Approved:	3/18/11	
* * =	Date	

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman lance Kinzer at 3:30 p.m. on February 15, 2011, in Room 346-S of the Capitol.

All members were present except:

Representative Colloton

Committee staff present:

Jill Wolters, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Tamera Lawrence, Office of the Revisor of Statutes
Lauren Douglass, Kansas Legislative Research Department
Robert Allison-Gallimore, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee: Representative Jim Howell, Eighty-Second District, Derby, Kansas Amber Versola, Kansas NOW Ronald W. Nelson, Kansas Bar Association

Others attending:

See attached list.

Chairman Kinzer advised the meeting would end at 4:45 p.m due to a Joint Senate/House Session scheduled for 5:00 p.m. He also announced the hearing scheduled today for <u>HB 2150</u> would be heard tomorrow, February 16, and the hearing for <u>HB 2183</u> would be rescheduled for Friday, February 18th.

HB 2010 - Offenses and conduct giving rise to forfeiture.

Representative Pauls made the motion to report **HB 2010** favorably for passage. Representative Patton seconded the motion. Motion carried.

HB 2106 - Concerning trespass and liability; exceptions.

Representative Patton made the motion to report **HB 2106** favorably for passage. Representative Brookens seconded the motion.

Representative Patton made the substitute motion to amend the bill to add changes in a balloon provided by the Revisors. (Attachment 1) Representative Brookens seconded the motion. Representative Pauls requested Page 1, Line 18 (2) be changed from "injury" to "physical injury or death". Chairman Kinzer stated with permission of the first and the second, this change will be added to the balloon amendment. Motion carried.

Representative Rubin made a substitute motion to add to the balloon, on page 2, Line 13, "to a trespasser" after the word liable so it would read "shall not be deemed liable to a trespasser for". Representative Brookens seconded the motion. Motion carried.

Representative Meiers made a substitute motion to add to the balloon amendment on Page 2, Line 20 to add "(4)" after the word "or", and also add "(5) livestock and wildlife on the property". Representative Smith seconded the motion. Motion carried.

After further discussion regarding common law, Representative Patton moved to table the bill. Motion carried.

The Hearing on HB 2254 - Covenant marriages; procedures for divorce and separate maintenance was opened.

Jill Wolters, Senior Assistant Revisor, provided an overview of the bill to the committee. (Attachment 2)

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on February 15, 2011, in Room 346-S of the Capitol.

Representative Howell, Eighty-Second District, Derby, Kansas, appeared before the committee as a proponent of the bill, stating the institution of marriage in American society is threatened today from many directions and been weakened over the recent decades by the increased divorce rates. This bill addresses this concern by raising the barriers to exit from the marriage and that entering into a covenant marriage rather than a standard marriage would be entirely voluntary. (Attachment 3)

The following proponents provided written testimony:

Kent Holcomb, Pastor of Calvory Baptist Church (<u>Attachment 4</u>) Mary Farney, Andover, Kansas (<u>Attachment 5</u>)

Amber Versola, on behalf of Kansas NOW, appeared as an opponent and stated that while the intent behind covenant marriage appears noble, the reality of it is that it carries the potential to cause grave danger to women in our state. She concluded she has not been able to find a single piece of evidence that covenant marriage has lowered the divorce rate in any of the three states that have such legislation. (Attachment 6)

Ronald W. Nelson, on behalf of the Kansas Bar Association, spoke before the committee as an opponent. He stated he has practiced family law for over twenty-five years and has also written chapters in the Kansas Bar Association "Practitioner's Guide to Kansas Family Law". He provided several reasons why covenant marriage is not the answer and that prior to the "no fault" divorce, a spouse would just leave the family home without a divorce. He also stated this bill encourages the destructive tendency of the "blame game" where the children end up being the victim of that kind of game. (Attachment 7)

Scott Mann, Family Law Attorney, provided written testimony in opposition of the bill. (Attachment 8)

The next meeting is scheduled for February 16, 2011.

The meeting was adjourned at 4:50 p.m.

JUDICIARY COMMITTEE GUEST LIST

DATE: 2-15-11

NAME	REPRESENTING
ED KLUMPP	KAIP/KPOB/KSB
Ru Velson	Ep4
Low Molin	XBA
Savely Jacquot	LKM
Sluber VII Sola	KS NOW.
John Reterou	Cy.tul Strategie,
Diane Minear	Sec. of State
Tim Gartner	ATIT
William Minner	KS. Heeman Kights Comm.
Ruth Glover	VVV
HICK FISCHEL	(1)
Eric Williams	KSCPOST
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EHlavey	KLETC
Bret Arnold	Pinegar TSm. 7h KS Catholic Conference
Edward Larson	KS Catholic Conference

Session of 2011

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HOUSE BILL No. 2106

By Committee on Federal and State Affairs

1-26

1	AN ACT concerning trespass and liability; exceptions.
3	Be it enacted by the Legislature of the State of Kansas: Section 1. This act shall be known and may be cited as the trespasser
5	responsibility act.
6 7	Sec. 2. (a) For the purposes of this act, "trespasser" means a person who enters on the property of another without permission and without an

- invitation, expressed or implied.

 (b) A possessor of land, including an owner, lessee, or other occupant, does not owe a duty of care to a trespasser and is not subject to liability for any injury to a trespasser.
- (c) Notwithstanding subsection (b), a possessor of land may be subject to liability for physical injury or death to a trespasser if:
- (1) The trespasser's physical injury or death was intentionally caused by the possessor, except that a possessor may use reasonable force to repel a trespasser that has entered the land or a building with the intent to commit a crime.
- (2) The trespasser was under the age of 17, the injury was resulting from an artificial condition on the land and:
- (A) The condition is one the possessor knew or reasonably should have known involved an unreasonable risk of death or serious bodily harm to such children.
- (B) the injured child did not discover the condition or realize the risk involved in the condition or of coming within the area made dangerous by
- (C) the utility to the possessor of maintaining the condition and the burden of eliminating the danger were slight as compared with the risk to the child involved; or
- (D) the possessor failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.
- (3) The possessor knew, or from facts within the possessor's knowledge should have known, that trespassers consistently intrude upon a limited area of the possessor's land and:

Comment [1]: willfully or wantonly

Comment [2]: a child

- (A) The trespasser's harm was caused by an artificial condition created or maintained by the possessor, the possessor knew the condition was likely to cause death or serious bodily injury to such a trespasser, the condition was of such a nature that the possessor had reason to believe that the trespasser would not discover it and the possessor failed to exercise reasonable care to warn the trespasser of the condition and the risk involved. Reasonable care to warn may include posting of signage stating the danger of the condition, but will not necessarily include the construction of fencing or other such barriers.
- (d) The possessor shall not be deemed liable for: (1) Natural conditions of the property such as cliffs, holes, caves, shifting or loose sand or soil and any other natural land conditions; (2) natural situations or conditions any reasonable person knew or should have known would contribute to the danger such as ice, snow or rain; (3) dangerous conditions that any reasonable person knew or should have known were dangerous such as roofs, equipment, steps and other inherently dangerous conditions; or unintentional failure of possessor to maintain or repair building or parking lots such as lighting, holes or other natural degradations of the property.
- Sec. 3. The provisions of this act are declared to be severable and if any provision, word, phrase or clause of the act or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remaining portions of this act.
- Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

- **Comment [3]:** the possessor knows, or in the exercise of ordinary care should know, that young children are likely to trespass upon the premises;
- Comment [4]: (B) the possessor knows, or in the exercise of ordinary care should know, that the condition exists and that it involves an unreasonable risk of bodily harm to young children;
- Comment [5]: (C) the children because of their youth either do not discover the condition or understand the danger involved in coming into the dangerous area; and
- Comment [6]: (D) one using ordinary care would not have maintained the condition when taking into consideration the usefulness of the condition and whether or not the expense or inconvenience to the defendant in remedying the condition would be slight in comparison to the risk of harm to children.

