriage is a commitment for life, a
18 discussion of the obligation to seek marriage counseling in times of marital
19 difficulties and a discussion of the exclusive grounds in a covenant marriage for legal
20 separation and divorce if a child is involved.

21 3. A notarized attestation, signed by the person who provided the counseling
22 specified under subd. 2. and attached to or included in the parties’ affidavit,
23 confirming that the parties were counseled as to the nature and purpose of the
24 marriage and the grounds for legal separation and divorce if a child is involved and
25 acknowledging that the person provided to the parties the informational pamphlet

1 developed and prepared by the department of health and family services, entitled
2 “Covenant Marriage”, that provides a full explanation of the terms, conditions and
3 consequences of a covenant marriage.

4 4. The notarized signatures of both parties.

5 5. If one or both of the parties are between the ages of 16 and 18 years, the
6 written consent required under s. 765.02 (2).

7 (c) The recitation portion of the declaration under par. (b) 1. shall be prepared
8 in duplicate originals, one of which shall be retained by the parties. The other
9 duplicate original, together with the remainder of the declaration, shall be provided
10 to the county clerk for attachment to the marriage license.

11 (d) If the parties to a marriage fulfill the requirements of par. (a) and enter into
12 a covenant marriage as intended, the officiating person, or the parties if the marriage
13 ceremony is performed without an officiating person, shall designate on the
14 marriage certificate that the parties entered into a covenant marriage. The
15 designation must be signed by the parties, the witnesses and the officiating person,
16 if any.

17 (2) REQUIREMENTS FOR MARRIAGES PREVIOUSLY CONTRACTED. (a) Notwithstanding
18 sub. (1), on or after the effective date of this paragraph [revisor inserts date], a
19 married couple who entered into their marriage before the effective date of this
20 paragraph [revisor inserts date], may designate their marriage as a covenant
21 marriage by executing a declaration of intent that complies with par. (b). The
22 declaration of intent shall be filed with the register of deeds with whom the couple’s
23 marriage certificate is filed. If the couple was married outside the state, a copy of
24 their marriage certificate, or comparable document, with the declaration of intent

1 attached, shall be filed with the register of deeds of the county in which the couple
2 resides.

3 (b) A declaration of intent to designate an existing marriage as a covenant
4 marriage shall include all of the following:

5 1. The following recitation by the parties:

6 ✓ “We do solemnly declare that marriage is a covenant between a man and a
7 woman who agree to live together as husband and wife for so long as they both may
8 live. We understand the nature, purposes and responsibilities of marriage. We have
9 read the informational pamphlet entitled “Covenant Marriage”, developed and
10 prepared by the department of health and family services, and we understand that
11 a covenant marriage is for life. If we experience marital difficulties, we commit
12 ourselves to taking all reasonable efforts, including marital counseling, to preserve
13 our marriage.

14 ✓ With full knowledge of what this commitment means, we do hereby declare that
15 our marriage will be bound by Wisconsin law on covenant marriage and we renew
16 our promise to love, honor and care for one another as husband and wife for the rest
17 of our lives.” ✓

18 2. The notarized signatures of both parties.

19 (c) The recitation portion of the declaration under par. (b) 1. shall be prepared
20 in duplicate originals, one of which shall be retained by the parties. The other
21 duplicate original, together with the remainder of the declaration, shall be filed as
22 provided in par. (a).

23 **(3) EFFECT; SPECIAL GROUNDS FOR DIVORCE OR SEPARATION IF A CHILD IS INVOLVED.**

24 A covenant marriage shall be subject to the same provisions as any other marriage
25 and shall be in all respects the same as any other marriage, except that, if the parties

1 to a covenant marriage, or either of them, has a minor child, or the wife is pregnant,
2 at the time an action for divorce or legal separation is commenced, a court may grant
3 a judgment of divorce or legal separation only upon one of the bases specified in s.
4 767.07 (2m) (c).[✓] If, at the commencement of an action for divorce or legal separation,
5 neither party to a covenant marriage has a minor child and the wife is not pregnant,
6 a court may grant a judgment of divorce or legal separation with respect to the
7 marriage as provided in s. 767.07 (1).[✓]

8 (4) INFORMATIONAL PAMPHLET. The department of health and family services
9 shall develop by rule and prepare an informational pamphlet, entitled “Covenant
10 Marriage”, that explains covenant marriage in easily understood language,
11 including the procedure for entering into, or designating an existing marriage as, a
12 covenant marriage and the effect of entering into, or designating an existing
13 marriage as, a covenant marriage. The department of health and family services
14 shall make the pamphlet available, upon request and free of charge, to any person
15 who may provide the premarital counseling under sub. (1) (b) 2. and to any other
16 person.

17 SECTION 8. 767.07[✓] of the statutes is renumbered 767.07 (1), and 767.07 (1)
18 (intro.), (a) and (b), as renumbered, are amended to read:

19 767.07 (1) (intro.) ~~A-~~ Except as provided in subs. (2m) and (3m), a court of
20 competent jurisdiction shall grant a judgment of divorce or legal separation if all of
21 the following apply:

22 (a) The requirements of this chapter as to residence ~~and marriage assessment~~
23 ~~counseling~~ have been complied with.

1 (b) 1. In connection with a judgment of divorce or legal separation, the court
2 finds that the marriage is irretrievably broken under s. 767.12 (2), unless ~~par. (b)~~
3 subd. 2.[✓] applies.

4 2. In connection with a judgment of legal separation, the court finds that the
5 marital relationship is broken under s. 767.12 (3); ~~and.~~

6 **SECTION 9.** 767.07 (2m) of the statutes is created to read:

7 **767.07 (2m)** Except as provided in sub. (3m), if the marriage of the parties is
8 a covenant marriage under s. 765.26 and at the commencement of the action under
9 this section the parties, or either of them, has a minor child or the wife is pregnant,
10 a court of competent jurisdiction shall grant a judgment of divorce or legal separation
11 only if all of the following apply:

12 (a) The requirements under sub. (1) are satisfied.

13 (b) The parties have undergone marriage counseling.

14 (c) The court finds any of the following:

15 1. That the respondent has violated s. 944.16 (1).

16 2. That the respondent has been convicted of a felony and has been sentenced
17 to imprisonment.

18 3. That the respondent has abandoned the petitioner for at least one year and
19 constantly refuses to return.

20 4. That the respondent has engaged in domestic abuse, as defined in s. 813.12
21 (1) (a), with respect to the petitioner, or has engaged in abuse, as defined in s. 48.02
22 (1), with respect to a child, stepchild or foster child of either or both of the parties.

23 5. That the petitioner and respondent have been living apart continuously
24 without reconciliation for 2 years or longer.

1 6. That the respondent's habitual intemperance, cruel treatment of the
2 petitioner or outrages toward the petitioner have made their living together
3 insupportable, except that the court may grant only a judgment of legal separation
4 if this subdivision applies.

5 **SECTION 10.** 767.07 (3m) of the statutes is created to read:

6 **767.07 (3m)** If the marriage of the parties is a covenant marriage under s.
7 765.26, a court of competent jurisdiction shall grant a judgment of divorce if the court
8 has granted a judgment of legal separation under sub. (1) or (2m) and the
9 requirements under s. 767.09 (2) are satisfied.

10 **SECTION 11.** 767.085 (1) (bm) of the statutes is created to read:

11 **767.085 (1) (bm)** If the relief requested is a divorce or legal separation and the
12 marriage of the parties is a covenant marriage under s. 765.26, the name and
13 birthdate of any minor child of a party not specified in par. (b).

14 **SECTION 12.** 767.085 (1) (cr) of the statutes is created to read:

15 **767.085 (1) (cr)** If the relief requested is a divorce or legal separation and the
16 marriage of the parties is a covenant marriage under s. 765.26, that the marriage is
17 a covenant marriage and either of the following:

18 1. That neither party has a minor child and the wife is not pregnant.

