



H.B. 268

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(As Introduced)

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Seaver, Wolpert**

BILL SUMMARY

- Requires applicants for a marriage license to receive 12 hours of premarital education on communication training, conflict resolution, values clarification, and goals of marriage and to complete a standardized marital inventory before the probate judge may issue a marriage license.
- Permits certain individuals to enter into a "covenant marriage" on or after the bill's effective date pursuant to a prescribed marriage license application, declaration of intent to contract a covenant marriage, premarital counseling, and solemnization procedure.
- Specifies that the legal consequences of a covenant marriage include (1) the nonavailability of a dissolution of marriage or annulment action to terminate the parties' marriage and (2) the availability of a divorce or legal separation action only on certain prescribed grounds, only if there has been a complete and total breach of the parties' marital covenant, and generally only if the complainant is the nonbreaching party.
- Permits certain individuals who are married on the bill's effective date to follow a prescribed procedure to cause their marriages to be redesignated as covenant marriages.
- Requires court-supervised counseling for parties to a covenant marriage before a court may grant a divorce or legal separation.
- Requires the Attorney General, in conjunction with Ohio probate courts, to cause the preparation, production, and distribution of an informational booklet that explains the statutory provisions that pertain to a covenant

marriage and a preexisting marriage that has been redesignated as a covenant marriage.

TABLE OF CONTENTS

Required premarital education for all marriage licenses	2
Covenant marriages.....	3
In general.....	3
Eligibility criteria of the parties	4
Marriage license application	4
Declaration of intent.....	5
Premarital counseling.....	6
Comprehension and solemnization requirements	6
Legal consequences.....	7
Controlling statutes	7
Redesignating a preexisting marriage as a covenant marriage	8
Eligible spouses.....	8
Procedure: first phase.....	8
Procedure: second phase	9
Legal consequences, applicable statutes, and miscellaneous	10
Divorce or legal separation of parties to a covenant marriage	10
Existing law.....	10
Changes proposed by the bill.....	12
Attorney General functions	13
Related probate court functions	14
Establishment of fee.....	14
Provision of booklet copies.....	14
Miscellaneous provisions	15

CONTENT AND OPERATION

Required premarital education for all marriage licenses

Under existing law, if either applicant for a marriage license is under 18 years of age, the applicants must state to the probate judge that they received marriage counseling satisfactory to the court. The bill requires instead that the probate judge require *all* parties who apply for a marriage license to state that they received the premarital education required by the bill and described below and completed the standardized premarital inventory described in the bill (R.C. 3101.05(A)(1)).

The bill requires that the parties who apply for a marriage license receive at least 12 hours of premarital education, consisting at a minimum of communication training, conflict resolution, values clarification, and goals of marriage, from any of the following (R.C. 3101.05(A)(2)(a)):

(i) A minister who is licensed to solemnize marriages or the minister's designee;

(ii) A psychologist licensed to practice psychology in Ohio;

(iii) An individual who holds a current and valid license or certificate of registration issued by the Ohio Counselor, Social Worker, and Marriage and Family Therapist Board that entitles the individual to practice as a professional counselor, professional clinical counselor, independent social worker, social worker, social worker assistant, independent marriage and family therapist, or marriage and family therapist;

(iv) A marriage and family life educator.

In addition, the parties must complete a standardized marital inventory consisting of a standardized series of questions to assist the parties in evaluating their compatibility with respect to communication, conflict resolution, values, and goals of marriage. The bill describes the standardized marital inventory as a standardized assessment that measures the key dimensions of the relationship of the parties, and includes, but is not limited to, FOCCUS or PREPARE. FOCCUS (Facilitating Open Couple Communication, Understanding and Study) and PREPARE (Premarital Preparation and Relationship Enhancement) are premarital assessment questionnaires designed to be used in consultation with a premarital counselor or other person trained in their use. (R.C. 3101.05(A)(2)(b).)

Covenant marriages

In general

The bill permits persons to enter into a covenant marriage on or after its effective date if (1) they satisfy certain eligibility criteria, (2) file a marriage license application in a prescribed form, (3) obtain specified premarital counseling, (4) accompany their marriage license application with a specified type of "declaration of intent to contract a covenant marriage" and a specified type of "premarital counseling affidavit," (5) satisfy certain comprehension of the nature of a covenant marriage requirements, and (6) solemnize their marriage in accordance with Ohio law. A covenant marriage will result in the placing of certain legal restrictions on the parties' ability to terminate their marriage by means

of a divorce or dissolution of marriage action and to obtain an annulment or legal separation. (R.C. 3101.20 to 3101.23.)