Office of the Revisor of Statutes 300 S.W. 10th Avenue Suite 24-E, Statehouse Topeka, Kansas 66612-1592 Telephone (785) 296-2321 FAX (785) 296-6668

MEMORANDUM

To:

House Committee on Judiciary

From:

Jill Ann Wolters, Senior Assistant Revisor

Date:

15 February, 2011

Subject:

House Bill No. 2254, Covenant marriage

HB 2254 would provide a second type of marriage for couples in Kansas, a covenant marriage. In covenant marriage, the couple (one male and one female) understands and agrees that the marriage between them is a lifelong relationship. Couples may choose to have a covenant marriage which requires both persons to sign a declaration of intent to contract a covenant marriage. Such declaration is signed, notarized and states that the parties have received premarital counseling and commit to take all reasonable steps to preserve the marriage, including marital counseling. Further, a signed, notarized affidavit shall be submitted by a counselor/clergy person confirming that the parties participated in premarital counseling, and were provided the pamphlet (created by the Attorney General's Office) entitled "covenant marriage act".

Minors may have a covenant marriage if such minor's parents or a judge consent.

There is an additional fee, not to exceed \$25 fee for a covenant marriage. (Current marriage license fee is \$80.)

Currently married couples may designate their marriage as a covenant marriage, with similar procedures as engaged couples. The declaration would be presented to the district court, then forwarded to the secretary of health and environment. There is a fee, not to exceed \$50.

If a couple has a covenant marriage, the divorce proceedings are as follows. (The divorce proceedings do not change for other marriages.) A divorce shall be granted only upon proof of any of the following grounds:

- 1. Adultery.
- 2. Conviction of capital murder, first degree murder, second degree murder, voluntary manslaughter, involuntary manslaughter, rape, indecent liberties with a child, aggravated indecent liberties with a child, criminal sodomy (sodomy with a child 14 or 15, and causing a child 14 or 15 to engage in sodomy with a person or animal), aggravated criminal sodomy, indecent solicitation of a child, aggravated indecent solicitation of a child, sexual exploitation of a child, aggravated sexual battery, or any conviction for an offense that is comparable to such crimes, or any federal or other state conviction for an offense that is comparable to such crimes.
- 3. Abandonment of the matrimonial domicile for one year and constant refusal to return.

House Judiciary
Date 2-15/1
Attachment # 2

- 4. Physical or sexual abuse of a spouse or child.
- 5. Living separate and apart continuously for two years, without reconciliation.
- 6. Living separate and apart continuously for one year, without reconciliation, from the date of judgment of separate maintenance OR if there are minor children of the marriage, 18 months (unless abuse of a child is the basis for the separate maintenance.)

If a couple has a covenant marriage, the separate maintenance proceedings are as follows. (The separate maintenance proceedings do not change for other marriages.) A judgment of separate maintenance shall be granted only upon proof of any of the following grounds:

- 1. Adultery.
- 2. Conviction of crimes listed in 2. above.
- 3. Abandonment of the matrimonial domicile for one year and constant refusal to return.
 - 4. Physical or sexual abuse of a spouse or child.
 - 5. Living separate and apart continuously for two years, without reconciliation.
 - 6. Habitual intemperance, or excessive, cruel treatment or outrages.

Section 4 requires the Attorney General to develop, adopt and disseminate a pamphlet about the covenant marriage act.

HB 2254 - Covenant Marriage

Mr. Chairman and member of the committee, I urge you to support House Bill 2254, which would allow couples marrying in Kansas to voluntarily enter into a "covenant marriage."

The institution of marriage in American society is today threatened from many directions, including from those who seek to change its definition or abolish it altogether. However, it has been weakened over recent decades by increased divorce rates, which undermine the lifelong nature of marriage as a union "until death do us part."

Much of this increase can be traced to the passage of no-fault divorce laws in the 1960s and 1970s. Although such laws were intended merely to reduce the rancor that often occurred in fault-based divorce proceedings, they had the unintended consequence of simply making making divorce too easy, and thus too frequent. The consequences for adults, but particularly for children, have been grave.

There is need for thoroughgoing divorce reform in this country. Covenant marriage is a small, but significant step in that direction. For marriage to succeed as the lifelong commitment it is meant to be, it must not be entered into lightly. Covenant marriage answers this need by raising the barriers to entry, requiring that there be careful thought and deliberate preparation prior to entering a covenant marriage.

For marriage to succeed, it must also not be abandoned lightly, as soon as the going gets rough—as it almost surely will in every marriage. Covenant marriage addresses this concern by raising the barriers to exit from marriage as well, by requiring counseling, a waiting period, or a finding of fault before a divorce will be granted.

For those that champion choice, please remember that entering into a covenant marriage rather than a standard marriage will be entirely voluntary. In a climate where everyone is clamoring for choice, policy makers have an obligation to offer couples the opportunity to make the choice of covenant marriage, a choice that is not only beneficial to them but historically beneficial for our society. This simply provides an opportunity that some will want. Secondly, for the fiscal conservatives, please recognize the cost of failed marriages. This bill, even if it only helps a small number of marriages, may be instrumental in saving the taxpayer significant expense.

I urge you to please support HB 2254 as a significant step to help strengthen marriage.

Jim Howell

Kansas State Representative District 82 (Derby) (785)296-7665 Topeka Office Jim.Howell@house.ks.gov

States that have covenant marriage

- 1. Arizona Ariz. Rev. Stat. Ann. § 25-901-906.
- 2. Arkansas Ark. Code Ann. § 9-11-801-811.
- 3. Louisiana La. Rev. Stat. Ann. § 9:272–276.

