

**House File 442 - Introduced**

HOUSE FILE 442

BY GASSMAN

**A BILL FOR**

1 An Act relating to marriage and divorce, and including  
2 effective date provisions.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

COVENANT MARRIAGE

Section 1. Section 331.602, Code 2015, is amended by adding the following new subsection:

NEW SUBSECTION. 39A. Record all declarations of intent pursuant to chapter 595A that are presented to the recorder's office for recording, upon payment of a fee in accordance with section 331.604.

Sec. 2. NEW SECTION. 595.3B **Certificate of marriage — covenant marriage designation.**

In addition to any other information contained in a certificate of marriage, the certificate of marriage shall include a section to allow the parties to designate the marriage as a covenant marriage.

Sec. 3. NEW SECTION. 595.3C **Covenant marriage — information pamphlet.**

The county registrar shall provide each applicant for a marriage license with a copy of the informational pamphlet on covenant marriage prepared by the office of the attorney general pursuant to section 595A.6.

Sec. 4. NEW SECTION. 595.14 **Covenant marriage — declaration return.**

If the parties wish to designate the marriage a covenant marriage, after the marriage has been solemnized, the officiating minister or magistrate shall return the completed certificate of marriage with the section designating the marriage as a covenant marriage clearly indicated to the county registrar in the county in which the parties applied for a license to marry, within fifteen days of the solemnization. Additionally, the parties to the marriage shall record the declaration of intent with the county recorder in the county in which the parties applied for the license to marry, and shall pay the fee in accordance with section 331.604.

Sec. 5. NEW SECTION. 595A.1 **Covenant marriage — intent — conditions to create.**

1 1. The parties who intend to enter a covenant marriage shall  
2 execute a declaration of intent to contract a covenant marriage  
3 as provided in section 595A.2.

4 2. A covenant marriage is a contract entered into by two  
5 parties who understand and agree that the marriage between them  
6 is a lifelong relationship, as indicated in the declaration of  
7 intent signed by both parties. Parties to a covenant marriage  
8 shall receive premarital education prior to entering the  
9 covenant marriage which emphasizes the nature and purposes of  
10 marriage and the responsibilities of marriage. Only when there  
11 has been a complete and total breach of the marital covenant  
12 contract shall the nonbreaching party be allowed to seek a  
13 declaration that the marriage is no longer legally recognized.

14 3. Parties to a covenant marriage shall receive at least  
15 twelve hours of premarital education that is provided by a  
16 licensed or ordained minister, or the minister's designee,  
17 a person authorized to solemnize marriages under section  
18 595.10, a psychologist licensed pursuant to chapter 154B, or  
19 a marital and family therapist licensed pursuant to chapter  
20 154D. The education provided shall include a discussion of the  
21 seriousness of marriage and that it is a commitment for life,  
22 the teaching of communication skills, the teaching of conflict  
23 management skills, and a discussion of the obligation to seek  
24 marital counseling in times of marital difficulties.

25 4. The declaration of intent to enter a covenant marriage  
26 is aspirational only and a failure by a party to comply with  
27 the statements contained in the declaration does not constitute  
28 additional grounds for dissolution of a covenant marriage  
29 beyond those provided in section 595A.4.

30 **Sec. 6. NEW SECTION. 595A.2 Covenant marriage — contents**  
31 **of declaration of intent.**

32 1. A declaration of intent to contract a covenant marriage  
33 shall contain all of the following:

34 a. A statement by the parties to the following effect:

35 "We, (names of both parties), solemnly declare our intent to

1 enter into a covenant marriage and we agree to live together  
2 as spouses as long as we both live. We have chosen each other  
3 carefully and voluntarily accept the exclusive grounds for  
4 dissolution of a covenant marriage. We have received the  
5 required premarital education, which included a discussion of  
6 the seriousness of marriage and that it is a commitment for  
7 life, the teaching of communication skills, the teaching of  
8 conflict management skills, and a discussion of the obligation  
9 to seek marital counseling in times of marital difficulties.  
10 We have read the pamphlet regarding covenant marriage and  
11 understand that a covenant marriage is for life. If either  
12 of us experiences serious difficulties with the marriage, we  
13 accept the ethical responsibility to inform the other spouse  
14 about the extent of those problems in time for corrective  
15 action to be taken and will make all reasonable efforts to  
16 preserve our marriage, including participation in marital  
17 counseling.”