Eligibility criteria of the parties

The bill permits one male person and one female person who satisfy certain criteria to enter into a covenant marriage *on or after the bill's effective date* by following a specified procedure. The male person generally must be 18 years of age or older, and the female person generally must be 16 years of age or older; these age limitations do not apply if a juvenile court consents to a marriage in which either or both persons are under the applicable minimum age and the juvenile court's consent is based on the female person's being pregnant with or having delivered the male person's child. The male and female persons cannot be nearer of kin than second cousins, cannot have a living spouse at the time of their marriage, and cannot be ineligible to marry because either person is under the influence of intoxicating liquor or a controlled substance or is infected with syphilis in a form that is communicable or likely to become communicable at the time their marriage license is issued. These criteria are identical to the *criteria of existing law* that the parties to a proposed marriage must satisfy. (R.C. 3101.01, 3101.04, and 3101.06 and Juvenile Rule 42(C)--not in the bill; R.C. 3101.20(A)(1) and (2) and 3101.21.)

Similar to existing law, if either the male person or the female person is a minor, the bill generally requires the minor to obtain a *consent* to the entry of the marriage from (1) the minor's parents, surviving parent, parent who is designated the residential parent and legal custodian of the minor by a court, or guardian of the minor's person or (2) an adult person or specified entity that has been awarded permanent custody of the minor by a juvenile court. However, also similar to existing law, the bill eliminates the consent requirement if a parent who is generally required to give a consent to marry resides in a foreign country, has neglected or abandoned the minor for a period of one year or longer immediately preceding the minor's application for a marriage license, has been adjudged to be an incompetent, is an inmate of a state mental or correctional institution, or has been permanently or otherwise deprived of certain parental rights and responsibilities by a juvenile court, probate court, or another court in certain manners. The procedure for giving the consent is the same as under existing law. (R.C. 3101.01, 3101.02, and 3101.03--not in the bill; R.C. 3101.20(A)(3) and 3101.21(A).)

Marriage license application

Application information. The bill requires the parties to a proposed covenant marriage to submit to the appropriate probate court an application for a marriage license that contains the same information as required by existing law

and in addition a statement that the applicants (1) seek to enter into a covenant marriage, (2) have attached to the application "a declaration of intent to contract a covenant marriage" (see "**Declaration of intent**" below) and an "affidavit of premarital counseling" (see "**Premarital counseling**" below), and (3) otherwise have fully complied with statutory marriage license requirements under the bill (see **COMMENT 1**). The bill modifies existing law by requiring that the application for a marriage license also include the names of the parties to each previous marriage and if any or the previous marriages were terminated by a divorce, dissolution of marriage, or annulment, the jurisdiction, date, and case number of the decree. (R.C. 3101.05 and 3101.21(A).)

If an applicant for a covenant marriage license knowingly makes a false statement in the license application (similar to existing law), in the declaration of intent to contract a covenant marriage (added by the bill), or in the affidavit of premarital counseling (added by the bill), the applicant commits the offense of "falsification" (R.C. 2921.13--not in the bill; R.C. 3101.05(B) and 3101.99(A)).

Form of a marriage license. Except for the required premarital education (see "**Required premarital education for all marriage licenses**," above), the bill does not modify the procedure for granting a marriage license to eligible applicants or the fee that a probate court must charge for issuing the license (see **COMMENT 2**). However, in addition to other provisions, each marriage license issued in connection with a proposed covenant marriage must include the following capitalized statement: "THE MARRIAGE SOLEMNIZED PURSUANT TO THIS MARRIAGE LICENSE WILL BE A COVENANT MARRIAGE." The bill specifies that probate courts have exclusive jurisdiction to perform all services associated with issuing marriage licenses that will result in a covenant marriage. (R.C. 2101.24(A)(1)(f) and 3101.05(A)(4).)

Probate court's marriage record. In addition to the marriage license, the names of the parties applying for the license, and solemnization information that existing law requires a probate court to include in its "marriage record," the bill requires a probate court to include in that record a statement whether applicants for a marriage license on or after the bill's effective date filed a "declaration of intent to contract a covenant marriage" with their marriage license application (R.C. 2101.12(H)).