State that have introduced bills concerning covenant marriage

- 1. Alabama 1998 Ala. HB 30
- 2. California 2005 Cal. SB 1228
- 3. Colorado 1999 Colo. HB 1199
- 4. Florida 1990 Fla. HB 1585
- 5. Georgia 1997 Ga. HB 1138
- 6. Indiana 2011 Ind. SB 19
- 7. Kentucky 2007 Ky. HB 110
- 8. Maryland 2008 Md. SB 1698
- 9. Michigan 2009 Mich. HB 5951
- 10. Minnesota 1997 Minn. SF 2935
- 11. Mississippi 2010 Miss. HB 875
- 12. Missouri 2005 Mo. HB 452
- 13. Nebraska 1997 B 1214
- 14. New Mexico 2001 HB 733
- 15. North Carolina 2005 HB 1664
- 16. Ohio 2005 SB 140
- 17. Oklahoma 2011 HB 1200
- 18. Oregon 2005 Or. 788
- 19. South Carolina 1997 S.C. SB 870
- 20. Tennessee 2005 Tenn. SB 3478
- 21. Texas 2007 Tex. HB 1821
- 22. Utah 2003 Utah HB 213
- 23. Virginia 1998 Va. 1159
- 24. Washington 1997 SB 6135
- 25. West Virginia 2006 W. Va. SB 734

Legal Separation in a Covenant Marriage

In order to obtain a legal separation (which is not a divorce and therefore does not end the marriage), a party to a Covenant Marriage must first obtain counseling and then must prove:

- 1. Adultery by the other spouse; or
- 2. Commission of a felony by the other spouse and a sentence of imprisonment at hard labor or death; or
- 3. Abandonment by the other spouse for one year; or
- 4. Physical of sexual abuse of the spouse or of a child of either spouse; or
- 5. The spouses have lived separate and apart for two years; or
- Habitual intemperance (for example, alcohol or drug abuse), cruel treatment, or severe ill treatment by the other spouse.

Divorce in a Covenant Marriage

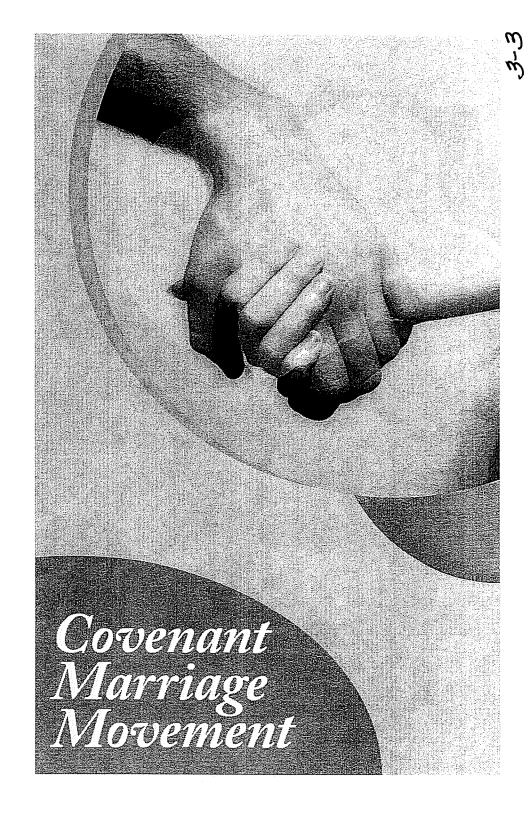
A marriage that is not a Covenant Marriage may be ended by divorce more easily than a Covenant Marriage. In a marriage that is not a Covenant Marriage, a spouse may, pursuant to Civil Code Article 102, file for a divorce and receive a judgment upon proof that the spouses have lived separate and apart for six months since the service of the petition for divorce. They may also, pursuant to Civil Code Article 103, get an immediate divorce for adultery by the other spouse, conviction of a felony by the other spouse and a sentence of hard labor or death, or by proof that the spouses have lived separate and apart continuously for six months before filing for divorce.

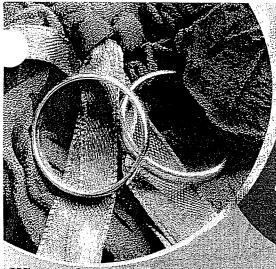
In a Covenant Marriage a spouse may get a divorce only after receiving counseling which shall occur once the spouses experience marital difficulties and shall continue until the divorce, unless the other spouse has physically or sexually abused the spouse or a child of the parties. A covenant spouse may only get a divorce for one of the following reasons:

- 1. Adultery by the other spouse; or
- 2. Commission of a felony by the other spouse and a sentence of imprisonment at hard labor or death; or
- 3. Abandonment by the other spouse for one year; or
- 4. Physical or sexual abuse of the spouse or of a child of either spouse or
- 5. The spouses have lived separate and apart for two years; or
- 6. The spouses are judicially or legally separated and have lived separate and apart since the legal separation for:
 - One year and six months if there is a minor child or children
 of the marriage.
 - b. One year if the separation was granted for abuse of a child of either spouse.
 - c. One year in all other cases.









What is a Covenant Marriage?

A covenant marriage is a marriage entered into by one male and one female. who understand and agree that the marriage between them is a lifelong relationship. Parties to a covenant marriage have received counseling as husband and wife forever emphasizing the nature and purposes of marriage and of its responsibilities. Only when there has been a complete and total breach of the marital covenant commitment may the non-breaching party seek a declaration that the marriage is no longer legally recognized.

A man and a woman may contract a covenant marriage by declaring their intent to do so on their application for a marriage license, and by executing a declaration of intent to: contract a covenant marriage. The application. for a marriage license and a declaration of intent counseling from a priest, minister, rabbi or shall be filed with the official who issues the marriage license (www.la4marriage.org).

"Behold, I myself do establish My covenant with you and your descendent after you." Genesis 9:9

Our mission is to restore churches and society to an understanding and practice of marriage as covenant by applying the timeless principles of God's Word.

What is the Declaration of Intent?

In order to enter into a Covenant Marriage, the couple must sign a recitation that provides:

- 1. A marriage is an agreement to live together
- 2. The parties have chosen each other carefully and disclosed to each other "everything which could adversely affect" the decision to marry.
- 3. The parties have received premarital counseling.
- 4. A commitment that if the parties experience marital difficulties they commit to take all responsible efforts to preserve their marriage, including marital counseling
- 5. The couple must obtain premarital similar clergyman of any religious sect, or a professional marriage counselor.

After discussing the meaning of a Covenant Marriage with a counselor, the couple must also sign, together with an attestation by the counselor, a notarized affidavir to the effect that the counselor has discussed with them-

- 1. The serious of a Covenant Marriage
- 2. That the commitment to the marriage is for life.
- 3. The obligation of the couple to seek marital counseling if problems arise in their marriage.

(www.ladoj.ag.state.la.us)

Believing that maritings is a coverant intended by to be litelong, fithirful relationship between a mires woman we vow to God each other out families and community to demain steadlast an enconditional l reconciliation and sexual purity while and of the contract of the con COVOSA SESSALIS SALICES ESTADOS SESTA

Believing that marriage is a covenant... What are we asking of you?

1. Learn and administer covenant marriage laws. 2. Create a Covenant Marriage Congregation. 3-Designate one Sunday a year as a Covenant Marriage Sunday

As Congregations

We are also asking you to raise the standards for couples who want to be married in your congregation.

We are asking you to offer ministries to couples in your congregation. and community to help insure their success in marriage

We are asking each congregation to prayerfully consider becoming a Covenant Marriage Congregation These congregations will be asked to lift up and stand by God's standards for marriage as a covenant.