19 2. That the parties, or either of them, has a minor child or the wife is pregnant,
20 the grounds for the action and the facts supporting a reasonable basis on which the
21 grounds are alleged.

22 **SECTION 13.** 767.12 (4) of the statutes is created to read:

23 **767.12 (4) GROUNDS.** In an action for divorce or legal separation, if both of the
24 parties to a covenant marriage under s. 765.26 state by petition or stipulation that

1 one or more of the grounds under s. 767.07 (2m) (c) apply, the court, after hearing,
2 shall make a finding that those grounds apply.

3 **SECTION 14.** 767.13 (5) (a) of the statutes is renumbered 767.13 (5) (a) 1. (intro.)
4 and amended to read:

5 767.13 (5) (a) 1. (intro.) On authority delegated by a judge, which may be by
6 a standard order, and with the approval of the chief judge of the judicial
7 administrative district, a family court commissioner may preside at any hearing held
8 to determine whether a judgment of divorce shall be granted, if ~~both~~ any of the
9 following applies:

10 a. Both parties state that the marriage is irretrievably broken and that all
11 material issues, including but not limited to division of property or estate, legal
12 custody, physical placement, child support, spousal maintenance and family
13 support, are resolved ~~or if one.~~

14 c. One party does not participate in the action for divorce.

15 2. The family court commissioner may grant and enter judgment in any action
16 over which he or she presides under this paragraph unless the judgment modifies an
17 agreement between the parties on material issues. If the family court commissioner
18 does not approve an agreement between the parties on material issues, the action
19 shall be certified to the court for trial.

20 **SECTION 15.** 767.13 (5) (a) 1. b. of the statutes is created to read:

21 767.13 (5) (a) 1. b. If the marriage is a covenant marriage and the parties, or
22 one of them, has a minor child or the wife is pregnant, both parties state that the
23 marriage is irretrievably broken and that all material issues, including but not
24 limited to division of property or estate, legal custody, physical placement, child

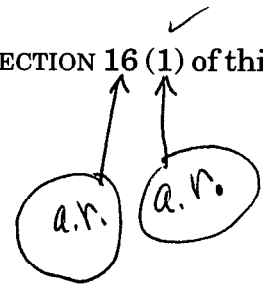
1 support, spousal maintenance and family support, are resolved and stipulate as to
2 the grounds under s. 767.07 (2m) (c) that apply.

3 **SECTION 16. Nonstatutory provisions.**

4 (1) RULES RELATED TO INFORMATIONAL PAMPHLET. The department of health and
5 family services shall submit in proposed form the rules required under section 765.26
6 (4) of the statutes, as created by this act, to the legislative council staff under section
7 227.15 (1) of the statutes no later than the first day of the 7th month beginning after
8 the effective date of this subsection.

9 **SECTION 17. Effective dates.** This act takes effect on the first day of the 13th
10 month beginning after publication, except as follows:

11 (1) The treatment of section 765.26 (4) ✓ of the statutes and SECTION 16 (1) ✓ of this
12 act take effect on the day after publication.



13 (END)



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1999 BILL

Friday

pp 2, 5 & 6

D-vote on p. 13

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1 **AN ACT** *San Cat.* **to renumber** 765.13; **to renumber and amend** 767.07 and 767.13 (5)
 2 (a); **to amend** 765.09 (3) and 765.12 (2); and **to create** 765.09 (4), 765.12 (3),
 3 765.13 (2), 765.26, 767.07 (2m), 767.07 (3m), 767.085 (1) (bm), 767.085 (1) (cr),
 4 767.12 (4) and 767.13 (5) (a) 1. b. of the statutes; **relating to:** covenant marriage
 5 and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, married persons may be divorced or legally separated without showing either party to be at fault for a breakdown in the marriage. For a divorce, the court must find that the marriage is irretrievably broken, which may be based on the statement of one of the parties and the court's determination that reconciliation is not reasonably likely. For a legal separation, the court must find that the marital relationship is broken. The court may convert a judgment of legal separation into a judgment of divorce if at least one year has elapsed since the judgment of legal separation was entered and at least one of the parties requests it.

This bill establishes covenant marriage as an option for persons entering into a marriage and for persons already married. If the parties to a covenant marriage, or one of them, decides to seek a divorce or a legal separation and at least one of the parties has a minor child, the court must make certain findings that do not apply in other marriages. In addition to finding that the marriage is irretrievably broken, or that the marital relationship is broken in the case of legal separation, the court must find that the parties have undergone marriage counseling, in an attempt to save the marriage, and that at least one of the following grounds applies:

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- 1) The respondent has committed adultery.
- 2) The respondent has committed a felony and has been sentenced to imprisonment.
- 3) The respondent has abandoned the petitioner for at least one year.
- 4) The respondent has abused the petitioner or a child of either or both parties.
- 5) The parties have been living apart without reconciliation for two years or more.

6) The respondent is habitually intemperate or treats the petitioner so cruelly that living together is impossible. (This ground applies only for a legal separation.)

If neither of the parties to a covenant marriage has a minor child and the wife is not pregnant, the court may grant the parties a divorce or legal separation upon the same basis as in a marriage that is not a covenant marriage. As in other marriages, the parties to a covenant marriage may stipulate as to any issues that the court would have to decide (such as property division, child custody and child support), including the grounds on which the divorce or legal separation is based. The family court commissioner may preside at the hearing and grant a judgment of divorce or legal separation in any marriage if the parties stipulate as to all issues that must be decided.

In order to enter into a covenant marriage, the parties must execute a declaration of intent to contract a covenant marriage, which must be signed by the parties and notarized, and which must include a recitation regarding their marriage as a commitment for life and the stated commitment to obtain marriage counseling if they experience marital difficulties. In addition, the parties must receive premarital counseling from a member of the clergy or a person designated by a member of the clergy. The person providing the counseling must sign, and have notarized, an attestation that he or she provided counseling.

When the parties apply for a marriage license, they must inform the county clerk, as part of their marriage license application, that they intend to contract a covenant marriage. The parties must submit to the county clerk a duplicate original of their declaration of intent to contract a covenant marriage, which the clerk attaches to the marriage license. Parties who indicate to the county clerk that they intend to contract a covenant marriage may marry no sooner than 31 days and no later than 45 days after their marriage license is issued. This extra time affords the parties an opportunity to rescind their decision to contract a covenant marriage. (For other marriages, the parties must marry within 30 days after their marriage license is issued.) The person officiating at the marriage of the parties designates on the marriage document, which when completed is sent to the register of deeds, whether the parties entered into a covenant marriage.

Persons who are already married may designate their marriage as a covenant marriage by executing a declaration of intent to designate an existing marriage as a covenant marriage, which must be signed by the parties and notarized, and which must include a recitation regarding their marriage as a commitment for life and the stated commitment to obtain marriage counseling if they experience marital difficulties. A duplicate original of the declaration of intent must be filed with the register of deeds in this state with whom the parties' marriage certificate is filed. If

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the parties were married in another state, they must file a duplicate original of the declaration of intent, along with a copy with their marriage certificate, with the register of deeds of the county in which they reside.

The bill requires the department of health and family services (DHFS) to develop by rule and prepare an informational pamphlet on covenant marriage that DHFS must provide free of charge upon request to persons who, under the bill, may provide premarital counseling to persons who wish to enter into a covenant marriage, as well as to any other person who requests a copy.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 765.09 (3) of the statutes is amended to read:

2 765.09 (3) Each party shall present satisfactory, documentary proof of
3 identification and residence and shall swear (or affirm) to the application before the
4 clerk who is to issue the marriage license or the person authorized to accept such
5 applications in the county and state where the party resides. The application shall
6 contain the social security number of each party, as well as any other informational
7 items that the department of health and family services directs, subject to sub. (4).
8 The portion of the marriage application form that is collected for statistical purposes
9 only shall indicate that the address of the marriage license applicant may be
10 provided by a county clerk to a law enforcement officer under the conditions specified
11 under s. 765.20 (2). Each applicant under 30 years of age shall exhibit to the clerk
12 a certified copy of a birth certificate, and any applicants shall submit a copy of any
13 judgments or a death certificate affecting the marital status. If such certificate or
14 judgment is unobtainable, other satisfactory documentary proof of the requisite facts
15 therein may be presented in lieu thereof. Whenever the clerk is not satisfied with
16 the documentary proof presented, he or she shall submit the same, for an opinion as

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1 to the sufficiency of the proof, to a judge of a court of record in the county of
2 application.