Declaration of intent

The bill requires the parties to a proposed covenant marriage to attach to their application for a marriage license a "declaration of intent to contract a covenant marriage" that is *in a statutorily prescribed form or in a substantially similar form* and that indicates their understanding that their marriage will involve

a lifelong relationship and has certain associated legal consequences (see "Legal consequences" below) (R.C. 3101.20(A)(4) and (B) and 3101.21(B)).

Premarital counseling

The bill requires the parties to a proposed covenant marriage to receive premarital counseling that emphasizes the nature and purposes of a covenant marriage and the responsibilities of the parties to a covenant marriage. The counseling must be provided by a marriage counselor or a rabbi, priest, or other regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect (hereafter, "qualified covenant marriage counselor"). The counseling must include, but is not necessarily limited to, a discussion of all of the following topics: (1) the nature and purposes of a marriage in general and of a covenant marriage in particular, including the commitments of the parties to a covenant marriage to love, honor, and care for each other for the rest of their lives and, in times of marital difficulties, to make all reasonable efforts to preserve their marriage (e.g., engaging in marital counseling) and (2) the legal consequences of a covenant marriage (see "Legal consequences" below) (R.C. 3101.20(A)(5) and (C) and 3101.21(C)).

The parties to the proposed covenant marriage must attach to the application for their marriage license an *affidavit* that pertains to their premarital counseling, that is in a *statutorily prescribed form or a substantially similar form*, and that is executed in part by the parties and in part by their qualified covenant marriage counselor and that is notarized before a notary public (R.C. 3101.21(E)).

Comprehension and solemnization requirements

The parties to a proposed covenant marriage must read and comprehend the statutory provisions pertaining to covenant marriages and a booklet that the Ohio Attorney General prepares on the subject (see "Attorney General functions" below). Similar to existing law, their marriage must be solemnized by an ordained or licensed minister of any religious society or congregation in Ohio who is licensed by the Secretary of State's office to solemnize marriages, a county court, municipal court, or probate court judge, or another type of statutorily authorized individual. (R.C. 3101.08--not in the bill; R.C. 3101.20(A)(5) and 3101.21(D).)

Similar to existing law, the authorized individual who solemnizes a covenant marriage generally must transmit a *certificate* of marriage within 30 days after the solemnization to the probate judge of the county in which the parties' marriage license was issued, and a solemnizing probate judge who issued the parties' marriage license must file a certificate of marriage in the probate judge's office within the 30-day period. The bill specifies that, if a marriage license includes the capitalized statement that "THE MARRIAGE SOLEMNIZED

PURSUANT TO THIS MARRIAGE LICENSE WILL BE A COVENANT MARRIAGE" (see "Marriage license application" above), the individual who solemnizes the covenant marriage (1) must stamp or type on the parties' certificate of marriage the capitalized words "COVENANT MARRIAGE" in a location designated by rule of the probate court that issued the parties' marriage license or (2) must check and initial on the parties' certificate of marriage a box adjacent to the preprinted, capitalized words "COVENANT MARRIAGE." (R.C. 3101.13(A) and (B).)

Legal consequences

The bill provides that, notwithstanding any contrary statutory provision or rule of court that generally pertains to the termination or annulment of a marriage in Ohio, all of the following apply to a covenant marriage (R.C. 3101.22, 3101.20(A)(4), 3101.21(B) and (C), 3105.012, 3105.08(B), 3105.172, 3105.61, 3105.62, and 3105.64(B)):

(1) The covenant marriage cannot be terminated by a *dissolution of marriage*;

(2) The covenant marriage cannot be annulled;

(3) The covenant marriage cannot be terminated by a *divorce* unless there is a complete and total breach of the marital covenant as evidenced by specified types of grounds and, with the exception of one ground, unless *the party who has not breached* the marital covenant seeks the termination of the marriage (see "Divorce, legal separation, and covenant marriages" below);

(4) A legal separation of the parties may be granted only if there is a complete and total breach of the marital covenant as evidenced by specified types of grounds and, with the exception of one ground, only if *the party who has not breached* the marital covenant seeks the legal separation (see "Divorce, legal separation, and covenant marriages" below).