We are asking you to consider joining other congregations in your respective communities to offer a unified commitment to strengthen marriages and families.

Covenants

a solemn, binding agreementinate

Herma God.

Declaration of Intent

For Covenant Marriage

of presently married couples

We do solemuly declare that marriage is a covenant between a man and a woman who agree to live together as husband and wife for so long as they both may live. We understand the nature, purpose, and responsibilities of marriage. We have read the Covenant Marriage Act, and we understand that a Covenant Marriage is for life. If we experience marital difficulties, we commit ourselves to take reasonable efforts to preserve our marriage, including marital counseling.

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

Signature of Spouse	Date	Signature of Spouse	Date
Print Name		Print Name	

<u>NEWNEWNEWNEWNEWNEWNEWNE</u>

Covenant Marriage Checklist (for use by couples who are already married)

q Delive	ery and expla	nation o	f Atto	rney Ge	neral's p	amphle	et
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ч Notar Соипs	ized Affidavi selor	t of Part	ies and	l Notari	zed Atte	estation	by
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Louisiana Department of Justice Office of the Attorney General

Louisiana Laws on Community Property and Covenant Marriage

James D. "Buddy" Caldwell Attorney General

Louisiana Department of Justice Office of the Attorney General Civil Division P.O. Box 94005 Baton Rouge, Louisiana 70804-9095 225.326.6000 www.agbuddycaldwell.com

Statewide Lawyer Referral and Information Service 888.503.5747

Louisiana State Bar Association www.lsba.org

Local Bar Services
Baton Rouge: 225.344.9926
Lafayette: 337.237.4700
Lake Charles: 337.436.2914
New Orleans: 504.561.8828
Shreveport: 318.222.0720
Southwest Louisiana: 337.436.3308

² Louisiana Department of Justice

Louisiana law, LA-R.S. 9:237, has empowered the attorney general to prepare, for the local officers who issue marriage licenses, a summary of the community property laws and the covenant marriage laws of this state, with the mandate to these local officers to deliver this summary to each prospective spouse when they receive their license to marry. This pamphlet contains the summary of these laws.

It should be understood at the outset that this pamphlet only briefly summarizes the law so that the prospective spouses can have a general idea of what the Louisiana law on these topics contains. This summary should provoke thought among prospective spouses, who, before they enter into marriage, should consider some of the options opened up by these laws, what the situation will be if the prospective spouses do nothing, and the consequences of exercising an option or doing nothing. For a more detailed analysis on precisely how these laws affect their individual circumstances and what may be the best way to maneuver through this legal pathway, prospective spouses should consult their private attorneys. If you are a prospective spouse and do not have an attorney, this pamphlet, also contains some of the referral programs available through the state and local bar associations.

LOUISIANA'S COMMUNITY PROPERTY LAW AND HOW TO CHANGE ITS EFFECTS BY CONTRACT

This part of the pamphlet is designed to explain how Louisiana's community property law establishes the property rights of husbands and wives and how the effects of the community property system can be altered by contract.

In Louisiana, marriage affects the property rights of both men and women. The rights of married people to buy, sell, or control their property, to borrow money, and to get credit are all regulated by law. "Property" includes almost everything: house, land, bank accounts, stock, pension plans, wages and other income and things of value.

A married couple becomes subject to Louisiana's community property law automatically upon marrying, unless they have made a special contract providing different rules to govern their property.

What is community property?

The community property laws provide rules on who may incur debts, how those debts are to be paid, and how debts and assets are to be divided between the husband and wife if their community ends.

Marriage Contracts

A couple may make a written marriage contract before the wedding which sets out how they want their property owned and controlled. A marriage contract written before marriage does not need court approval for its provisions that are in accordance with Louisiana law to be enforceable. Married people from another state who move into Louisiana, and who do not wish to have their property become community property, have one year after they move to Louisiana to make a marriage contract to that effect without a judge's approval. Their contract is also governed by the Louisiana law on separation of property, so the contract is valid if it is in accordance with relevant Louisiana law. Of course, after the first year, they too may enter a separation of property agreement with court approval.

Remember

- By law, marriage changes your property rights.
- The community property law will apply to you if you do not make a special marriage contract.
- You may make this special contract before or after you are married, but some contracts written after marriage require a judge's approval to be legal.

⁴ Louisiana Department of Justice

- If you were married outside of Louisiana, moving here has changed your property rights. You have one year from the date you moved to make a marriage contract without a judge's approval.
- The contract must be signed by the man and woman in the presence of a Notary Public and two witnesses or executed by a private signature duly acknowledged.
- You should see a lawyer so that you will know how the taxes on your property and the inheritance of your property may be changed by your marriage.
- If you do not know a lawyer, the Lawyer Referral Service can help you find one. In large cities, call your Legal Aid office for assistance if you cannot afford a lawyer.
- There is a list of some legal resources in the beginning of this pamphlet.

If you need further help in understanding the community property laws, or if you are thinking about making a marriage contract, you should consult an attorney.

THE COVENANT MARRIAGE ACT

What is covenant marriage?

Legal commentaries have noted that recent developments in social and legal history have substantially contributed to the weakening of marriage. The Louisiana Legislature decided that it was time for the law to strengthen marriage and stabilize family life. However, it did not decide to do so by changing the existing law on what is now the "standard" marriage of law. Rather, it enacted a new, stronger, alternative form of marriage, called the covenant marriage.

In short, the law describes a covenant marriage as a marriage entered into by one male and one female who understand and agree that the marriage between them is a lifelong relationship.

How does a couple enter into a covenant marriage?

If a couple does not take additional steps to confect other special contracts or file special documents but merely go through the usual steps simply to get married, they do not enter into a covenant marriage. By simply getting married, they enter into what is now a "standard" marriage in Louisiana law. In order to enter into a covenant marriage, the couple must take special steps and execute and record special documents on the public record.

The law provides that a man and woman may contract a covenant marriage by declaring their intent to do so on their application for a marriage license and executing a declaration of intent to contract a covenant marriage and then, of course, actually getting married accordingly. The application for a marriage license and the declaration of intent shall be filed with the official who issues the marriage license.

The declaration of intent to contract a covenant marriage shall contain all of the following:

A recitation signed by both parties to the following effect:

"We do solemnly declare that marriage is a covenant between a man and a woman who agree to live together as husband and wife for so long as they both may live. We have chosen each other carefully and disclosed to one another everything which could adversely affect the decision to enter into this marriage. We have received premarital counseling on the nature, purposes, and responsibilities of marriage. We have read the Covenant Marriage Act, and we understand that a Covenant Marriage is for life. If we experience marital difficulties, we commit ourselves to take all reasonable efforts to preserve our marriage, including marital counseling."

"With full knowledge of what this commitment means, we do hereby declare that our marriage will be bound by Louisiana law on Covenant Marriages and we promise to love, honor, and care for one another as husband and wife."

