

# 1999 SENATE BILL 17

January 26, 1999 – Introduced by Senators WELCH, DARLING, ROESSLER and FITZGERALD, cosponsored by Representatives OWENS, AINSWORTH, KEDZIE, HANDRICK, VRAKAS, GOETSCH, JENSEN, GUNDERSON, ALBERS and GARD. Referred to Committee on Judiciary and Consumer Affairs.

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.

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### ***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 a man and a woman who are entering into a marriage and for a man and a woman who are 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

**SENATE BILL 17**

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

**SENATE BILL 17**

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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***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

**SENATE BILL 17****SECTION 1**

1 the documentary proof presented, he or she shall submit the same, for an opinion as  
2 to the sufficiency of the proof, to a judge of a court of record in the county of  
3 application.

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

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

8 We, .... (name of intended husband) and .... (name of intended wife), do hereby  
9 declare that we intend to contract a covenant marriage and have executed and do  
10 submit for attachment to the marriage license a declaration of intent under section  
11 765.26 (1) (b), Wisconsin Statutes.

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

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

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

**SENATE BILL 17**

1           765.12 (3) If the parties indicate on their marriage license application that they  
2 intend to contract a covenant marriage, as provided in s. 765.09 (4), the parties shall  
3 submit to the clerk a declaration of intent to contract a covenant marriage that  
4 complies with s. 765.26 (1) (b). The clerk shall attach the declaration of intent to the  
5 marriage license. The marriage license shall authorize the marriage ceremony of  
6 parties who indicate on their marriage license application that they intend to  
7 contract a covenant marriage to be performed not sooner than 31 days nor later than  
8 45 days after the license is issued. At any time before the marriage ceremony takes  
9 place, the parties may rescind their intention to contract a covenant marriage.

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

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

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

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

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

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

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

**SENATE BILL 17****SECTION 7**

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

**SENATE BILL 17**

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

**SENATE BILL 17**

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

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

11 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."

24 2. The notarized signatures of both parties.



**SENATE BILL 17**

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:

**SENATE BILL 17****SECTION 8**

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.

**SENATE BILL 17**

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.

**SENATE BILL 17****SECTION 12**

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.

**SENATE BILL 17**

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

2           767.13 (5) (a) 1. b. If the marriage is a covenant marriage and the parties, or  
3 one of them, has a minor child or the wife is pregnant, both parties state that the  
4 marriage is irretrievably broken and that all material issues, including but not  
5 limited to division of property or estate, legal custody, physical placement, child  
6 support, spousal maintenance and family support, are resolved and stipulate as to  
7 the grounds under s. 767.07 (2m) (c) that apply.

8           **SECTION 16. Nonstatutory provisions.**

9           (1) RULES RELATED TO INFORMATIONAL PAMPHLET. The department of health and  
10 family services shall submit in proposed form the rules required under section 765.26  
11 (4) of the statutes, as created by this act, to the legislative council staff under section  
12 227.15 (1) of the statutes no later than the first day of the 7th month beginning after  
13 the effective date of this subsection.

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

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

18

(END)