Controlling statutes

The bill specifies that a covenant marriage is subject to the following statutory provisions (R.C. 3101.23):

(1) The statutory provisions that the bill enacts that apply *exclusively* to covenant marriages;

(2) All other statutory provisions that do not conflict with the bill's exclusive covenant marriage provisions and that pertain to (a) the entering into or the termination of marriages in Ohio and (b) the rights, duties, responsibilities, and

privileges of spouses, former spouses, and parents set forth in R.C. Chapters 2317., 3103., 3105., 3107., 3109., 3111., 3113., 3115., 3117., 3119., 3121., 3123., and 3125.

Redesignating a preexisting marriage as a covenant marriage

Eligible spouses

The bill permits the husband and wife in a specified type of marriage that is in existence *on the bill's effective date* to follow a specified procedure *at any time after that date* to cause their marriage to be redesignated as a covenant marriage. The marriage must have (1) been entered into in Ohio prior to the bill's effective date, (2) involved a male person and a female person who satisfy the eligibility criteria described under "**Eligibility criteria of the parties**" above, (3) been solemnized by an authorized individual referred to under "**Comprehension and solemnization requirements**" above, and (4) continues to be a valid marriage on the date of the filing of a petition to redesignate the marriage as a covenant marriage that is accompanied by a postmarital declaration of covenant marriage intent and an affidavit of postmarital counseling. (R.C. 3101.26(D)(1) and 3101.27.)

Procedure: first phase

The husband and wife in a qualified preexisting marriage must do all of the following after the bill's effective date to cause their marriage to be redesignated as a covenant marriage (R.C. 2101.16(A)(5) and (H)(2), 3101.26(B), (C), and (D)(2) and (3), and 3101.27):

(1) Submit a specified type of "petition to redesignate our marriage as a covenant marriage" to the probate court in which the spouses previously filed their application for a marriage license;

(2) Attach to that petition a copy of the spouses' certificate of marriage together with a "postmarital declaration of covenant marriage intent" that is in a *statutorily prescribed form or a substantially similar form* (see **COMMENT 3**);

(3) Receive from a previously described "qualified covenant marriage counselor" postmarital counseling that emphasizes the nature and purposes of a covenant marriage and the responsibilities of the parties to a covenant marriage. The postmarital counseling must include, but is not necessarily limited to, a discussion of the same topics as in premarital counseling for covenant marriage purposes. (See "**Premarital counseling**," above.)

(4) Read and comprehend (a) the statutory provisions that pertain to covenant marriages and to the redesignation of a preexisting marriage as a covenant marriage and (b) the Ohio Attorney General's booklet on these topics;

(5) Attach to their petition an "affidavit of postmarital counseling" that is in a *statutorily prescribed form or a substantially similar form* (see **COMMENT 3**);

(6) Pay the fee, if any, prescribed by rule of the probate court for the services associated with the redesignation of their marriage as a covenant marriage. The bill *permits* a probate court to establish by rule a reasonable fee for the services that the probate court must perform in connection with a "redesignation as a covenant marriage" petition for a marriage entered into prior the effective date of the bill.

Procedure: second phase

Initial tasks. The bill confers exclusive jurisdiction upon Ohio's probate courts to perform certain "services" associated with the redesignation of qualified preexisting marriages as covenant marriages entered into prior to the effective date of the bill (R.C. 2101.24(A)(1)(f)). A probate court must do all of the following tasks if, at any time after the bill's effective date, a husband and wife in a qualified preexisting marriage comply with the "**Procedure: first phase**" requirements (R.C. 2101.241(B)):

(1) Enter an *order on the journal* of the court that states that the petitioners' marriage has been redesignated as a covenant marriage as of the date the court enters the order and takes the action described in (2) below;

(2) Stamp or type on the petitioners' certificate of marriage the capitalized words "COVENANT MARRIAGE" together with a notation to the journal entry of the order referred to in (1) above;

(3) Attach to the petitioners' certificate of marriage, their petition to redesignate their marriage as a covenant marriage, their postmarital declaration of covenant marriage intent, and their affidavit of postmarital counseling;

(4) Notify the Department of Health (DH) of the redesignation of the petitioners' marriage as a covenant marriage.

Subsequent tasks. When it is the case, each probate court must include in its "marriage record" in the appropriate location a statement that the marriage of certain petitioners entered into prior to the bill's effective date has been redesignated as a covenant marriage pursuant to the bill's redesignation procedure. Then, on or before the tenth day of each month, each probate court must forward

to the DH on a prescribed form *a certified abstract* of each journal entry and associated action described in (1) and (2) under "***Initial tasks***" above that relates to a preexisting marriage that has been redesignated as a covenant marriage. Each probate court that adopts by rule a reasonable fee for its services in connection with a "redesignation as a covenant marriage" petition may include *15 cents* in that fee for each certified abstract of that nature. (R.C. 2101.12(H), 2101.241(B)(4), 3705.21, and 3705.24(F)(2).)