- An affidavit by the parties attesting they have received premarital counseling from a priest, minister, rabbi, clerk of the Religious Society of Friends, any clergyman of any religious sect, or a professional marriage counselor. The seriousness of covenant marriage shall be included in the discussion during counseling.
- An attestation signed by the counselor and attached to or included in the parties'
 affidavit, confirming that the parties were counseled as to the nature and purpose
 of the marriage.
- The signature of both parties witnessed by a notary.
- If one or both of the parties are minors, the written consent or authorization of those persons required under the Children's Code to consent to or authorize the marriage of minors.

Thus, the declaration shall contain two separate documents, the recitation and the affidavit of the parties to the marriage, the latter of which shall include the attestation of the premarital counselor, either included therein or attached thereto. The recitation of the parties shall be prepared in duplicate originals, one of which shall be retained by the parties and the other, together with the affidavit and attestation, shall be filed with the official who issues the marriage license.

The law also stipulates a method by which already married couples may convert their marriage from a "standard" marriage into a covenant marriage by designating it so. This method is very similar to the method by which covenant marriage is entered into in the first instance, but, in this declaration of intent, the two spouses renew their original marriage promise to love, honor, and care for one another as husband and wife for the rest of their lives and, of course, instead of "premarital counseling," they simply undergo the covenant marriage counseling prior to designating their marriage as a covenant marriage. The declaration of intent and other documents are filed with the state officer who issued their original marriage license and who maintains the record of their marriage certificate. If they were originally married out of state, they file a copy of their marriage certificate from the other state, which does not have to be certified, together with the covenant marriage documents, with the officer who issues marriage licenses in the parish in which they are domiciled. The officer will then make a notation on the copy of the out-of-state marriage certificate that a declaration of intent has been filed by the couple to designate their marriage as a covenant marriage.

What are some of the special incidents and effects of a covenant marriage?

The law provides that the spouses to a covenant marriage owe to each other the same legal obligations as couples in a "standard" marriage, but it also provides, in addition, some special rules. Essentially, these special rules include the following: Spouses owe each other love and respect and they commit to a community of living. Spouses are bound to live together, unless there is a good cause otherwise. The spouses determine the family residence by mutual consent, according to their requirements and those of the family. The management of the household shall be the right and the duty of both spouses. Spouses by mutual consent after collaboration should make decisions relating to family life in the best interest of the family.

An extremely important and special incident and effect of a covenant marriage is that each of the parties to the covenant marriage has voluntarily declared, "If we experience marital difficulties, we commit ourselves to take all reasonable efforts to preserve our marriage, including marriage counseling". According to legal commentaries, this declaration is a legally binding obligation to which they have stipulated. It should be noted that not only formal marital counseling, if needed, be undertaken by the spouses in times of marital difficulties but also all other reasonable steps as well be observed. These steps could include a myriad of other religious and non-religious assistance to the preservation of the marriage. Whether any one step or effort is "reasonable" will depend on all the circumstances. If the circumstances warrant, counseling programs may be undertaken for each spouse separately, or separate counseling programs be given to each spouse separately.

How does a covenant marriage strengthen marriage through new and different divorce/separation laws?

As one legal commentary explained, "the covenant marriage legislation represents the first time, as a general trend, in two hundred years in any Western country that divorce has become more difficult rather than easier". In a "standard" marriage, eventhough there are two spouses to a marriage, one of those acting alone can effectively abandon the other spouse with a divorce in six (6) months or twelve (12) months if there are minor children; even when the other spouse would like to try reasonable efforts, including marital counseling, to preserve their marriage. In a covenant marriage, both spouses have voluntarily stipulated that when marital difficulties arise, they will make all reasonable efforts to preserve the marriage, including marital counseling. The law provides that the counseling or other such reasonable steps taken by the spouses to preserve the marriage, as required by the Declaration of Intent signed by the spouses, shall occur once the parties experience marital difficulties and, further, that if the spouses begin living separate and apart, the counseling or other intervention should continue until the rendition of a judgment of divorce.

What are the grounds for a covenant marriage divorce?

- The other spouse has committed adultery.
- The other spouse has committed a felony and has been sentenced to death or imprisonment at hard labor.
- The other spouse has abandoned the matrimonial domicile for a period of one year and constantly refuses to return.
- The other spouse has physically or sexually abused the spouse seeking the divorce or a child of one of the spouses.
- The spouses have been living separate and apart continuously without reconciliation for a period of two years.
- The spouses have been living separate and apart continuously without reconciliation for a period of one year from the date of the judgment of separation from bed and board was signed.
- If there is a minor child or children of the marriage, the spouses have been living separate and apart continuously without reconciliation for a period of one year and six months from the date the judgment of separation from bed and board was signed; however, if abuse of a child of the marriage or a child of one of the spouses is the basis for which the judgment of separation from bed and board was obtained, then a judgment of divorce may be obtained if the spouses have been living separate and apart continuously without reconciliation for a period of one year from the date the judgment of separation from bed and board was signed.

Instead of an immediate divorce, a separation from bed and board may be obtained. The grounds for a judgment of separation from bed and board are as follows:

- The other spouse has committed adultery.
- The other spouse has committed a felony and has been sentenced to death or imprisonment at hard labor.
- The other spouse has abandoned the matrimonial domicile for a period of one year and constantly refuses to return.
- The other spouse has physically or sexually abused the spouse seeking the divorce or a child of one of the spouses.

- The spouses have been living separate and apart continuously without reconciliation for a period of two years.
- On account of habitual intemperance of the other spouse, or excesses, cruel treatment, or outrages of the other spouse, if such habitual intemperance, or such ill-treatment is of such a nature as to render their living together insupportable.

Sample covenant marriage forms

The law suggests some sample forms for couples about to enter into a covenant marriage. The law says that the Declaration of Intent shall consist of two documents-namely, the recitation and the affidavit, the latter of which shall include the attestation of the premarital counselor either included therein or attached thereto. The recitation shall be prepared in duplicate originals, one of which shall be retained by the parties and the other, together with the affidavit and attestation, shall be filed with the officer who issues marriage licenses, and the marriage license itself should reflect the intent to contract a covenant marriage.

(a) Recitation

Declaration of Intent

"We do solemnly declare that marriage is a covenant between a man and woman who agree to live together as husband and wife for so long as they both may live. We have chosen each other carefully and disclosed to one another everything which could adversely affect the decision to enter this marriage. We have received premarital counseling on the nature, purposes, and responsibilities of marriage. We have read the Covenant Marriage Act, and we understand that a Covenant Marriage is for life. If we experience marital difficulties, we commit ourselves to take all reasonable efforts to preserve our marriage, including marital counseling."

