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# SENATE BILL No. 394

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 31-9-2-28.5; IC 31-11; IC 31-15.

**Synopsis:** Covenant marriage. Defines "covenant marriage". Provides that a couple may designate a covenant marriage when applying for a marriage license or after marriage. Requires that a marriage license must indicate whether the marriage is a covenant marriage. Establishes the procedure for declaring a covenant marriage. Requires the state department of health to maintain records of covenant marriage declarations. Provides limited grounds for legal separation or dissolution of a covenant marriage. Requires the state department of health to develop an informational pamphlet regarding covenant marriage.

**Effective:** Upon passage.

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January 11, 2005, read first time and referred to Committee on Judiciary.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

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# SENATE BILL No. 394



A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 31-9-2-28.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: **Sec. 28.5. "Covenant marriage", for purposes**  
4 **of IC 31-11-4, IC 31-11-4.5, and IC 31-15 means a marriage**  
5 **entered into by one (1) male and one (1) female who:**  
6 **(1) understand and agree that the marriage between them is**  
7 **a lifelong relationship;**  
8 **(2) have received counseling emphasizing the nature,**  
9 **purposes, and responsibilities of marriage;**  
10 **(3) understand and agree that only when there has been a**  
11 **complete and total breach of the marital covenant may the**  
12 **nonbreaching party seek a dissolution of the marriage; and**  
13 **(4) declare their intent to enter into a covenant marriage on:**  
14 **(A) their application for a marriage license under**  
15 **IC 31-11-4-4; or**  
16 **(B) a declaration of intent to designate their existing**  
17 **marriage as a covenant marriage under IC 31-11-4.5-2.**





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**executed a declaration of intent and filed it with this application for a marriage license.**

\_\_\_\_\_  
**Signature of Intended Husband**                      **Date**

\_\_\_\_\_  
**Signature of Intended Wife**                      **Date**

(b) The clerk of the circuit court shall record the application, including the license and certificate of marriage, in a book provided for that purpose. This book is a public record.

(c) The state department of health shall develop uniform forms for applications for marriage licenses, **which must indicate whether the individuals applying for the marriage license are declaring an intent to enter into a covenant marriage.** The state department of health shall furnish these forms to the circuit court clerks. The state department of health may periodically revise these forms.

(d) The state department of health shall require that the record of marriage form developed under subsection (c) must include each applicant's Social Security number. Any Social Security numbers collected on the record of marriage form shall be kept confidential and used only to carry out the purposes of the Title IV-D program. A person who knowingly or intentionally violates confidentiality regarding an applicant's Social Security ~~numbers~~ **number** as described in this subsection commits a Class A infraction.

(e) Notwithstanding subsection (a), a person who objects on religious grounds is not required to:

- (1) verify the application under subsection (a) by oath or affirmation; or
- (2) sign the acknowledgment described in subsection (a)(8).

However, before the clerk of the circuit court may issue a marriage license to a member of the Old Amish Mennonite church, the bishop of that member must sign a statement that the information in the application is true.

(f) If a person objects on religious grounds to:

- (1) verifying the application under subsection (a) by oath or affirmation; or
- (2) signing the acknowledgment described in subsection (a)(8);

the clerk of the circuit court shall indicate that fact on the application for a marriage license.

SECTION 3. IC 31-11-4-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. Each marriage license must have two (2) certificates attached to the license. The state department of health shall prescribe a uniform ~~form~~ **forms** for these

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certificates. One (1) certificate must be marked "Original", and one (1) certificate must be marked "Duplicate". Each certificate must contain the following:

**(1) For individuals not declaring their marriage a covenant marriage:**

MARRIAGE CERTIFICATE

I \_\_\_\_\_ (name) certify that on \_\_\_\_\_ (date) at \_\_\_\_\_ in \_\_\_\_\_ County, Indiana, \_\_\_\_\_ of \_\_\_\_\_ County, \_\_\_\_\_ (state) and \_\_\_\_\_ of \_\_\_\_\_ County, \_\_\_\_\_ (state) were married by me as authorized under a marriage license that was issued by the Clerk of the Circuit Court of \_\_\_\_\_ County, Indiana, dated \_\_\_\_\_.