Upon the receipt of those types of certified abstracts, the DH's Office of Vital Statistics must register (i.e., "record and index") the covenant marriage amendments to the previously registered certificates of marriage of the parties to the redesignated covenant marriages (R.C. 3705.21).

Legal consequences, applicable statutes, and miscellaneous

Notwithstanding any contrary statutory provision or rule of court that generally pertains to the termination or annulment of a marriage in Ohio, on and after the date that a probate court makes the journal entry and takes the associated action described in (1) and (2) under "***Initial tasks***" above in connection with a qualified preexisting marriage, the bill's provisions pertaining to the "***Legal consequences***" of a covenant marriage will apply to the redesignated covenant marriage. Similarly, a redesignated covenant marriage will be subject to the same statutory provisions as apply to a covenant marriage. (R.C. 3101.28, 3101.29(A), 3101.22, 3101.23, and 3101.26(A).)

If a petitioner for the redesignation of a preexisting marriage as a covenant marriage knowingly makes a false statement in the petition, in the postmarital declaration of covenant marriage intent, or in the affidavit of postmarital counseling filed with a probate court, the petitioner will commit the offense of "falsification" (R.C. 2921.13--not in the bill; R.C. 3101.29(B) and 3101.99(A)).

Divorce or legal separation of parties to a covenant marriage

Existing law

Under existing law, a court of common pleas may grant a divorce or a legal separation on substantially similar grounds as follows (R.C. 3105.01, 3105.10(A), 3105.17(A), and 3105.65(C)):

- (1) Either party had a husband or wife living at the time of the marriage from which the divorce or legal separation is sought;
- (2) Willful absence of the adverse party for one year;
- (3) Adultery;

- (4) Extreme cruelty;
- (5) Fraudulent contract;
- (6) Any gross neglect of duty;
- (7) Habitual drunkenness;
- (8) *Imprisonment* of the adverse party in a state or federal correctional institution at the time of filing the complaint for the divorce or legal separation;
- (9) In divorce actions only, procurement of a divorce outside Ohio by a husband or wife by virtue of which the party who procured it is released from the obligations of the marriage, while those obligations remain binding upon the other party;
- (10) *On the application of either party, when husband and wife without interruption for one year have lived separate and apart without cohabitation;*
- (11) *Incompatibility*, unless denied by either party.

Under existing law, a marriage may be annulled for any of the following causes existing at the time of the marriage:

- (1) That the party seeking the annulment was under the legal age for marriage at the time of the marriage, unless after attaining reaching the legal age, the party cohabited with the other as husband or wife;
- (2) That the former spouse of either party was living and the marriage with the former spouse is still in force;
- (3) That either party has been adjudicated to be mentally incompetent, unless that party, after being restored to competency, cohabited with the other as husband or wife;
- (4) That the consent of either party was obtained by fraud, unless that party afterwards, with full knowledge of the facts constituting the fraud, cohabited with the other as husband or wife;
- (5) That the consent to the marriage of either party was obtained by force, unless that party afterwards cohabited with the other as husband or wife;
- (6) That the marriage was never consummated.

Changes proposed by the bill

Annulment. Under the bill, a covenant marriage may not be annulled (R.C. 3101.22(B), 3101.28, and 3105.31(A)).

Grounds for divorce or legal separation. Under the bill, a court of common pleas may grant a divorce or a legal separation in connection with parties to a covenant marriage (including a redesignated covenant marriage) only if there has been a *complete and total breach of the marital covenant* of the parties to the marriage as evidenced by certain listed causes (see below) and, with one exception, only if the *nonbreaching party is the complainant* in the action. The *exclusive* grounds ("causes") for a court of common pleas to grant a divorce or a legal separation to the parties to a covenant marriage are as follows (R.C. 3105.01, 3105.012, 3105.10(A), 3105.17, 3105.172, and 3105.65(C)):

(1) Similar to existing law, the other party had a husband or wife living at the time of the marriage;

(2) Similar to existing law, the willful absence of the other party for one year;

(3) The adultery "of the other party" (generally similar to existing law);