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

Signed:		
(Name of Prospective Spouse)		
(Name of Prospective Spouse)		

(b) Affidavit

STATE OF LOUISIANA		
PARISH OF		
BE IT KNOWN THAT on this	day of	
before me the undersigned not	ary, personally came and ap	opeared:
	and	
(Insert na	mes of prospective spouses)

Who after being duly sworn by me, Notary, deposed and stated that:

Affiants acknowledge that they have received premarital counseling from a priest, minister, rabbi, clerk of the Religious Society of Friends, any clergyman of any religious sect, or a professional marriage counselor, which marriage counseling included:

A discussion of the seriousness of Covenant Marriage;

Communication of the fact that a Covenant Marriage is a commitment for for life;

The Obligation of a Covenant Marriage to take reasonable efforts to preserve the marriage if martial difficulties arise, and

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

(Name of prosp	ective spouse)	
(Name of prosp	ective spouse)	
SWORN TO ANI	O SUBSCRIBED, before me, th	nisday of
	NOTARY PUB	BLIC
Attestation		

Attestation

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



Sample covenant marriage forms for couples already married

(a) Recitation

Declaration of Intent

"We do solemnly declare that marriage is a covenant between a man and a woman who agree to live together as husband and wife for so long as they both may live. We understand the nature, purpose, and responsibilities of marriage. We have read the Covenant Marriage Act, and we understand that a Covenant Marriage is for life. If we experience marital difficulties, we commit ourselves to take reasonable efforts to preserve our marriage, including marital counseling."

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

	Signed:
	(Name of Spouse)
	(Name of Spouse)
(b)	Affidavit
	STATE OF LOUISIANA
	PARISH OF
	BE IT KNOWN THAT on thisday of,, before me the undersigned notary, personally came and appeared:
	and
	(Insert names of spouses)

Who after being sworn by me, Notary, deposed and stated that:

Affiants acknowledge that they have received counseling from a priest, minister, rabbi, clerk of the Religious Society of Friends, and clergymen of any religious sect, or a professional marriage counselor, which counseling included:

A discussion of the seriousness of Covenant Marriage;

Communication of the fact that a Covenant Marriage is a commitment for life;

The obligation of a Covenant Marriage to take reasonable efforts to preserve the marriage if martial difficulties arise, and

That the affiants both read the pamphlet entitled "The Covenant Marriage Act" developed and promulgated by the office of the attorney general, which provides a full explanation of a Covenant Marriage, including the obligation to seek marital counseling in times of marital

difficulties and the exclusive grounds for legally terminating a Covenant Marriage by divorce or divorce after a judgment of separation from bed or board.

(Name of Spouse)
(Name of Spouse)
SWORN TO AND SUBSCRIBED, before me, this day of,
·
NOTARY PUBLIC
(c) Attestation
Attestation
The undersigned does hereby attest that the affiants did receive counselir from me as to the nature and purpose of marriage, which included a discussic of the seriousness of Covenant Marriage, communication of the fact that Covenant Marriage is for life, and the obligation of a Covenant Marriage to take reasonable efforts to preserve the marriage if marital difficulties arise.
COUNSELOR

¹⁴ Louisiana Department of Justice

One of the biggest problems faced in our society today is divorce. The results are devastating and long lasting. It has been my privilege to be a Pastor for the past thirty two years. During that time I have dealt first hand with the tragedy of divorce. Children are scarred for life and the married partners that divorce most often carry the same issues into their next relationship. We need to do all we can to protect the sanctity and permanence of marriage. Covenant marriage is certainly a step in the right direction. Couples entering into the marriage relationship need to go through counseling. They need to commit to the covenant marriage for life. If problems occur during the marriage couples should be required to do all they can to be reconciled. This would only have a positive impact on society in our state. In counseling couples before marriage I have stressed that marriage is a covenant that is to last as long as they live. Those who have made this commitment to covenant marriage are today experiencing companionship and joy in their marriage. Because of that I urge you to do all you can to make covenant marriage the standard in our state.

Respectfully submitted,

Kent Holcomb

Pastor of Calvary Baptist Church

Derby Kansas

3 ½ years ago my eldest son (J) felt the need to deal openly with the sexual abuse he had experienced as a teenager from his father. Having been married for 37 years, I was thrown into much pain and trouble. The decisions I had to make were agonizing, but I had confidence in the legal/judicial system of our state to see that the situation was handled right. Being told by the police that I could not have my children around their father or they would be put in protective custody, gave me strength to make some very hard decisions. I was totally ignorant of how separation/ divorce issues were handled in our state, but I soon came to experience the need for marriage contracts to be more binding—so that a person is held responsible to his promises and to his responsibilities.

One of the most distressing things I had to deal with was the consequences of the no-fault divorce law. So that I could be at home with my children (four of my eight were still at home) and so that I could have means to care for them and myself, I filed for separate maintenance. However, I could not even file for the real reason. (Real reason—protection--my husband had extensively abused one son and I found that he had started to prey upon another son (D) who was 14 years old at the time. My eldest son's (J) report to the police precipitated an investigation to my husband's chiropractic business. Having found sexual abuse there, he since has been charged with sexual battery and is now on the state's offenders' list.) On the legal documents, the reason for my request for separation is "incompatibility". That was distressing because that is not true. The whole thing was not a marriage issue in the beginning. It was a FAULT issue. It became a marriage issue when my husband responded to the separation request with a petition for divorce. He had chosen to not deal honestly with the abuse issues, and current laws enable that.

Again, I thought—okay. The government system will do what is right by me. But it has been 3 ½ painful years, and there is still no resolution. He is not paying the court ordered support, and he is not working. He has used much of our resources, given away his patient files, etc... I had not developed a career because I had lived the life my husband wanted for our family—I stayed home with our eight children and home

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educated for 25 years. I am working full time now, but I am not able to earn enough to cover all expenses.

If he wanted out of the marriage, no-fault divorce laws put no responsibility on him for his criminal behavior toward our children. (By the way—because of statutes of limitation issues, he did not have to face legal consequences for the extensive abuse of our son. Statute of limitation issues is another thing that needs to be reworked in our state.) We have both spent 10's of thousands of dollars on the settlement/support issue. I asked for the house and some meager accounts. He asked for ½ of the house and all of the business interests. I said no.

This has been very stressful for me. I trusted the marriage "contract" and promises made in

1971 to be binding. Besides promising faithfulness and protection, he did promise to provide until death. Is it okay with the courts that every promise is broken? What was the marriage license for that we purchased? Why did we have to be married by state approved clergy? Why were there witnesses of the marriage who signed the license?

I think a more binding contract such as a covenant marriage would have helped immensely in dealing with the painful, stressful issues I have had to deal with. A person should be held to his promises. And if he chooses to break them, he should not be allowed to walk away without giving up his state-approved "right" to half of the marital property. As a 60 year old I really need it all as I think of living out the rest of my years supporting myself and our handicapped daughter alone.