3 **SECTION 2.** 765.09 (4) of the statutes is created to read:

4 765.09 (4) If the parties intend to contract a covenant marriage under s. 765.26,
5 the marriage license application shall include a separate form with the following
6 declaration:

7 We, (name of intended husband) and (name of intended wife), do hereby
8 declare that we intend to contract a covenant marriage and have executed and do
9 submit for attachment to the marriage license a declaration of intent under section
10 765.26 (1) (b), Wisconsin Statutes.

11 **SECTION 3.** 765.12 (2) of the statutes is amended to read:

12 765.12 (2) The Except as provided in sub. (3), the marriage license shall
13 authorize the marriage ceremony to be performed in any county of this state within
14 30 days of issuance, excepting that where both parties are nonresidents of the state,
15 the ceremony shall be performed only in the county in which the marriage license is
16 issued. The officiating person shall determine that the parties presenting
17 themselves to be married are the parties named in the marriage license. If aware
18 of any legal impediment to such marriage, the person shall refuse to perform the
19 ceremony. The issuance of a marriage license shall not be deemed to remove or
20 dispense with any legal disability, impediment or prohibition rendering marriage
21 between the parties illegal, and the marriage license shall contain a statement to
22 that effect.

23 **SECTION 4.** 765.12 (3) of the statutes is created to read:

24 765.12 (3) If the parties indicate on their marriage license application that they
25 intend to contract a covenant marriage, as provided in s. 765.09 (4), the parties shall

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1 submit to the clerk a declaration of intent to contract a covenant marriage that
2 complies with s. 765.26 (1) (b). The clerk shall attach the declaration of intent to the
3 marriage license. The marriage license shall authorize the marriage ceremony of
4 parties who indicate on their marriage license application that they intend to
5 contract a covenant marriage to be performed not sooner than 31 days nor later than
6 45 days after the license is issued. At any time before the marriage ceremony takes
7 place, the parties may rescind their intention to contract a covenant marriage.

8 **SECTION 5.** 765.13 of the statutes is renumbered 765.13 (1).

9 **SECTION 6.** 765.13 (2) of the statutes is created to read:

10 765.13 (2) The marriage document shall provide for a designation by the
11 officiating person, or by the parties to the marriage if the marriage ceremony is
12 performed without an officiating person, as to whether the parties entered into a
13 covenant marriage. The designation shall be signed by the parties to the marriage,
14 the witnesses and the officiating person, if any.

15 **SECTION 7.** 765.26 of the statutes is created to read:

16 **765.26 Covenant marriage. (1) REQUIREMENTS FOR NEW MARRIAGES.** (a) A
17 covenant marriage may be contracted between one male and one female who, in
18 addition to complying with the other requirements of this chapter, have done all of
19 the following:

20 1. Received premarital counseling on the nature, purposes and responsibilities
21 of marriage from a member of the clergy or a person designated by a member of the
22 clergy.

23 2. Executed a declaration of intent that complies with par. (b).

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3. Indicated their intention to contract a covenant marriage on their marriage license application and provided the county clerk with a duplicate original of their declaration of intent.

(b) A declaration of intent to contract a covenant marriage shall include all of the following:

1. The following recitation by the parties:

“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 as 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 pamphlet entitled “Covenant Marriage” and we understand that a covenant marriage is for life. If we experience marital difficulties, we commit ourselves to taking all reasonable efforts, including marriage counseling, to preserve our marriage.

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

2. An affidavit by the parties that they have received premarital counseling from a member of the clergy or a person designated by a member of the clergy, and that the counseling included 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 marriage counseling in times of marital difficulties and a discussion of the exclusive grounds in a covenant marriage for legal separation and divorce if a child is involved.

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1 3. A notarized attestation, signed by the person who provided the counseling
2 specified under subd. 2. and attached to or included in the parties' affidavit,
3 confirming that the parties were counseled as to the nature and purpose of the
4 marriage and the grounds for legal separation and divorce if a child is involved and
5 acknowledging that the person provided to the parties the informational pamphlet
6 developed and prepared by the department of health and family services, entitled
7 "Covenant Marriage", that provides a full explanation of the terms, conditions and
8 consequences of a covenant marriage.

9 4. The notarized signatures of both parties.

10 5. If one or both of the parties are between the ages of 16 and 18 years, the
11 written consent required under s. 765.02 (2).

12 (c) The recitation portion of the declaration under par. (b) 1. shall be prepared
13 in duplicate originals, one of which shall be retained by the parties. The other
14 duplicate original, together with the remainder of the declaration, shall be provided
15 to the county clerk for attachment to the marriage license.

16 (d) If the parties to a marriage fulfill the requirements of par. (a) and enter into
17 a covenant marriage as intended, the officiating person, or the parties if the marriage
18 ceremony is performed without an officiating person, shall designate on the
19 marriage certificate that the parties entered into a covenant marriage. The
20 designation must be signed by the parties, the witnesses and the officiating person,
21 if any.

22 **(2) REQUIREMENTS FOR MARRIAGES PREVIOUSLY CONTRACTED.** (a) Notwithstanding
23 sub. (1), on or after the effective date of this paragraph [revisor inserts date], a
24 married couple who entered into their marriage before the effective date of this
25 paragraph [revisor inserts date], may designate their marriage as a covenant

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1 marriage by executing a declaration of intent that complies with par. (b). The
2 declaration of intent shall be filed with the register of deeds with whom the couple's
3 marriage certificate is filed. If the couple was married outside the state, a copy of
4 their marriage certificate, or comparable document, with the declaration of intent
5 attached, shall be filed with the register of deeds of the county in which the couple
6 resides.

7 (b) A declaration of intent to designate an existing marriage as a covenant
8 marriage shall include all of the following:

9 1. The following recitation by the parties:

10 "We do solemnly declare that marriage is a covenant between a man and a
11 woman who agree to live together as husband and wife for so long as they both may
12 live. We understand the nature, purposes and responsibilities of marriage. We have
13 read the informational pamphlet entitled "Covenant Marriage", developed and
14 prepared by the department of health and family services, and we understand that
15 a covenant marriage is for life. If we experience marital difficulties, we commit
16 ourselves to taking all reasonable efforts, including marital counseling, to preserve
17 our marriage.

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

22 2. The notarized signatures of both parties.

23 (c) The recitation portion of the declaration under par. (b) 1. shall be prepared
24 in duplicate originals, one of which shall be retained by the parties. The other

BILL

1 duplicate original, together with the remainder of the declaration, shall be filed as
2 provided in par. (a).

3 **(3) EFFECT; SPECIAL GROUNDS FOR DIVORCE OR SEPARATION IF A CHILD IS INVOLVED.**

4 A covenant marriage shall be subject to the same provisions as any other marriage
5 and shall be in all respects the same as any other marriage, except that, if the parties
6 to a covenant marriage, or either of them, has a minor child, or the wife is pregnant,
7 at the time an action for divorce or legal separation is commenced, a court may grant
8 a judgment of divorce or legal separation only upon one of the bases specified in s.
9 767.07 (2m) (c). If, at the commencement of an action for divorce or legal separation,
10 neither party to a covenant marriage has a minor child and the wife is not pregnant,
11 a court may grant a judgment of divorce or legal separation with respect to the
12 marriage as provided in s. 767.07 (1).