(4) Extreme cruelty "*of the other party, including, but not limited to, the other party's physical or sexual abuse of the nonbreaching party or a child of either party*" (italicized language different from existing law);

(5) Imprisonment of the other party in a state or federal correctional institution *for the commission of aggravated murder, murder, or a felony, if the other party has been sentenced to death, life imprisonment, or a definite term of imprisonment of ten years or more for the offense* and is confined at the time of the filing of the complaint for divorce or legal separation in the state or federal correctional institution pursuant to that sentence (italicized language is a modification of existing law);

(6) Similar to existing law and only available in a divorce action, procurement of a divorce outside Ohio by the other party by virtue of which the other party is released of the obligations of the marriage, while those obligations remain binding upon the nonbreaching party;

(7) The parties without interruption for *two years if they do not have a minor child or children or two years and six months if they do have a minor child or children* have lived separate and apart without cohabitation and, *despite engaging in marriage counseling and all other reasonable efforts to preserve the marriage, without reconciliation* (italicized language is a modification of existing

law). Either party may be a complainant in an action for divorce or legal separation based on this ground.

(8) Habitual drunkenness of, or habitual illegal substance abuse by, the other party.

The bill's provisions pertaining to the *exclusive* grounds for a grant of a divorce or a legal separation to the parties to a covenant marriage have the effect of *eliminating* the following grounds of existing law that are available to parties in a noncovenant marriage: (1) fraudulent contract, (2) any gross neglect of duty, and (3) incompatibility (R.C. 3105.01(E), (F), and (K) and 3105.17(A)(5), (6), and (10)).

The bill also states that if a party to a covenant marriage files a complaint for a legal separation by reason of the other party's physical or sexual abuse of a child of either party and the court grants a decree of legal separation for that cause, that party may not file a complaint for divorce on those grounds until after the expiration of one year from the date of entry of the decree of legal separation (R.C. 3105.172(C)).

The bill prohibits converting a divorce action involving a covenant marriage into an action for dissolution of marriage (R.C. 3105.08).

Counseling. The bill prohibits a court of common pleas from hearing or deciding an action for divorce or legal separation involving a covenant marriage until court-ordered marital or family counseling has concluded and the results of the counseling have been reported to the court. At any time after 30 days have elapsed from the service of summons or first publication of notice in the action, the court must order the parties to undergo marital counseling and, if children are involved in the proceeding, to take part in family counseling. The court must state in its order the type of counseling required, the counseling procedures, the length of time for the counseling, the manner in which the costs of the counseling are to be paid, and any other specific conditions required by it. The counseling procedures may include referrals to the conciliation judge (R.C. Chapter 3117.-- not in the bill). The court may name the marriage counselor, family counselor, or a rabbi, priest, or other regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination, or sect who will provide the marital or family counseling. (R.C. 3105.092.)

Attorney General functions

The bill requires the Attorney General, in conjunction with Ohio probate courts, to prepare, produce, and distribute or cause the preparation, production, and distribution of an informational booklet that explains the statutory provisions

that pertain to a covenant marriage and a preexisting marriage that has been redesignated as a covenant marriage. The booklet must be in understandable language and readable format. (R.C. 109.021(B).)

The Attorney General must provide copies of the booklet to the clerks of Ohio probate courts upon request and the payment of the per copy fee adopted in the manner described below. The Attorney General must prescribe by rule adopted pursuant to the Administrative Procedure Act a reasonable fee for each copy of the booklet that the Attorney General's office provides to a clerk of a probate court. That fee cannot exceed the lesser of \$2 or the actual cost incurred by the Attorney General in connection with the preparation, production, and distribution of a copy of the booklet. (R.C. 109.021(C).)

The Attorney General must review or cause the review of the booklet at least once each biennium to determine whether it is accurate in all respects and contains all relevant statutory information pertaining to covenant marriages and preexisting marriages that have been redesignated as a covenant marriage. If the booklet is not accurate in all respects or does not contain all of the relevant statutory information, the Attorney General must prepare, produce, and distribute or cause the preparation, production, and distribution of a new booklet. (R.C. 109.021(D).)

Related probate court functions

Establishment of fee

The bill *permits* a probate court to establish by rule a fee for each copy of the Attorney General's booklet that the clerk of the court provides to the individuals listed under "**Provision of booklet copies**" below. That fee cannot exceed the lesser of \$2 or the actual cost incurred by the Attorney General in connection with the preparation, production, and distribution of a copy of the booklet. (R.C. 2101.16(H)(1).)

