

**SUBJECT:** Creation and dissolution of a covenant marriage

**COMMITTEE:** State Affairs — committee substitute recommended

**VOTE:** 6 ayes — Swinford, Paxton, Christian, B. Cook, Flynn, Parker  
1 nay — Veasey  
2 absent — Van Arsdale, Farrar

**WITNESSES:** (*On original version:* )  
For — None  
  
Against — Jack Marr, Texas Family Law Foundation; (*Registered, but did not testify:* Patti Edelman; Randall Ellis, American Civil Liberties Union; Katie Tastrom, National Association of Social Workers-Texas)

(*On committee substitute:* )  
For — Laura Wolf, Texas Council on Family Violence  
  
Against — None

**BACKGROUND:** A man and a woman desiring to enter into a ceremonial marriage must obtain a marriage license from the county clerk of any county of this state.

Family Code, sec. 2.002 states that a couple applying for a marriage license must:

- appear before the county clerk;
- submit the person’s proof of identity and age as provided by the Family Code;
- provide the information applicable for which spaces are provided in the application for a marriage license;
- mark the appropriate boxes provided in the application; and
- take the oath printed on the application and sign the application before the county clerk.

Family Code, sec. 2.009 provides that when a marriage license is issued, the local clerk must:

- prepare the license;
- enter on the license the names of the licensees and the date the license is issued;
- record the time at which the license was issued;
- distribute to each applicant printed materials about HIV/AIDS and note on the license this distribution was made; and
- distribute to each applicant a premarital education handbook provided by the attorney general.

Local Government Code, sec. 118.011(a) requires applicants to pay a \$30.00 fee for a marriage license.

**DIGEST:**

CSHB 180 would create the option to enter into a covenant marriage. When completing the application form for a marriage license, an instruction would be included for applicants to mark a box and sign an affirmation to the printed statement:

"We, (name of male applicant) and (name of female applicant), declare our intent to contract a covenant marriage. We do hereby declare that our marriage will be bound by Texas law on covenant marriage and we promise to love, honor, and care for one another as husband and wife for the rest of our lives; or We, (name of the male applicant) and (name of the female applicant), do not wish to enter into a covenant marriage."

Upon issuing a marriage license, the county clerk would indicate whether or not a marriage license was for a covenant marriage and would distribute to each applicant printed materials about family violence provided by the Department of Family and Protective Services.

The bill would amend Health and Safety Code, sec. 194.001, to require the county clerk to file a copy of each affidavit of intent to designate a marriage as a covenant marriage with the bureau of vital statistics no later than 90 days after the date on which the affidavit was executed. The bill also would amend sec. 194.0011 to account for the inclusion of an affidavit of intent to designate a marriage as a covenant marriage in the prescribed content for a marriage license application.

Marriage licenses fees would be designated as covenant and non-covenant. The fee for issuance of a covenant marriage license would be \$25.00 and an affidavit of intent to designate a marriage as a covenant marriage would also be \$25.00. The fees would be paid at the time the license was issued.

The bill would amend Family Code, ch. 2, which governs marital relationships, by adding sec. 2.0105 to require the Department of Family and Protective Services to prepare and provide each county clerk with the materials to be distributed to marriage license applicants. The material would be required to include inform applicants on how to identify family violence, how family violence starts, what do if a person becomes a victim of family violence, and would include the National Domestic Violence Hotline. The materials also would illustrate the wheels of equality, power, and control developed by the Domestic Abuse Intervention Project of Duluth, Minnesota.

The bill would amend the Family Code to include the associated requirements of entering a covenant marriage relationship, including:

- the couple would designate their marriage as a covenant marriage by signing and notarizing an affidavit of intent to do so and on the couple's marriage license;
- the applicants would assert their covenant marriage by filing the affidavit and marriage license with the county clerk;
- before a couple could enter the covenant marriage, they would be required to complete at least 8 hours of premarital counseling;
- the premarital counseling would cover issues, such as the seriousness of entering a covenant marriage, inform the couple of the obligation to seek marital counseling in times of difficulty, and any other topics the counselor considered important to the marital commitment.

The attorney general would be required to develop a pamphlet on covenant marriage that included a full explanation of the terms and conditions of a covenant marriage, including the grounds for dissolution and legal separation. The pamphlet would be provided to the county clerks to distribute to each couple applying for a license for a covenant marriage. A county clerk also would develop material to educate couples on the requirements associated issuing a covenant marriage license and the differences between a covenant marriage and a non-covenant marriage.

Before a spouse could file for suit to dissolve a covenant marriage, the couple would have to receive counseling from a licensed marriage and family therapist or other licensed mental health professional educated in counseling married couples in an attempt to reconcile the marriage. The

couples would be required to attend counseling until the counselor or both spouses determined the marriage was unsalvageable.

A court could grant a divorce in a covenant marriage in favor of a spouse if the other spouse:

- committed adultery;
- was convicted of a felony;
- was imprisoned for at least one year in a state or federal penitentiary;
- had not been pardoned of a criminal conviction; or
- left the spouse with the intention of abandonment, remained away for two years, and the spouses have lived apart without cohabitation for at least three years.