18 *b.* A statement from the person who provided the premarital  
19 education to the following effect:

20 “I, (name of provider), confirm that (names of both parties  
21 to the marriage) received at least twelve hours of premarital  
22 education that complies with Iowa Code section 595A.1. I am  
23 a licensed or ordained minister, the minister’s designee,  
24 a person authorized to solemnize marriages under Iowa Code  
25 section 595.10, a psychologist licensed pursuant to Iowa Code  
26 chapter 154B, or a marital and family therapist licensed  
27 pursuant to Iowa Code chapter 154D.”

28 *c.* (1) The signature of both parties, witnessed by a notary  
29 public.

30 (2) If one or both of the parties are minors, the written  
31 consent or authorization of those persons required under  
32 section 595.2 to consent to or authorize the marriage of  
33 minors.

34 2. The declaration of intent shall be prepared in duplicate  
35 originals, one of which shall be retained by the parties and

1 the other of which shall be returned to the county recorder of  
2 the county in which the parties applied for a license to marry.

3     Sec. 7. NEW SECTION. 595A.3 **Covenant marriage —**  
4 **applicability to existing marriages.**

5     1. On or after January 1, 2016, married parties may  
6 designate their marriage as a covenant marriage by executing a  
7 declaration of intent in accordance with this section and by  
8 complying with the other requirements of this chapter.

9     2. The married parties wishing to designate their marriage  
10 as a covenant marriage shall record a duplicate original of the  
11 declaration of intent with the county recorder in the county in  
12 which the parties reside and shall pay the fee in accordance  
13 with section 331.604. The county recorder shall make a  
14 notation on the declaration of intent identifying the source of  
15 issuance of the original marriage license of the parties.

16     3. A declaration of intent to designate an existing marriage  
17 as a covenant marriage shall contain all of the following:

18     a. A statement by the parties to the following effect:

19 "We, (names of both parties), solemnly declare that our  
20 marriage is a covenant marriage and we agree to live together  
21 as spouses as long as we both live. We voluntarily accept the  
22 exclusive grounds for dissolution of a covenant marriage. We  
23 have received the required marital education, which included  
24 a discussion of the obligation to seek marital counseling  
25 in times of marital difficulties and an explanation of the  
26 exclusive grounds for dissolving a covenant marriage. We have  
27 read the informational pamphlet regarding covenant marriage and  
28 understand that a covenant marriage is for life. If either  
29 of us experiences serious difficulties with the marriage, we  
30 accept the ethical responsibility to inform the other spouse  
31 about the extent of those problems in time for corrective  
32 action to be taken and will make all reasonable efforts to  
33 preserve our marriage, including participation in marital  
34 counseling. With full knowledge of what this commitment means,  
35 we declare that our marriage will be bound by the state law on

1 covenant marriage and we promise to love, honor, and care for  
2 one another as spouses for the rest of our lives.”

3 *b.* A statement from the person who provided the marital  
4 education to the following effect:

5 “I, (name of provider), confirm that (names of both parties  
6 to the marriage) received marital education that complies  
7 with Iowa Code section 595A.1. I am a licensed or ordained  
8 minister, the minister’s designee, a person authorized  
9 to solemnize marriages under Iowa Code section 595.10, a  
10 psychologist licensed pursuant to Iowa Code chapter 154B, or  
11 a marital and family therapist licensed pursuant to Iowa Code  
12 chapter 154D.”

13 *c.* The signature of both parties, witnessed by a notary  
14 public.

15 4. Parties who wish to designate their marriage as a  
16 covenant marriage shall receive at least twelve hours of  
17 marital education. The marital education provided shall be  
18 provided by a licensed or ordained minister, or the minister’s  
19 designee, a person authorized to solemnize marriages under  
20 section 595.10, a psychologist licensed pursuant to chapter  
21 154B, or a marital and family therapist licensed pursuant  
22 to chapter 154D. The education provided shall include a  
23 discussion of the obligation to seek marital counseling  
24 in times of marital difficulties and an explanation of the  
25 exclusive grounds for dissolution of a covenant marriage. The  
26 educator shall provide the parties with the informational  
27 pamphlet on covenant marriage developed by the office of the  
28 attorney general pursuant to section 595A.6.

29 **Sec. 8. NEW SECTION. 595A.4 Dissolution of a covenant**  
30 **marriage — exclusive grounds.**

31 1. Notwithstanding any other law to the contrary, and  
32 subsequent to the parties obtaining marital counseling, a party  
33 to a covenant marriage may obtain a dissolution of marriage  
34 only upon proof of any of the following:

35 *a.* The other party has committed adultery.

1     *b.* The other party has committed a felony and has been  
2 sentenced to imprisonment.

3     *c.* The other party has abandoned the matrimonial domicile  
4 for a period of at least one year and refuses to return.