Provision of booklet copies

Upon request and the payment of any associated fee that the probate court adopts in the manner described above, the clerk of the court must provide a copy of the Attorney General's booklet to any of the following individuals (R.C. 2101.241(A)):

(1) A male person and a female person who inform the clerk of their interest in entering into a covenant marriage;

(2) The husband and wife in a qualified preexisting marriage who inform the clerk of their interest in redesignating their preexisting marriage as a covenant marriage;

(3) A previously described "qualified premarital or postmarital marriage counselor."

Miscellaneous provisions

The bill continues existing law's provision that a husband and wife contract towards each other obligations of mutual respect, fidelity, and support. However, it additionally specifies that a husband and wife *in a covenant marriage* and a husband and wife in a redesignated covenant marriage contract to be bound by the bill's "**Legal consequences**" and "**Controlling statutes**" that apply to covenant marriages. (R.C. 3103.01.)

The bill generally continues existing law's general prohibition against a husband and wife, "by any contract with each other," altering their legal relations. However, the bill indicates that that prohibition does not preclude a husband and wife in a qualified preexisting marriage from petitioning to have their marriage redesignated as a covenant marriage pursuant to the bill's procedures or from agreeing in their postmarital declaration of covenant marriage intent to be bound by the bill's "**Legal consequences**" and "**Controlling statutes**" that apply to covenant marriages. (R.C. 3103.06.)

The bill clarifies in the Adoption Law that a married adult whose spouse does not join as a petitioner is eligible to adopt a child (among other circumstances) if the petitioner and the other spouse are separated under existing law or under the bill's provisions pertaining to a legal separation of parties to a covenant marriage (R.C. 3107.03(D)(2)).

The bill provides that the existing law requirement that, at any time after 30 days from the service of summons or first publication of notice in an action for divorce, annulment, or legal separation, or at any time after the filing of a petition for dissolution of marriage, the court of common pleas order the parties to undergo conciliation for the period of time not exceeding 90 days as the court specifies, does not apply to an action for divorce or legal separation involving a covenant marriage (R.C. 3105.091(A)).

The bill includes within the existing definition of "separate property" for the purposes of the division of marital and separate property any real or personal property or interest in real or personal property acquired by one spouse after a decree of legal separation issued under the law regarding the legal separation of a covenant marriage (R.C. 3105.171(A)(6)).

The bill modifies the provisions regarding the issuance of spousal support by including a legal separation from a covenant marriage within the provision regarding any continuing order for periodic payments of money that are subject to further order of the court upon changed circumstances of either party (R.C. 3105.18(D)).

The bill provides that the circumstances for which a marriage can be annulled do not apply to a covenant marriage (R.C. 3105.31).

COMMENT

1. Under continuing law, each party seeking a marriage license must apply for the license and must state under oath the party's name, age, residence, place of birth, occupation, Social Security number, father's name, and mother's maiden name, if known, and the name of the person who is expected to solemnize the marriage. If either party has been previously married, the application also must include the names of the parties to each previous marriage and of any minor children, and, if any of the previous marriages was terminated by a divorce (existing law), dissolution of marriage (added by the bill), or annulment (added by the bill), the jurisdiction, date, and case number of the decree. (R.C. 3101.05(A).)

The parties to a proposed marriage must apply for a marriage license not less than five or more than 30 days before a license is issued. Each of the parties seeking a marriage license generally must personally appear in the probate court of the county in which either party resides, or, if neither party is a resident of Ohio, in which the marriage is expected to be solemnized. If neither party is an Ohio resident, the marriage may be solemnized only in the county in which the license is obtained. (R.C. 3101.05(A).)

2. The Probate Code requires a probate judge to charge applicants for a marriage license a \$10 fee for the services associated with the issuance of the license (R.C. 2101.16(A)(46)--not affected by the bill). The Shelters for Domestic Violence Victims Law requires a probate judge to charge the applicants an additional fee of \$17 that is used to provide financial assistance to those types of shelters (R.C. 3113.34--not in or affected by the bill).

3. The bill's "postmarital declaration of covenant marriage intent" is generally similar to its "declaration of intent to contract a covenant marriage," and its "affidavit of postmarital counseling" is generally similar to its "affidavit of premarital counseling" (R.C. 3101.27(B) and (E) and 3101.21(B) and (E)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-18-05	p. 841

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