A court also could grant a divorce in a covenant marriage if:

- an order of legal separation was issued to one of the spouses and the spouse lived apart without reconciliation for two years or, if there was a minor child, two years and six months; or
- after completing counseling, the spouses agreed to dissolve the marriage or a counselor recommended dissolution.

Family Code, ch. 6, which governs suits for dissolution of marriage, would not apply to a covenant marriage unless a spouse who filed a petition for divorce also filed a petition stating the other spouse committed family violence against the spouse. This would allow the divorce to be finalized 60 days from the date the suit was filed. Also, a court could not grant a divorce if a spouse was convicted of a felony solely on the testimony of the other spouse.

A spouse of a covenant marriage could file suit to obtain an order of legal separation if the other spouse:

- committed adultery;
- was convicted of a felony;
- was imprisoned for at least one year in a state or federal penitentiary;
- had not been pardoned of a criminal conviction;
- left the spouse with the intention of abandonment, remained away for at least one year;

- committed family violence against the spouse, who both reported the incident to law enforcement and filed for a protective order; or
- habitually abused illegal drugs or alcohol.

An order of legal separation also could be granted if the spouses had lived apart without cohabitation for at least three years.

A court could not render an order of legal separation if a spouse was convicted of a felony solely on the testimony of the other spouse.

A court could render a temporary order for spousal maintenance in favor of the spouse filing for legal separation when the spouse was left with the intent of abandonment and the other spouse remained away for at least one year. A temporary order for spousal maintenance also could be ordered with the filing for the dissolution of the covenant marriage.

The bill would take effect September 1, 2007.

**SUPPORTERS  
SAY:**

CSHB 180 would offer the option of covenant marriage to couples already seeking to marry and potentially increase the value of marriage among couples. Arkansas, Arizona, and Louisiana have adopted forms of covenant marriage to promote family stability.

Encouraging couples to attend marriage counseling before a marriage, during times of difficulty, and before a divorce would afford them the opportunity to reflect on the enduring commitment of marriage and the seriousness of preserving their marital vows and could keep them from making a hasty decision to end their marriage. It is estimated that a single divorce costs \$30,000 to the state and federal governments. When a marriage ends, the costs affect everyone.

Increasing the incidence of marriage and reducing the incidence of divorce are reasonable and necessary policy goals. Marriage benefits adults, children, and society by providing a stable and healthy environment for raising children. Men and women who are married have been shown to be happier and healthier, and research shows that the incidence of illness is less for married couples and that married people live up to eight years longer than their divorced or never-married counterparts. Marriage also provides for increased financial viability, and children fare better in two-parent households. Children of married parents are less likely to engage in criminal behavior, abuse drugs and alcohol, become pregnant out of

wedlock, or experience emotional and psychological troubles. The fate of Texas' children depends on policymakers' success in supporting marriage.

In addition, a unilateral dissolution of a marriage does not always produce fair results. A marriage treated as an economic partnership assumes each spouse invested and sacrificed equally. Splitting assets at the point of divorce does not always provide adequate support to the spouse who sacrificed educational and career opportunities to devote time to family priorities. This spouse could have less earning potential than the spouse invested in a career and would be likely to experience economic hardship after the divorce. A "slow-down" option would allow for a more equitable dissolution.

**OPPONENTS  
SAY:**

Formally legalizing covenant marriage is unnecessary because couples already have the choice to enter into a covenant marriage through their churches.

In addition, if a marriage were unsalvageable, limiting the grounds for divorce could immobilize a family from starting over. Divorce can provoke hostility and antagonism, and a longer waiting period could lead to new hostilities, increased feelings of deprivation or loss, and parental conflict. Children adjust better to divorce when their parents adjust better. Divorce requires parents to work toward rebuilding a new family life with consistency and stability, and a spouse could find it especially difficult to reestablish a life knowing the decision to divorce was not final. If parents are having difficulty with the divorce, they will be unable to support their children through the transition. Deciding to divorce is already stressful, and limiting the grounds for divorce could serve to compound the effects.

Covenant marriage could de-value non-covenant marriage and suggest that couples who choose non-covenant marriage were somehow less serious at the time they applied for a marriage license and exchanged their vows. As a result, creating a new type of marriage could work to weaken the institution itself and possibly invite challenges to marriage laws, such as who should legally be able to marry or what was the appropriate minimum age to marry.

**NOTES:**

The substitute modified the original to require distribution of materials on family violence prepared by the Department of Family and Protective Services by a county clerk to couples applying for marriage license. It also

would permit a spouse to file for the dissolution of covenant marriage on the grounds of family violence under subch. A of the Family Code.

The substitute also added to the requirement of premarital counseling a minimum requirement of 8 hours of science-based counseling and would permit a couple to seek counseling from a mental health professional or licensed marriage and family therapist prior to dissolution so long as a counselor had completed at least six hours of continuing education in subjects related to counseling married couples. The substitute added the allowance for couples to be qualified to file for dissolution of the covenant marriage under certain circumstances if they had completed the required counseling.

The substitute modified administrative procedures, including requiring a county clerk to distinguish between a covenant and non-covenant marriage on the marriage license and establishing a \$25 fee for a covenant marriage license and a \$25 fee for the affidavit of intent to enter into a covenant marriage.

HB 180 originally was set on the April 24 General State Calendar and was recommitted to committee.