13 **(4) INFORMATIONAL PAMPHLET.** The department of health and family services
14 shall develop by rule and prepare an informational pamphlet, entitled “Covenant
15 Marriage”, that explains covenant marriage in easily understood language,
16 including the procedure for entering into, or designating an existing marriage as, a
17 covenant marriage and the effect of entering into, or designating an existing
18 marriage as, a covenant marriage. The department of health and family services
19 shall make the pamphlet available, upon request and free of charge, to any person
20 who may provide the premarital counseling under sub. (1) (b) 2. and to any other
21 person.

22 **SECTION 8.** 767.07 of the statutes is renumbered 767.07 (1), and 767.07 (1)
23 (intro.), (a) and (b), as renumbered, are amended to read:

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1 767.07 (1) (intro.) ~~A~~ Except as provided in subs. (2m) and (3m), a court of
2 competent jurisdiction shall grant a judgment of divorce or legal separation if all of
3 the following apply:

4 (a) The requirements of this chapter as to residence ~~and marriage assessment~~
5 ~~counseling~~ have been complied with;

6 (b) 1. In connection with a judgment of divorce or legal separation, the court
7 finds that the marriage is irretrievably broken under s. 767.12 (2), unless ~~par. (b)~~
8 subd. 2. applies.

9 2. In connection with a judgment of legal separation, the court finds that the
10 marital relationship is broken under s. 767.12 (3); ~~and~~.

11 **SECTION 9.** 767.07 (2m) of the statutes is created to read:

12 767.07 (2m) Except as provided in sub. (3m), if the marriage of the parties is
13 a covenant marriage under s. 765.26 and at the commencement of the action under
14 this section the parties, or either of them, has a minor child or the wife is pregnant,
15 a court of competent jurisdiction shall grant a judgment of divorce or legal separation
16 only if all of the following apply:

17 (a) The requirements under sub. (1) are satisfied.

18 (b) The parties have undergone marriage counseling.

19 (c) The court finds any of the following:

20 1. That the respondent has violated s. 944.16 (1).

21 2. That the respondent has been convicted of a felony and has been sentenced
22 to imprisonment.

23 3. That the respondent has abandoned the petitioner for at least one year and
24 constantly refuses to return.

BILL

1 4. That the respondent has engaged in domestic abuse, as defined in s. 813.12
2 (1) (a), with respect to the petitioner, or has engaged in abuse, as defined in s. 48.02
3 (1), with respect to a child, stepchild or foster child of either or both of the parties.

4 5. That the petitioner and respondent have been living apart continuously
5 without reconciliation for 2 years or longer.

6 6. That the respondent's habitual intemperance, cruel treatment of the
7 petitioner or outrages toward the petitioner have made their living together
8 insupportable, except that the court may grant only a judgment of legal separation
9 if this subdivision applies.

10 **SECTION 10.** 767.07 (3m) of the statutes is created to read:

11 767.07 (3m) If the marriage of the parties is a covenant marriage under s.
12 765.26, a court of competent jurisdiction shall grant a judgment of divorce if the court
13 has granted a judgment of legal separation under sub. (1) or (2m) and the
14 requirements under s. 767.09 (2) are satisfied.

15 **SECTION 11.** 767.085 (1) (bm) of the statutes is created to read:

16 767.085 (1) (bm) If the relief requested is a divorce or legal separation and the
17 marriage of the parties is a covenant marriage under s. 765.26, the name and
18 birthdate of any minor child of a party not specified in par. (b).

19 **SECTION 12.** 767.085 (1) (cr) of the statutes is created to read:

20 767.085 (1) (cr) If the relief requested is a divorce or legal separation and the
21 marriage of the parties is a covenant marriage under s. 765.26, that the marriage is
22 a covenant marriage and either of the following:

23 1. That neither party has a minor child and the wife is not pregnant.

BILL

1 2. That the parties, or either of them, has a minor child or the wife is pregnant,
2 the grounds for the action and the facts supporting a reasonable basis on which the
3 grounds are alleged.

4 **SECTION 13.** 767.12 (4) of the statutes is created to read:

5 767.12 (4) **GROUND.** In an action for divorce or legal separation, if both of the
6 parties to a covenant marriage under s. 765.26 state by petition or stipulation that
7 one or more of the grounds under s. 767.07 (2m) (c) apply, the court, after hearing,
8 shall make a finding that those grounds apply.

9 **SECTION 14.** 767.13 (5) (a) of the statutes is renumbered 767.13 (5) (a) 1. (intro.)
10 and amended to read:

11 767.13 (5) (a) 1. (intro.) On authority delegated by a judge, which may be by
12 a standard order, and with the approval of the chief judge of the judicial
13 administrative district, a family court commissioner may preside at any hearing held
14 to determine whether a judgment of divorce shall be granted, if ~~both~~ any of the
15 following applies:

16 a. Both parties state that the marriage is irretrievably broken and that all
17 material issues, including but not limited to division of property or estate, legal
18 custody, physical placement, child support, spousal maintenance and family
19 support, are resolved ~~or if one.~~

20 c. One party does not participate in the action for divorce.

21 2. The family court commissioner may grant and enter judgment in any action
22 over which he or she presides under this paragraph unless the judgment modifies an
23 agreement between the parties on material issues. If the family court commissioner
24 does not approve an agreement between the parties on material issues, the action
25 shall be certified to the court for trial.

Inset A

a marriage and family therapist,
a professional counselor,

(end of ins. A)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0411/2dn
PJK:kg:jf

January 8, 1999

This redraft adds marriage and family therapists and professional counselors as persons who may provide premarital counseling. The draft never did specify who may provide marriage counseling.

Pamela J. Kahler
Senior Legislative Attorney
266-2682

Please "e-mail" analysis of

LRB-0411/2 to

Jacqueline (^{Jacque}~~Jackie~~) Zibrowski
(at Carol Owens' office)

Thanks.

Barman, Mike

From: Barman, Mike
Sent: Monday, January 11, 1999 11:03 AM
To: Zibrowski, Jacque
Cc: Kahler, Pam
Subject: Anmalysis for 99-0411/2

LRB-0411/2
Drafter:PJK

1999 BILL

AN ACT to renumber 765.13; to renumber and amend 767.07 and 767.13 (5) (a); to amend 765.09 (3) and 765.12 (2); and to create 765.09 (4), 765.12 (3), 765.13 (2), 765.26, 767.07 (2m), 767.07 (3m), 767.085 (1) (bm), 767.085 (1) (cr), 767.12 (4) and 767.13 (5) (a) 1. b. of the statutes; relating to: covenant marriage and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, married persons may be divorced or legally separated without showing either party to be at fault for a breakdown in the marriage. For a divorce, the court must find that the marriage is irretrievably broken, which may be based on the statement of one of the parties and the court's determination that reconciliation is not reasonably likely. For a legal separation, the court must find that the marital relationship is broken. The court may convert a judgment of legal separation into a judgment of divorce if at least one year has elapsed since the judgment of legal separation was entered and at least one of the parties requests it. This bill establishes covenant marriage as an option for persons entering into a marriage and for persons already married. If the parties to a covenant marriage, or one of them, decides to seek a divorce or a legal separation and at least one of the parties has a minor child, the court must make certain findings that do not apply in other marriages. In addition to finding that the marriage is irretrievably broken, or that the marital relationship is broken in the case of legal separation, the court must find that the parties have undergone marriage counseling, in an attempt to save the marriage, and that at least one of the following grounds applies:

- 1) The respondent has committed adultery.
- 2) The respondent has committed a felony and has been sentenced to imprisonment.
- 3) The respondent has abandoned the petitioner for at least one year.
- 4) The respondent has abused the petitioner or a child of either or both parties.
- 5) The parties have been living apart without reconciliation for two years or more.
- 6) The respondent is habitually intemperate or treats the petitioner so cruelly that living together is impossible. (This ground applies only for a legal separation.)