Mary Farney Andover Kansas NOW Amber Versola, Lobbyist Phone (785) 979-1733 lobbyist@ksnow.org PO BOX 1860 Wichita, KS 67201



2/15/2011

TO: Kansas House Judiciary Committee

FR: Amber Versola, Lobbyist - Kansas National Organization for Women

RE: Opposition to HB 2254

With respect to the vast concerns I have in regards to the foreseeable consequences of HB 2254, I respectfully ask the committee to reject HB 2254 in its' entirety. While the intent behind covenant marriage appears noble, the reality of it is that it carries the potential to cause grave danger to women in our state. To explain further, please consider that:

- Under this law, a judge has to decide that there is proof of domestic or sexual violence in order for a divorce to be granted without a waiting period. What will happen if a woman lacks scars, bruises, police reports, or affidavits from a hospital? By requiring proof that violence has occurred, this law jeopardizes the victim's rights to safety. If a judge determines the proof to be insufficient, the woman could then be required to return to her marital household (or even her own, if separated) after she has publicly acknowledged the darkest secrets of her abuser,
- ❖ With parental consent, Kansas law currently allows 16 or 17 year old teenagers to enter into marriage agreement. It is my understanding that this bill would also allow these teens to enter a covenant marriage with the same parental consent. As a parent and former youth care worker, I am alarmed by the idea of a 16 year old getting married. However, the notion that they could enter a covenant marriage is even more frightening. Both a teenager's body and brain are still developing. I fear that at 16, a young woman may not fully realize what she is committing to with a marriage − let alone a covenant marriage.
- Most women don't get married knowing that they will become victims of abuse, or otherwise need a divorce. Because marriage is supposed to last forever, women may agree to a covenant marriage. In addition, they can be pressured from their families, partner, clergy, or religious sect to enter a said covenant.
- By saying that a covenant marriage is a piece of legislation that will strengthen marriages, we are also implying that there's a lower value in traditional marriage. Will a "traditionally married" couple who isn't financially able to enter a covenant marriage be discriminated against (or at least "frowned upon") by their religious organization or family?
- Cost is one of the obstacles in the path to divorce for a victim of domestic violence. With the burden of proof placed on the victim, a covenant marriage may be even more cost prohibitive. Furthermore, the judge could mandate that a woman attend (and pay for) counseling with her batterer.
- If a couple still wants to enter a covenant marriage, they may already be able to do so through their religious organization – without the state's interference.
- In spite of all of my research, I have not been able to find a single piece of evidence that covenant marriage has lowered the divorce rate in any of the 3 states that have such legislation.

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While I understand the desire to lower the divorce rates in our society, I feel that covenant marriage legislation is not the answer. Forcing women to remain in a marriage that they don't want to be in or aren't safe to be in is not only dangerous, but is also not good public policy. HB 2254 is a dangerous proposal that I strongly urge the committee to reject.

Sincerely,

Amber Versola

Kansas NOW Lobbyist



TO:

The Honorable Lance Kinzer, Chair

And Members of the House Judiciary Committee

FROM:

Ronald W. Nelson

On behalf of the Kansas Bar Association

RE:

HB 2254, Covenant Marriage

DATE:

February 15, 2011

Mr. Chairman and Members of the Committee:

Good afternoon. I am Ronald W. Nelson. I have practiced family law in Kansas – with my offices in Johnson County – for over 25 years. I am a past-president of the Kansas Bar Association Family Law Section, and I a Fellow in both the American Academy of Matrimonial Lawyers and the International Academy of Matrimonial Lawyers. In addition to my daily practice representing clients in divorce, parentage, and other domestic relations disputes, I have also written chapters in the Kansas Bar Association PRACTICTIONERS' GUIDE TO KANSAS FAMILY LAW.

For years, psychologists, social workers, sociologists, and family lawyers have tried to help couples strengthen their relationships and marriages — and to avoid the difficult and emotionally damaging problems resulting from separation and divorce. Some have focused on making the divorce process itself more humane by helping the participants through the process in a more cooperative and issue focused manner, rather than viewing the process as an opportunity to "go to war" a dragging their issues through the courts. Others focus efforts on educating people about the challenges faced by couples entering into marriage and living together as a couple before marriage. Still others emphasize helping couples deal with their stresses throughout their marriage — teaching couples throughout marriage how to renew their relationship and stay married.

One suggestion to "strengthen marriage" – that is before the Committee today – is Covenant Marriage, which requires couples counseling on the front end and limits the reasons for which a couple may divorce on the back end. But when the proposal is critically analyzed, the benefits are illusory and the consequences more harmful than leaving things the way they are. In addition, setting up multiple forms of marriage is contrary to good public policy.

HB2254 provides that a "covenant marriage" is one in which the couple "agree[s] that the marriage between them is a lifelong relationship." But that commitment is exactly the same commitment that everyone who marries makes. No one enters into a marriage planning on separation or divorce. No one thinks that their marriage or their relationship will suffer the fate that far too many marriages today endure. To suggest (as does this bill) that a "covenant marriage" is the only marriage in which couples make a life-long commitment to each other exhibits a lack of understanding of why people marry and why people divorce.

HB 2254 requires that before entering into a "covenant marriage" the couple receive "premarital counseling of the seriousness of covenant marriage ... a discussion of the obligation to seek marital counseling in times of marital difficulties, and a discussion of the exclusive grounds for legally terminating a covenant marriage by divorce or by divorce after separate maintenance." But nowhere does

the bill say anything about the counselor confirming that the couple is "ready for marriage" or understands the marriage commitment. Merely "informing" couples about the seriousness of covenant marriage and about "the exclusive grounds for termination" hardly prepares couples for what is to come in future months and years: buying, renting, and setting up a home, work, school, and home stresses, family conflicts, unforeseen medical – and mental health – issues, pregnancy, raising children through the "fun years" into and past their teens into adulthood, and the financial –and time management – strains that come with it. To expect that couples entering into any kind of marriage fully understand what is to come in their life and marriage is to disregard the complexities of married life and to ignore the emotional and mental state of couples contemplating marriage. As Barbara Whitehead, author of "The Divorce Culture" states: "It's impossible to get [engaged couples] to contemplate [future] troubles, adversity, [and] conflict, especially if it's their first marriage and they are fairly young. It's not a teachable moment."

There is very little statistical information about the lasting effect of covenant marriages, in part because of the small number of covenant marriages (only about 1% of couples in the three states having statutory covenant marriage), the demography of those entering into covenant marriage, and the movement of couples between states (a couple in a "covenant marriage" divorce under the laws of the state in which they then live, not under the laws of the state where they married). But the information available indicates that many of those who choose covenant marriage would likely not divorce anyway because of their strong religious and social views.

The main feature of HB 2254 is its provisions that divorce from "covenant marriage" may occur only for certain reasons – what family lawyers call "fault-based" divorce grounds. But the imposition of "fault-based" grounds for divorce has never preserved families or relationships. Instead, it leads to a different kind of family dissolution (leaving the family home without divorce) or greater conflict because the parties must assign blame. One reason for the rise of "no fault" divorce in the 60s and 70s was that there were many spouses who simply left the home without obtaining divorce. And requiring "fault" to obtain divorce is simply a frustrated attempt by the state to keep two people together who do not want to be together – imposing the fallout from that failed relationship on the state from greater conflict, more – and longer – court hearings, and greater need for social services. Divorces from covenant marriages will happen. And the "fault-based" divorces coming from failed covenant marriages will cost the state more money in court time, judge and related court personnel salaries, and other valuable state resources.

Good Family Lawyers spend many hours trying to get divorce clients to get past their anger, resentment and grief that often results from blaming their spouse – and others – for the breakdown of the marriage. Lawyers, mental health professionals and others work hard to help couples having marital troubles avoid "the blame game." But this bill *encourages* that destructive tendency. Instead of recognizing that people sometimes grow apart because of events out of their control, and helping them to humanely dissolve that relationship, this bill sets up the couple as combatants. And the victims of that combat will be couple's children.