Signed

(OFFICIAL DESIGNATION)

**(2) For individuals declaring their marriage a covenant marriage:**

MARRIAGE CERTIFICATE

I \_\_\_\_\_ (name) certify that on \_\_\_\_\_ (date) at \_\_\_\_\_ in \_\_\_\_\_ County, Indiana, \_\_\_\_\_ of \_\_\_\_\_ County, \_\_\_\_\_ (state) and \_\_\_\_\_ of \_\_\_\_\_ County, \_\_\_\_\_ (state) were married by me into a covenant marriage as authorized under a marriage license that was issued by the Clerk of the Circuit Court of \_\_\_\_\_ County, Indiana, dated \_\_\_\_\_.

Signed

(OFFICIAL DESIGNATION)

SECTION 4. IC 31-11-4-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. (a) The clerk of the circuit court shall forward marriage records to the state department of health on at least a monthly basis.

(b) The state department of health shall:

(1) prescribe:

**(A) a form for recording marriages that provides a manner for the clerk of the circuit court to indicate whether the marriage was declared a covenant marriage; and**

**(B) a form for recording declarations of a covenant marriage filed under IC 31-11-4.5-2;**

(2) accept a court order under section 17 of this chapter (or IC 31-7-3-15.5 before its repeal) in place of a marriage certificate;

(3) prepare an annual index of all marriages solemnized in Indiana that:

**(A) distinguishes between a marriage designated as a covenant marriage and a marriage not designated as a**

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1           covenant marriage; and  
 2           **(B) indicates declarations of a covenant marriage filed under**  
 3           **IC 31-11-4.5-2;**  
 4           and furnish at least one (1) index to the Indiana state library; and  
 5           (4) furnish to the Indiana state library reports on records of  
 6           marriage published by the state department of health to the Indiana  
 7           state library that:  
 8           **(A) distinguish between a marriage designated as a covenant**  
 9           **marriage and a marriage not designated as a covenant**  
 10           **marriage; and**  
 11           **(B) indicate declarations of a covenant marriage filed under**  
 12           **IC 31-11-4.5-2; and**  
 13           **(5) develop an informational pamphlet entitled "Covenant**  
 14           **Marriage Law", which outlines in sufficient detail the**  
 15           **consequences of entering into a covenant marriage. The state**  
 16           **department of health shall make this informational pamphlet**  
 17           **available upon request to any priest, minister, rabbi, clerk of**  
 18           **the Religious Society of Friends, clergyman of any religious**  
 19           **sect, or marriage counselor.**

20           SECTION 5. IC 31-11-4.5 IS ADDED TO THE INDIANA CODE  
 21           AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 22           UPON PASSAGE]:

23           **Chapter 4.5. Covenant Marriage**

24           **Sec. 1. (a) Individuals applying for a marriage license under**  
 25           **IC 31-11-4 may, at the time of filing an application for a marriage**  
 26           **license, file a declaration of intent to enter into a covenant**  
 27           **marriage, consisting of the following documents:**

28           **(1) A recitation to the following effect, with the signatures of**  
 29           **both parties witnessed by a notary public:**

30                           **A COVENANT MARRIAGE**

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

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With full knowledge of what this commitment means, we do hereby declare that our marriage will be bound by Indiana 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."

(2) An affidavit by the parties that they have received premarital counseling from a priest, minister, rabbi, clerk of the Religious Society of Friends, clergyman of any religious sect, or marriage counselor that included a discussion of the seriousness of covenant marriage, communication of the fact that a covenant marriage is a commitment for life, a discussion of the obligation to seek marital counseling in times of marital difficulties, and a discussion of the exclusive grounds for obtaining a judgment of legal separation or for legally dissolving a covenant marriage.

(3) A notarized 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 and the grounds for termination of the marriage and acknowledging that the counselor provided to the parties the informational pamphlet "Covenant Marriage Law" developed by the state department of health.

(4) If one (1) or both of the parties are minors, the consent required by IC 31-11-2.

(b) The recitation required under subsection (a)(1) shall be prepared in duplicate originals, one (1) of which shall be retained by the parties and the other of which shall be filed with the clerk of the circuit court and attached to the duplicate marriage certificate when filed with the clerk of the circuit court.

Sec. 2. (a) A married couple may execute a declaration of intent to designate their marriage as a covenant marriage to be governed by the laws governing covenant marriages. The declaration consists of the following documents:

(1) A recitation to the following effect, with the signatures of both parties witnessed by a notary public:

**A COVENANT MARRIAGE**

"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, purposes, and responsibilities of marriage. We have read the "Covenant Marriage Law" informational pamphlet, and we understand that a covenant

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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 Indiana law on covenant marriages, and we renew our promise to love, honor, and care for one another as husband and wife for the rest of our lives."