If neither of the parties to a covenant marriage has a minor child and the wife is not pregnant, the court may grant the parties a divorce or legal separation upon the same basis as in a marriage that is not a covenant marriage. As in other marriages, the parties to a covenant marriage may stipulate as to any issues that the

court would have to decide (such as property division, child custody and child support), including the grounds on which the divorce or legal separation is based. The family court commissioner may preside at the hearing and grant a judgment of divorce or legal separation in any marriage if the parties stipulate as to all issues that must be decided.

In order to enter into a covenant marriage, the parties must execute a declaration of intent to contract a covenant marriage, which must be signed by the parties and notarized, and which must include a recitation regarding their marriage as a commitment for life and the stated commitment to obtain marriage counseling if they experience marital difficulties. In addition, the parties must receive premarital counseling from a marriage and family therapist, a professional counselor, a member of the clergy or a person designated by a member of the clergy. The person providing the counseling must sign, and have notarized, an attestation that he or she provided counseling.

When the parties apply for a marriage license, they must inform the county clerk, as part of their marriage license application, that they intend to contract a covenant marriage. The parties must submit to the county clerk a duplicate original of their declaration of intent to contract a covenant marriage, which the clerk attaches to the marriage license. Parties who indicate to the county clerk that they intend to contract a covenant marriage may marry no sooner than 31 days and no later than 45 days after their marriage license is issued. This extra time affords the parties an opportunity to rescind their decision to contract a covenant marriage. (For other marriages, the parties must marry within 30 days after their marriage license is issued.) The person officiating at the marriage of the parties designates on the marriage document, which when completed is sent to the register of deeds, whether the parties entered into a covenant marriage.

Persons who are already married may designate their marriage as a covenant marriage by executing a declaration of intent to designate an existing marriage as a covenant marriage, which must be signed by the parties and notarized, and which must include a recitation regarding their marriage as a commitment for life and the stated commitment to obtain marriage counseling if they experience marital difficulties. A duplicate original of the declaration of intent must be filed with the register of deeds in this state with whom the parties' marriage certificate is filed. If the parties were married in another state, they must file a duplicate original of the declaration of intent, along with a copy with their marriage certificate, with the register of deeds of the county in which they reside.

The bill requires the department of health and family services (DHFS) to develop by rule and prepare an informational pamphlet on covenant marriage that DHFS must provide free of charge upon request to persons who, under the bill, may provide premarital counseling to persons who wish to enter into a covenant marriage, as well as to any other person who requests a copy.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.



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1999 BILL

*Tues.
D-note
See p. 8*

1 **AN ACT to renumber** 765.13; **to renumber and amend** 767.07 and 767.13 (5)
 2 (a); **to amend** 765.09 (3) and 765.12 (2); and **to create** 765.09 (4), 765.12 (3),
 3 765.13 (2), 765.26, 767.07 (2m), 767.07 (3m); 767.085 (1) (bm), 767.085 (1) (cr),
 4 767.12 (4) and 767.13 (5) (a) 1. b. of the statutes; **relating to:** covenant marriage
 5 and granting rule-making authority.

Gen. Cat.

Analysis by the Legislative Reference Bureau

Under current law, married persons may be divorced or legally separated without showing either party to be at fault for a breakdown in the marriage. For a divorce, the court must find that the marriage is irretrievably broken, which may be based on the statement of one of the parties and the court's determination that reconciliation is not reasonably likely. For a legal separation, the court must find that the marital relationship is broken. The court may convert a judgment of legal separation into a judgment of divorce if at least one year has elapsed since the judgment of legal separation was entered and at least one of the parties requests it.

This bill establishes covenant marriage as an option for ~~persons~~ entering into a marriage and for ~~persons~~ already married. If the parties to a covenant marriage, or one of them, decides to seek a divorce or a legal separation and at least one of the parties has a minor child, the court must make certain findings that do not apply in other marriages. In addition to finding that the marriage is irretrievably broken, or that the marital relationship is broken in the case of legal separation, the court must find that the parties have undergone marriage counseling, in an attempt to save the marriage, and that at least one of the following grounds applies:

a man and a woman who are

BILL

- 1) The respondent has committed adultery.
- 2) The respondent has committed a felony and has been sentenced to imprisonment.
- 3) The respondent has abandoned the petitioner for at least one year.
- 4) The respondent has abused the petitioner or a child of either or both parties.
- 5) The parties have been living apart without reconciliation for two years or more.

6) The respondent is habitually intemperate or treats the petitioner so cruelly that living together is impossible. (This ground applies only for a legal separation.)

If neither of the parties to a covenant marriage has a minor child and the wife is not pregnant, the court may grant the parties a divorce or legal separation upon the same basis as in a marriage that is not a covenant marriage. As in other marriages, the parties to a covenant marriage may stipulate as to any issues that the court would have to decide (such as property division, child custody and child support), including the grounds on which the divorce or legal separation is based. The family court commissioner may preside at the hearing and grant a judgment of divorce or legal separation in any marriage if the parties stipulate as to all issues that must be decided.

In order to enter into a covenant marriage, the parties must execute a declaration of intent to contract a covenant marriage, which must be signed by the parties and notarized, and which must include a recitation regarding their marriage as a commitment for life and the stated commitment to obtain marriage counseling if they experience marital difficulties. In addition, the parties must receive premarital counseling from a marriage and family therapist, a professional counselor, a member of the clergy or a person designated by a member of the clergy. The person providing the counseling must sign, and have notarized, an attestation that he or she provided counseling.

When the parties apply for a marriage license, they must inform the county clerk, as part of their marriage license application, that they intend to contract a covenant marriage. The parties must submit to the county clerk a duplicate original of their declaration of intent to contract a covenant marriage, which the clerk attaches to the marriage license. Parties who indicate to the county clerk that they intend to contract a covenant marriage may marry no sooner than 31 days and no later than 45 days after their marriage license is issued. This extra time affords the parties an opportunity to rescind their decision to contract a covenant marriage. (For other marriages, the parties must marry within 30 days after their marriage license is issued.) The person officiating at the marriage of the parties designates on the marriage document, which when completed is sent to the register of deeds, whether the parties entered into a covenant marriage.

Persons who are already married may designate their marriage as a covenant marriage by executing a declaration of intent to designate an existing marriage as a covenant marriage, which must be signed by the parties and notarized, and which must include a recitation regarding their marriage as a commitment for life and the stated commitment to obtain marriage counseling if they experience marital difficulties. A duplicate original of the declaration of intent must be filed with the

BILL

register of deeds in this state with whom the parties' marriage certificate is filed. If the parties were married in another state, they must file a duplicate original of the declaration of intent, along with a copy with their marriage certificate, with the register of deeds of the county in which they reside.

The bill requires the department of health and family services (DHFS) to develop by rule and prepare an informational pamphlet on covenant marriage that DHFS must provide free of charge upon request to persons who, under the bill, may provide premarital counseling to persons who wish to enter into a covenant marriage, as well as to any other person who requests a copy.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 765.09 (3) of the statutes is amended to read:

2 765.09 (3) Each party shall present satisfactory, documentary proof of
3 identification and residence and shall swear (or affirm) to the application before the
4 clerk who is to issue the marriage license or the person authorized to accept such
5 applications in the county and state where the party resides. The application shall
6 contain the social security number of each party, as well as any other informational
7 items that the department of health and family services directs, subject to sub. (4).
8 The portion of the marriage application form that is collected for statistical purposes
9 only shall indicate that the address of the marriage license applicant may be
10 provided by a county clerk to a law enforcement officer under the conditions specified
11 under s. 765.20 (2). Each applicant under 30 years of age shall exhibit to the clerk
12 a certified copy of a birth certificate, and any applicants shall submit a copy of any
13 judgments or a death certificate affecting the marital status. If such certificate or
14 judgment is unobtainable, other satisfactory documentary proof of the requisite facts
15 therein may be presented in lieu thereof. Whenever the clerk is not satisfied with
16 the documentary proof presented, he or she shall submit the same, for an opinion as

BILL**SECTION 1**

1 to the sufficiency of the proof, to a judge of a court of record in the county of
2 application.