"Chains do not hold a marriage together. It is threads; hundreds of tiny threads which sew people together through the years." Simone Signoret.

On behalf of the Kansas Bar Association, I thank you for your time this morning and would be available to respond to questions.

Testimony of Ronald W. Nelson

Arkansas originally sought to limit the power of other states to effect Arkansas covenant marriages. But that effort was determined a violation of the US Constitution and no other states have recognized Arkansas's power to limit that other state's ability to divorce that state's own citizens – regardless where they married.

SCOTT M. MANN 7225 Renner Road, Suite 200 Shawnee, KS 66217

February 11, 2011

To: Representative Lance Kinzer, Chair House Judiciary Committee, State of Kansas

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE MEETING SCHEDULED FOR FEBRUARY 15, 2011

RE: Opposition to House Bill 2254 (Creating Covenant Marriage)

Members of the Judiciary Committee:

I write to the Committee to respectfully request your consideration of the following written testimony on House Bill 2254, scheduled to be considered on February 15, 2011. I write in opposition to House Bill 2254 that would for the first time in Kansas history create "covenant marriage."

By way of introduction, I am a Kansas attorney with a practice in the area of Family Law in the Kansas City Metropolitan area. I am a Past-President of the Section of Family Law of the Kansas Bar Association (KBA) and am a Fellow of the American Academy of Matrimonial Attorneys. I have since 2004 authored a chapter on "Marriage" for The Missouri Bar in their attorney reference book Family Law, and am the Editor of the KBA's Practitioner's Guide to Family Law, Second Edition, as well as a chapter author of that attorney desk book and reference published in 2010. I am licensed to practice in both Kansas and Missouri and have practiced law regularly in both states for over 20 years. I have limited my practice to assisting individuals and families in divorce, paternity, child custody, child support, and adoption cases. I handle many divorce cases each year. On a daily basis in divorce cases I see the full range of the human condition and I try to help my clients through what often is a very traumatic process and experience as quickly, quietly and cheaply as is possible under the circumstances. The following are my own personal views of the proposed concept of covenant marriage in Kansas.

While the sponsors of this Bill creating covenant marriage may have had only good intentions, Kansas simply does not need covenant marriage. In the three (3) States that I am aware of that have previously adopted the concept, less than one-half of 1% of the marriages in those states are covenant marriages. Kansas has previously considered and rightly rejected this concept before. Where it exists, it is not by any measure a

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preferred choice of the residents of those States, and the concept has many inherent flaws from my perspective.

Covenant marriages created in one state may be terminated *for any reason* in another state that does not recognize the concept. No State can bind another State by its statutes. Kansas cannot require another State to recognize the covenant marriage concept. Most states, over 23, that have considered the concept have rejected it as unnecessary. As an attorney licensed in both Missouri and Kansas, were Kansas to implement covenant marriage, I would likely advise clients to instead consider filing for divorce in Missouri, which has no covenant marriage. Filing for divorce in another State where covenant marriage is not recognized would likely save the client time, money, and save the parties and their children additional emotional damage.

The concept of covenant marriage creates two classes of marriage. The concept as proposed implicates the State in a religious institution – a covenant that only God can terminate. The State should not impose any one religious view on the entire population. Most couples engage in some pre-marriage counseling, so the proposed covenant marriage requirements duplicate what is already occurring.

By limiting the abused spouse from terminating the relationship, covenant marriage as proposed allows for the continued victimization of the battered spouse by the abusive spouse. In the difficult economic times we have experienced the past several years, I am witnessing that domestic violence is on the rise. Covenant marriage will not lessen or end spousal abuse, and it actually may increase the severity of the abuse if the abuser knows that it will difficult for the victim to leave the abusive relationship for a long period of time.

Most people enter into a marriage intending to stay married. In my experience, no one enters into marriage intending to divorce. The covenant marriage concept simply duplicates the assumptions of those marrying.

Requiring "fault" to be proved before a divorce could be granted (whether in a regular or a covenant marriage) is a misguided attempt by the State to force two adults to remain together who do not wish to remain together. Requiring "proof of adultery," which is undefined in the Bill, will unnecessarily return Kansas to the time over 40 years ago when spouses had to engage in an expensive (financially and emotionally) effort to either, on the one hand, ruin the other party's reputation and community standing, or on the other hand, defend one's reputation against such allegations. The children would be the ultimate victims of this institutionalized combat. The net result of injecting fault into the divorce process will be a return to the two types of behavior the Kansas no-fault divorce statutes were originally implemented to eradicate: (a) long, expensive and bitter fights over past "bad" behavior that is detrimental to the children of the parties; or (b) spouses colluding and engaging in dishonest conduct (lying to the judge) to obtain the desired divorce. In my experience, protracted and high conflict divorces of the type HR 2254 would foster usually result in that high conflict continuing for years after the divorce, again to the detriment of the children.

In my experience, spouses do not decide to end their marriage relationship for frivolous reasons, especially where there are children involved. For those who find out that they cannot stay married to or should not have married their spouse, covenant marriage does not mean that divorce will occur less often, only that when it does occur, it will be more difficult, acrimonious and expensive for the parties. If the intent of the Bill and this concept was to create more attorney's fees and more litigation in the courts, and using more of the already limited court resources, then it surely will succeed. Divorces under the covenant marriage concept proposed will undoubtedly occur. In effect, by opposing this Bill, I am acting against my profession's and my own economic interest. Passage of this Bill will not stop divorces from occurring, but will most certainly enrich the attorneys of the state.

In a divorce case, "time is money" in many instances, and the delays required by the covenant marriage concept will mean more expense to the parties, regardless of the underlying disputes of the parties. In my experience, the longer a divorce case lingers in the court system, the more likely it becomes for the parties to engage in very costly and destructive (to them and their children) behavior. Even where the parties are not able to afford an attorney or choose not to be represented, the longer the parties are legally held together after their decision to separate, the higher the degree of acrimony there is and the greater the likelihood of domestic violence as frustrations grow and tempers flare. This body should consider carefully the impact on minor children who, along with their parents, are forced by this proposed concept to stay interconnected in a failed relationship for up to two years. In the counties where I practice, an average divorce case lasts less than 6 months.

Since 1643, when Anne Clarke obtained a divorce from her husband in the Massachusetts Bay Colony, divorce has been a byproduct of some, but not all, marriages in this country. Implementing the changes contained in HR 2254 will not alter the fact that divorces will still occur in some families. Given the reality that divorces will continue to occur, this committee should always be looking for concepts that will serve to lessen the burdens and stresses caused by divorce, especially the impacts on the children. From my direct experience in working with families of divorce on a daily basis, this Bill would have the opposite impact on Kansas families.

For the foregoing reasons, this Committee should reject HR 2254 establishing covenant marriage. I thank the Committee for your consideration of my testimony on this subject.

Scott M. Mann