(2) An affidavit by the parties that they have discussed their intent to designate their marriage as a covenant marriage with a priest, minister, rabbi, clerk of the Religious Society of Friends, clergyman of any religious sect, or marriage counselor, and that the discussion included a discussion of the obligation to seek marital counseling in times of marital difficulties and the exclusive grounds for obtaining a judgment of legal separation or for legally dissolving a covenant marriage.

(3) A notarized attestation, signed by the counselor and attached to or included in the parties' affidavit, acknowledging that the counselor provided to the parties the informational pamphlet "Covenant Marriage Law" developed by the state department of health.

(b) The recitation required under subsection (a)(1) shall be prepared in duplicate originals, one (1) of which shall be retained by the parties and the other of which shall be filed as determined under subsection (c).

(c) The documents required under subsection (a) shall be filed with the clerk of the circuit court:

(1) in which the couple's marriage license is filed, if the couple was married in Indiana; or

(2) in the county where the couple is domiciled, if the couple was married outside Indiana.

(d) If the couple is married outside Indiana, the documents required under subsection (a) must be accompanied by a certified copy of the couple's marriage certificate.

(e) Upon receipt of a declaration designating a marriage as a covenant marriage under this section, the clerk of the circuit court shall make a notation on the marriage certificate of the declaration and attach a copy of the declaration to the certificate.

SECTION 6. IC 31-15-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. The purposes and policies of this article are as follows:

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- 1           ~~(1)~~ To abolish the existing grounds for absolute and limited
- 2           divorce and to provide as the basis for dissolution of marriage:
- 3           ~~(A)~~ ir retrievable breakdown of the marriage;
- 4           ~~(B)~~ the conviction of either party, subsequent to the marriage, of
- 5           a felony;
- 6           ~~(C)~~ impotence existing at the time of the marriage; and
- 7           ~~(D)~~ incurable insanity of either party for a period of at least two
- 8           ~~(2)~~ years.
- 9           ~~(2)~~ **(1)** To provide for the appropriate procedures for the
- 10           dissolution of marriage.
- 11           ~~(3)~~ **(2)** To provide for the disposition of property, child support,
- 12           and child custody.
- 13           ~~(4)~~ **(3)** To provide for separation agreements.
- 14           ~~(5)~~ **(4)** To provide for a temporary legal separation.

15           SECTION 7. IC 31-15-2-3 IS AMENDED TO READ AS FOLLOWS  
 16           [EFFECTIVE UPON PASSAGE]: Sec. 3. **(a) Except as provided in**  
 17           **subsection (b),** dissolution of marriage shall be decreed upon a finding  
 18           by a court of one (1) of the following grounds and no other ground:

- 19           (1) Ir retrievable breakdown of the marriage.
- 20           (2) The conviction of either of the parties, subsequent to the
- 21           marriage, of a felony.
- 22           (3) Impotence existing at the time of the marriage.
- 23           (4) Incurable insanity of either party for a period of at least two (2)
- 24           years.

25           **(b) Dissolution of a marriage declared to be a covenant marriage**  
 26           **under IC 31-11-4.5 shall be granted only upon a finding by a court**  
 27           **of one (1) of the following grounds:**

- 28           **(1) The nonpetitioning spouse has:**
- 29           **(A) committed adultery;**
- 30           **(B) committed a felony and has been sentenced to death or**
- 31           **life imprisonment without the possibility of parole;**
- 32           **(C) abandoned the marital residence for at least one (1) year**
- 33           **and refuses to return; or**
- 34           **(D) physically or sexually abused the petitioning spouse or**
- 35           **any child.**
- 36           **(2) The spouses have been living separate and apart**
- 37           **continuously without reconciliation for at least:**
- 38           **(A) two (2) years; or**
- 39           **(B) one (1) year from the date a judgment of legal separation**
- 40           **was signed.**

41           SECTION 8. IC 31-15-2-5 IS AMENDED TO READ AS FOLLOWS  
 42           [EFFECTIVE UPON PASSAGE]: Sec. 5. A petition for dissolution of