3 **SECTION 2.** 765.09 (4) of the statutes is created to read:

4 765.09 (4) If the parties intend to contract a covenant marriage under s. 765.26,
5 the marriage license application shall include a separate form with the following
6 declaration:

7 We, (name of intended husband) and (name of intended wife), do hereby
8 declare that we intend to contract a covenant marriage and have executed and do
9 submit for attachment to the marriage license a declaration of intent under section
10 765.26 (1) (b), Wisconsin Statutes.

11 **SECTION 3.** 765.12 (2) of the statutes is amended to read:

12 765.12 (2) The Except as provided in sub. (3), the marriage license shall
13 authorize the marriage ceremony to be performed in any county of this state within
14 30 days of issuance, excepting that where both parties are nonresidents of the state,
15 the ceremony shall be performed only in the county in which the marriage license is
16 issued. The officiating person shall determine that the parties presenting
17 themselves to be married are the parties named in the marriage license. If aware
18 of any legal impediment to such marriage, the person shall refuse to perform the
19 ceremony. The issuance of a marriage license shall not be deemed to remove or
20 dispense with any legal disability, impediment or prohibition rendering marriage
21 between the parties illegal, and the marriage license shall contain a statement to
22 that effect.

23 **SECTION 4.** 765.12 (3) of the statutes is created to read:

24 765.12 (3) If the parties indicate on their marriage license application that they
25 intend to contract a covenant marriage, as provided in s. 765.09 (4), the parties shall

BILL

1 submit to the clerk a declaration of intent to contract a covenant marriage that
2 complies with s. 765.26 (1)(b). The clerk shall attach the declaration of intent to the
3 marriage license. The marriage license shall authorize the marriage ceremony of
4 parties who indicate on their marriage license application that they intend to
5 contract a covenant marriage to be performed not sooner than 31 days nor later than
6 45 days after the license is issued. At any time before the marriage ceremony takes
7 place, the parties may rescind their intention to contract a covenant marriage.

8 **SECTION 5.** 765.13 of the statutes is renumbered 765.13 (1).

9 **SECTION 6.** 765.13 (2) of the statutes is created to read:

10 765.13 (2) The marriage document shall provide for a designation by the
11 officiating person, or by the parties to the marriage if the marriage ceremony is
12 performed without an officiating person, as to whether the parties entered into a
13 covenant marriage. The designation shall be signed by the parties to the marriage,
14 the witnesses and the officiating person, if any.

15 **SECTION 7.** 765.26 of the statutes is created to read:

16 **765.26 Covenant marriage. (1) REQUIREMENTS FOR NEW MARRIAGES.** (a) A
17 covenant marriage may be contracted between one male and one female who, in
18 addition to complying with the other requirements of this chapter, have done all of
19 the following:

20 1. Received premarital counseling on the nature, purposes and responsibilities
21 of marriage from a marriage and family therapist, a professional counselor, a
22 member of the clergy or a person designated by a member of the clergy.

23 2. Executed a declaration of intent that complies with par. (b).

BILL

1 3. Indicated their intention to contract a covenant marriage on their marriage
2 license application and provided the county clerk with a duplicate original of their
3 declaration of intent.

4 (b) A declaration of intent to contract a covenant marriage shall include all of
5 the following:

6 1. The following recitation by the parties:

7 “We do solemnly declare that marriage is a covenant between a man and a
8 woman who agree to live together as husband and wife for as long as they both may
9 live. We have chosen each other carefully and disclosed to one another everything
10 that could adversely affect the decision to enter into this marriage. We have received
11 premarital counseling on the nature, purposes and responsibilities of marriage. We
12 have read the pamphlet entitled “Covenant Marriage” and we understand that a
13 covenant marriage is for life. If we experience marital difficulties, we commit
14 ourselves to taking all reasonable efforts, including marriage counseling, to preserve
15 our marriage.

16 With full knowledge of what this commitment means, we do hereby declare that
17 our marriage will be bound by Wisconsin law on covenant marriage and we promise
18 to love, honor and care for one another as husband and wife for the rest of our lives.”

19 2. An affidavit by the parties that they have received premarital counseling
20 from a marriage and family therapist, a professional counselor, a member of the
21 clergy or a person designated by a member of the clergy, and that the counseling
22 included a discussion of the seriousness of covenant marriage, communication of the
23 fact that a covenant marriage is a commitment for life, a discussion of the obligation
24 to seek marriage counseling in times of marital difficulties and a discussion of the

BILL

1 exclusive grounds in a covenant marriage for legal separation and divorce if a child
2 is involved.

3 3. A notarized attestation, signed by the person who provided the counseling
4 specified under subd. 2. and attached to or included in the parties' affidavit,
5 confirming that the parties were counseled as to the nature and purpose of the
6 marriage and the grounds for legal separation and divorce if a child is involved and
7 acknowledging that the person provided to the parties the informational pamphlet
8 developed and prepared by the department of health and family services, entitled
9 "Covenant Marriage", that provides a full explanation of the terms, conditions and
10 consequences of a covenant marriage.

11 4. The notarized signatures of both parties.

12 5. If one or both of the parties are between the ages of 16 and 18 years, the
13 written consent required under s. 765.02 (2).

14 (c) The recitation portion of the declaration under par. (b) 1. shall be prepared
15 in duplicate originals, one of which shall be retained by the parties. The other
16 duplicate original, together with the remainder of the declaration, shall be provided
17 to the county clerk for attachment to the marriage license.

18 (d) If the parties to a marriage fulfill the requirements of par. (a) and enter into
19 a covenant marriage as intended, the officiating person, or the parties if the marriage
20 ceremony is performed without an officiating person, shall designate on the
21 marriage certificate that the parties entered into a covenant marriage. The
22 designation must be signed by the parties, the witnesses and the officiating person,
23 if any.

24 **(2) REQUIREMENTS FOR MARRIAGES PREVIOUSLY CONTRACTED.** (a) Notwithstanding
25 sub. (1), on or after the effective date of this paragraph [revisor inserts date], a

BILL

1 marriage between one male and one female that was
 2 married couple who entered into ~~their marriage~~ before the effective date of this
 3 paragraph [revisor inserts date], may ~~designate their marriage~~ be designated by the married couple
 4 marriage ~~by executing~~ if the couple executes a declaration of intent that complies with par. (b). The
 5 declaration of intent shall be filed with the register of deeds with whom the couple's
 6 marriage certificate is filed. If the couple was married outside the state, a copy of
 7 their marriage certificate, or comparable document, with the declaration of intent
 8 attached, shall be filed with the register of deeds of the county in which the couple
 9 resides.

10 (b) A declaration of intent to designate an existing marriage as a covenant
 11 marriage shall include all of the following:

1. The following recitation by the parties:

12 "We do solemnly declare that marriage is a covenant between a man and a
 13 woman who agree to live together as husband and wife for so long as they both may
 14 live. We understand the nature, purposes and responsibilities of marriage. We have
 15 read the informational pamphlet entitled "Covenant Marriage", developed and
 16 prepared by the department of health and family services, and we understand that
 17 a covenant marriage is for life. If we experience marital difficulties, we commit
 18 ourselves to taking all reasonable efforts, including marital counseling, to preserve
 19 our marriage.

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

2. The notarized signatures of both parties.

BILL

1 (c) The recitation portion of the declaration under par. (b) 1. shall be prepared
2 in duplicate originals, one of which shall be retained by the parties. The other
3 duplicate original, together with the remainder of the declaration, shall be filed as
4 provided in par. (a).