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- 1 marriage must:
- 2 (1) be verified; and
- 3 (2) set forth the following:
- 4 (A) The residence of each party and the length of residence in
- 5 the state and county.
- 6 (B) The date of the marriage.
- 7 (C) The date on which the parties separated.
- 8 (D) The name, age, and address of:
- 9 (i) any living child less than twenty-one (21) years of age; and
- 10 (ii) any incapacitated child;
- 11 of the marriage and whether the wife is pregnant.
- 12 (E) The grounds for dissolution of the marriage.
- 13 (F) The relief sought.
- 14 **(G) If applicable, a statement that the marriage has been**
- 15 **declared a covenant marriage.**

16 SECTION 9. IC 31-15-3-4 IS AMENDED TO READ AS FOLLOWS  
 17 [EFFECTIVE UPON PASSAGE]: Sec. 4. A proceeding for legal  
 18 separation is commenced by the filing of a petition entitled, "In Re the  
 19 legal separation of \_\_\_\_\_ and \_\_\_\_\_". The petition must:

- 20 (1) be verified; and
- 21 (2) set forth the following:
- 22 (A) The residence of each party and the length of residence in
- 23 the state and county.
- 24 (B) The date of the marriage.
- 25 (C) The date on which the parties separated.
- 26 (D) The names, ages, and addresses of:
- 27 (i) any living child less than twenty-one (21) years of age; and
- 28 (ii) any incapacitated child;
- 29 of the marriage and whether the wife is pregnant.
- 30 (E) The grounds for legal separation.
- 31 (F) The relief sought.
- 32 **(G) If applicable, a statement that the marriage has been**
- 33 **declared a covenant marriage.**

34 SECTION 10. IC 31-15-3-9 IS AMENDED TO READ AS  
 35 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. **(a) Except as**  
 36 **provided in subsection (b),** in an action for legal separation under  
 37 section 2 of this chapter, the court may grant a decree for a separation  
 38 of the parties to the marriage for a period not to exceed one (1) year if  
 39 the court finds that:

- 40 (1) conditions in or circumstances of the marriage make it
- 41 currently intolerable for both parties to live together;
- 42 (2) the marriage should be maintained; and

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1 (3) neither party has filed a petition or counter petition for  
2 dissolution of marriage under IC 31-15-2 (or IC 31-1-11.5 before  
3 its repeal).

4 **(b) A court may grant a decree for a legal separation of the**  
5 **parties to a covenant marriage for a period not to exceed one (1)**  
6 **year if the court finds that:**

7 **(1) the nonpetitioning spouse has:**

8 **(A) committed adultery;**

9 **(B) committed a felony and has been sentenced to death or**  
10 **life imprisonment without the possibility of parole;**

11 **(C) abandoned the marital residence for at least one (1) year**  
12 **and refuses to return; or**

13 **(D) physically or sexually abused the petitioning spouse or**  
14 **any child;**

15 **(2) the spouses have been living separate and apart**  
16 **continuously without reconciliation for at least two (2) years;**  
17 **or**

18 **(3) the nonpetitioning spouse has exhibited habitual**  
19 **intemperance, excesses, cruel treatment, or outrages of such a**  
20 **nature as to render the parties' continued living together**  
21 **unsupportable.**

22 SECTION 11. IC 31-15-4-9 IS AMENDED TO READ AS  
23 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. The court may  
24 require the parties to seek counseling for themselves or for a child of  
25 the parties under such terms and conditions that the court considers  
26 appropriate if:

27 (1) either party makes a motion for counseling in an effort to  
28 improve conditions of their marriage;

29 (2) a party, the child of the parties, the child's guardian ad litem or  
30 court appointed special advocate, or the court makes a motion for  
31 counseling for the child; or

32 (3) the court makes a motion for counseling for parties who:

33 **(A) are the parents of a child less than eighteen (18) years of age;**  
34 **or**

35 **(B) have declared the marriage to be a covenant marriage.**

36 SECTION 12. [EFFECTIVE UPON PASSAGE] **(a) The state**  
37 **department of health shall develop, before July 1, 2005, an**  
38 **informational pamphlet entitled "Covenant Marriage Law", as**  
39 **provided under IC 31-11-4-18, as amended by this act, that outlines**  
40 **in sufficient detail the consequences of entering into a covenant**  
41 **marriage. The state department of health shall make this**  
42 **informational pamphlet available upon request to any priest,**

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1     **minister, rabbi, clerk of the Religious Society of Friends,**  
2     **clergyman of any religious sect, or marriage counselor who**  
3     **provides marriage counseling as provided for by this act.**

4     **(b) This SECTION expires December 31, 2005.**

5     **SECTION 13. An emergency is declared for this act.**

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