5 **(3) EFFECT; SPECIAL GROUNDS FOR DIVORCE OR SEPARATION IF A CHILD IS INVOLVED.**
6 A covenant marriage shall be subject to the same provisions as any other marriage
7 and shall be in all respects the same as any other marriage, except that, if the parties
8 to a covenant marriage, or either of them, has a minor child, or the wife is pregnant,
9 at the time an action for divorce or legal separation is commenced, a court may grant
10 a judgment of divorce or legal separation only upon one of the bases specified in s.
11 767.07 (2m) (c). If, at the commencement of an action for divorce or legal separation,
12 neither party to a covenant marriage has a minor child and the wife is not pregnant,
13 a court may grant a judgment of divorce or legal separation with respect to the
14 marriage as provided in s. 767.07 (1).

15 **(4) INFORMATIONAL PAMPHLET.** The department of health and family services
16 shall develop by rule and prepare an informational pamphlet, entitled “Covenant
17 Marriage”, that explains covenant marriage in easily understood language,
18 including the procedure for entering into, or designating an existing marriage as, a
19 covenant marriage and the effect of entering into, or designating an existing
20 marriage as, a covenant marriage. The department of health and family services
21 shall make the pamphlet available, upon request and free of charge, to any person
22 who may provide the premarital counseling under sub. (1) (b) 2. and to any other
23 person.

24 **SECTION 8.** 767.07 of the statutes is renumbered 767.07 (1), and 767.07 (1)
25 (intro.), (a) and (b), as renumbered, are amended to read:

BILL

1 767.07 (1) (intro.) ~~A~~ Except as provided in subs. (2m) and (3m), a court of
2 competent jurisdiction shall grant a judgment of divorce or legal separation if all of
3 the following apply:

4 (a) The requirements of this chapter as to residence and marriage assessment
5 counseling have been complied with;

6 (b) 1. In connection with a judgment of divorce or legal separation, the court
7 finds that the marriage is irretrievably broken under s. 767.12 (2), unless ~~par. (b)~~
8 subd. 2. applies.

9 2. In connection with a judgment of legal separation, the court finds that the
10 marital relationship is broken under s. 767.12 (3); ~~and.~~

11 **SECTION 9.** 767.07 (2m) of the statutes is created to read:

12 767.07 (2m) Except as provided in sub. (3m), if the marriage of the parties is
13 a covenant marriage under s. 765.26 and at the commencement of the action under
14 this section the parties, or either of them, has a minor child or the wife is pregnant,
15 a court of competent jurisdiction shall grant a judgment of divorce or legal separation
16 only if all of the following apply:

17 (a) The requirements under sub. (1) are satisfied.

18 (b) The parties have undergone marriage counseling.

19 (c) The court finds any of the following:

20 1. That the respondent has violated s. 944.16 (1).

21 2. That the respondent has been convicted of a felony and has been sentenced
22 to imprisonment.

23 3. That the respondent has abandoned the petitioner for at least one year and
24 constantly refuses to return.

BILL

1 4. That the respondent has engaged in domestic abuse, as defined in s. 813.12
2 (1) (a), with respect to the petitioner, or has engaged in abuse, as defined in s. 48.02
3 (1), with respect to a child, stepchild or foster child of either or both of the parties.

4 5. That the petitioner and respondent have been living apart continuously
5 without reconciliation for 2 years or longer.

6 6. That the respondent's habitual intemperance, cruel treatment of the
7 petitioner or outrages toward the petitioner have made their living together
8 insupportable, except that the court may grant only a judgment of legal separation
9 if this subdivision applies.

10 **SECTION 10.** 767.07 (3m) of the statutes is created to read:

11 767.07 (3m) If the marriage of the parties is a covenant marriage under s.
12 765.26, a court of competent jurisdiction shall grant a judgment of divorce if the court
13 has granted a judgment of legal separation under sub. (1) or (2m) and the
14 requirements under s. 767.09 (2) are satisfied.

15 **SECTION 11.** 767.085 (1) (bm) of the statutes is created to read:

16 767.085 (1) (bm) If the relief requested is a divorce or legal separation and the
17 marriage of the parties is a covenant marriage under s. 765.26, the name and
18 birthdate of any minor child of a party not specified in par. (b).

19 **SECTION 12.** 767.085 (1) (cr) of the statutes is created to read:

20 767.085 (1) (cr) If the relief requested is a divorce or legal separation and the
21 marriage of the parties is a covenant marriage under s. 765.26, that the marriage is
22 a covenant marriage and either of the following:

23 1. That neither party has a minor child and the wife is not pregnant.

BILL

1 2. That the parties, or either of them, has a minor child or the wife is pregnant,
2 the grounds for the action and the facts supporting a reasonable basis on which the
3 grounds are alleged.

4 **SECTION 13.** 767.12 (4) of the statutes is created to read:

5 767.12 (4) GROUND. In an action for divorce or legal separation, if both of the
6 parties to a covenant marriage under s. 765.26 state by petition or stipulation that
7 one or more of the grounds under s. 767.07 (2m) (c) apply, the court, after hearing,
8 shall make a finding that those grounds apply.

9 **SECTION 14.** 767.13 (5) (a) of the statutes is renumbered 767.13 (5) (a) 1. (intro.)
10 and amended to read:

11 767.13 (5) (a) 1. (intro.) On authority delegated by a judge, which may be by
12 a standard order, and with the approval of the chief judge of the judicial
13 administrative district, a family court commissioner may preside at any hearing held
14 to determine whether a judgment of divorce shall be granted, if ~~both~~ any of the
15 following applies:

16 a. Both parties state that the marriage is irretrievably broken and that all
17 material issues, including but not limited to division of property or estate, legal
18 custody, physical placement, child support, spousal maintenance and family
19 support, are resolved ~~or if one,~~

20 c. One party does not participate in the action for divorce.

21 2. The family court commissioner may grant and enter judgment in any action
22 over which he or she presides under this paragraph unless the judgment modifies an
23 agreement between the parties on material issues. If the family court commissioner
24 does not approve an agreement between the parties on material issues, the action
25 shall be certified to the court for trial.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0411/3dn
PJK:kg:ijs

January 12, 1999

This redraft limits covenant marriages to marriages between one male and one female.

Pamela J. Kahler
Senior Legislative Attorney
266-2682

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 1/12/99

To: Representative Owens

Relating to LRB drafting number: LRB-0411

Topic

Providing procedure for covenant marriage

Subject(s)

Dom. Rel. - marriage

1. **JACKET** the draft for introduction Carol Owens

in the **Senate** ____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Pamela J. Kahler, Senior Legislative Attorney
Telephone: (608) 266-2682

BRANCH THREE
DODGE COUNTY CIRCUIT COURT
ANDREW P. BISSONNETTE, CIRCUIT JUDGE
Dodge County Legal Services Building
105 N. Main St., Juneau, Wisconsin 53039-1056
Fax: (414) 386-3587

Vicki Brom, RPR/CM
Circuit Court Reporter
Phone: (414) 386-3563

Gail Schroeder
Judicial Assistant
Phone: (414) 386-3805

April 6, 1999

Representative Carol Owens
Wisconsin State Assembly
53rd Assembly District
P. O. Box 8953, State Capitol
Madison, WI 53708

Representative Robert Goetsch
Wisconsin State Assembly
39th District, State Capitol
P. O. Box 8952
Madison, WI 53702

Re: Covenant Marriage Bill - AB 83

Dear Carol and Bob:

I am writing to you because I understand that you are sponsors of the covenant marriage bill. I am not sure if you are aware of it, but the State Bar will probably be opposing the bill. They are concerned that this returns our divorce law to a fault base system where there is more acrimony and more attorneys fees that the parties have to incur in order to get the divorce.

I have reviewed the bill, and it doesn't look that bad to me. In fact, the required counseling before the marriage and again before the divorce would probably do some good. Clearly, it is something that people must opt into. It is not something that is forced on everyone. It also looks like there will be a pamphlet describing all of the implications of the covenant marriage, and that the people are going to have to read that pamphlet and certify that they've read it in order to enter the covenant marriage.

I only have a few comments regarding the bill as drafted. If you look at section nine, it talks about what has to be proven in order for a divorce to be granted in a covenant marriage. It indicates that the divorce can be granted if, at §767.07(2m)(c), "the court finds any of the following:". The only question I have there is whether or not the court's finding must be by the

Representative Carol Owens
Representative Robert Goetsch
April 6, 1999
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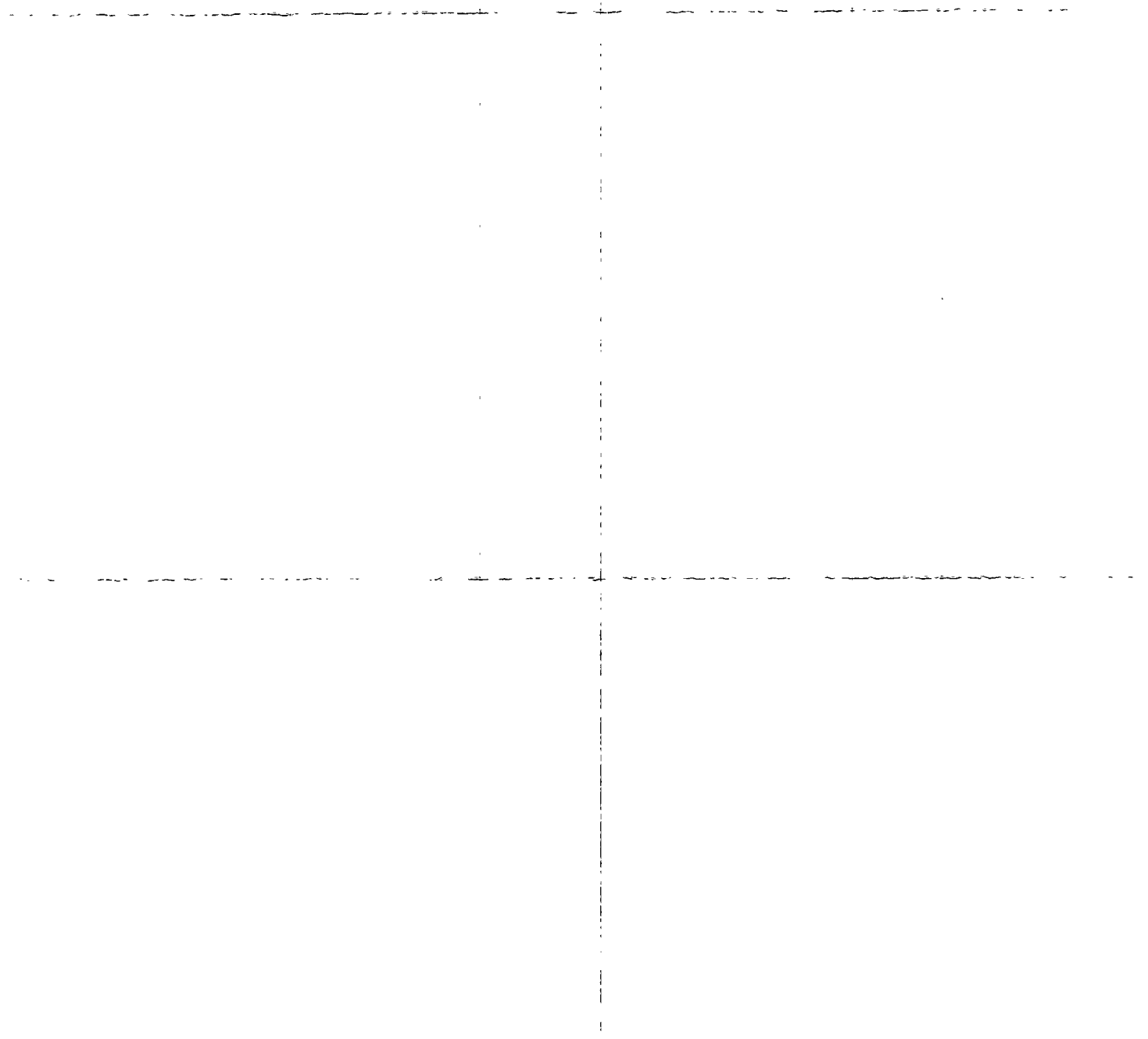
preponderance of the evidence. I assume that would be the standard. It is the ordinary burden of proof in a civil case. It does not appear that you intended to raise that burden to the middle burden which is clear and convincing evidence. Sometimes it helps, however, if you specify what burden of proof applies.

One of the things that would support a divorce in this type of a marriage is that "the respondent has been convicted of a felony and has been sentenced to imprisonment." This is §767.07(2m)(c)(2). The question that that raises in my mind is whether the conviction for the felony has to have occurred during the marriage, or could it have occurred ten or fifteen years before the marriage. If it occurred well before the marriage, and the person is now out of prison, then it seems that, even if the parties intend to enter a covenant marriage, the grounds are already available for divorce anytime somebody wants out. It may have been your intent that this would only be a grounds for divorce if the felony were committed during the marriage. I don't know if that's true or not, but as its worded now, the law would permit a divorce if the party had been convicted of a felony and sentenced to prison at any time in his or her life.

The very next line in the bill talks about the respondent having abandoned the petitioner "for at least one year and constantly refuses to return." I don't know if you actually intended to use the word "constantly" or if maybe you meant "consistently", or "steadfastly". When I think that somebody is doing something "constantly" it means to me that they are always doing it, and are doing little else with their life. I picture a person walking around muttering to himself or others "I refuse to return, I refuse to return, I refuse to return". If there was evidence that there was some point where he wasn't constantly saying that, then I don't think that you could find that he was constantly refusing to return. I doubt that "constantly" is the word that you really want at that point.

When we get to the very next line of the bill, §767.07(2m)(c)(4), you start talking about a case where the respondent "has engaged in domestic abuse, as defined in §813.12(1)(a), with respect to the petitioner". The real reason I raise the question about the burden of proof, above, is because the definition of domestic abuse here is pulled out of the domestic abuse injunction statute. That injunction statute has a much lower burden of proof. It only requires "reasonable grounds" for the court to believe that domestic abuse has occurred or even has been threatened and an injunction can be issued. I assume that it is not your intent that evidence that a domestic abuse injunction was just issued would be sufficient to meet the burden of proof required to get a divorce in a covenant marriage. As I have mentioned above, domestic abuse injunctions are issued on as little evidence as that somebody raised his hand to his spouse and threatened to hit her, even though he may have never struck her throughout the entire marriage.

Actually, as I re-read this part of your bill, the person I described in the previous paragraph would in fact meet the requirements of your bill as drafted. The domestic abuse definition which you chose does include a "threat to engage in" domestic abuse. See Wis. Stat.



Representative Carol Owens
Representative Robert Goetsch
April 6, 1999
Page 3

§813.12(1)(a)(4). So, the situation where someone has raised a hand in a threatening manner against a spouse, but didn't actually strike the spouse, would apparently meet the requirements sufficient to get a divorce in a covenant marriage. I assume, however, that you would require proof of that incident by at least a preponderance of the evidence and not on the lower burden of proof permitted in domestic abuse injunction cases.

You should give these matters some thought. I am sending a copy of this to Pam Kahler at the Legislative Reference Bureau who assisted you in drafting the legislation. I am also sending copies to Senators Fitzgerald and Roessler who also represent Dodge County.

Sincerely,



**ANDREW P. BISSONNETTE
CIRCUIT JUDGE, BRANCH III
DODGE COUNTY, WISCONSIN**

APB:gs

cc: Senator Steve Fitzgerald
Senator Carol A. Roessler
✓ Pam Kahler, LRB