5     *d.* The other party has physically or sexually abused the  
6 party seeking the dissolution or a child of one of the parties.

7     *e.* The parties have been living separate and apart  
8 continuously without reconciliation for a period of at least  
9 two years.

10     2. Notwithstanding subsection 1, a party to a covenant  
11 marriage may obtain a dissolution of marriage without providing  
12 proof of any of the grounds specified under subsection 1 if the  
13 parties agree to the dissolution and there are no children of  
14 the marriage.

15     3. In all proceedings for dissolution of marriage pursuant  
16 to subsection 1, the court may issue an order of temporary  
17 support and maintenance during the pendency of the proceedings.  
18 Notwithstanding the time period requirements of the grounds  
19 specified pursuant to subsection 1, paragraph "c" or "e",  
20 a party to a covenant marriage may petition the court for  
21 separate support and maintenance prior to the elapsing of the  
22 specified time period.

23     4. In all proceedings for dissolution of marriage pursuant  
24 to subsection 1, the court shall order the parties to complete  
25 at least twelve hours of marital counseling that involves both  
26 parties and emphasizes the principles of reconciliation. The  
27 court may require the parties to pay an equal share of the  
28 costs of the counseling or may apportion the cost between the  
29 parties based on the ability to pay. The counseling shall be  
30 provided by a licensed or ordained minister or the minister's  
31 designee, a person authorized to solemnize a marriage pursuant  
32 to section 595.10, a psychologist licensed pursuant to chapter  
33 154B, or a marital and family therapist licensed pursuant  
34 to chapter 154D. The court may waive all or part of the  
35 counseling requirement to the extent the parties have already

1 received the required twelve hours of marital education within  
2 one year of the petition for dissolution of marriage.

3 Sec. 9. NEW SECTION. 595A.5 **Covenant marriage — other**  
4 **applicable laws.**

5 1. A covenant marriage shall be governed by all of the  
6 provisions of chapter 595 which do not conflict with this  
7 chapter.

8 2. A dissolution of a covenant marriage shall be governed by  
9 all of the provisions of chapter 598 which do not conflict with  
10 this chapter.

11 Sec. 10. NEW SECTION. 595A.6 **Attorney general — pamphlet.**

12 Prior to July 1, 2015, the office of the attorney general  
13 shall develop an informational pamphlet entitled "Covenant  
14 Marriage Option" which shall outline in sufficient detail  
15 the requirements for entering into a covenant marriage or  
16 designating an existing marriage as a covenant marriage,  
17 the implications of entering into a covenant marriage or  
18 designating an existing marriage as a covenant marriage, the  
19 grounds for dissolution of a covenant marriage, and the legal  
20 differences between a covenant marriage and a noncovenant  
21 marriage. The informational pamphlet shall be made available  
22 to all offices of the county registrar and to all persons who  
23 provide premarital and marital education under this chapter.

24 Sec. 11. **EFFECTIVE UPON ENACTMENT.** The section of this  
25 division of this Act enacting section 595A.6, relating to the  
26 pamphlet to be developed by the attorney general, being deemed  
27 of immediate importance, takes effect upon enactment.

28 **DIVISION II**

29 **DISSOLUTION PROCEEDINGS**

30 Sec. 12. Section 598.1, Code 2015, is amended by adding the  
31 following new subsection:

32 NEW SUBSECTION. 2A. "*Educational setting*" means a public  
33 school, an accredited nonpublic school, competent private  
34 instruction in accordance with the provisions of chapter 299A,  
35 or any other method of educational instruction that satisfies



1 the compulsory education requirements of chapter 299.

2 Sec. 13. Section 598.10, subsection 1, Code 2015, is amended  
3 by adding the following new paragraph:

4 NEW PARAGRAPH. *c.* If the parents are in disagreement over a  
5 minor child's educational setting, the court shall consider the  
6 educational setting of the minor child in making a temporary  
7 order for custody. There is a rebuttable presumption that  
8 it is in the best interest of the minor child to remain in  
9 the educational setting in which the minor child was enrolled  
10 during the immediately preceding school year.

11 Sec. 14. Section 598.12, Code 2015, is amended to read as  
12 follows:

13 **598.12 Attorney or guardian ad litem for minor child —**  
14 **investigations — psychologist evaluation.**

15 1. The court may appoint an attorney to represent the legal  
16 interests of the minor child or children of the parties. The  
17 attorney shall be empowered to make independent investigations  
18 and to cause witnesses to appear and testify before the court  
19 on matters pertinent to the legal interests of the children.

20 2. The court may appoint a guardian ad litem to represent  
21 the best interests of the minor child or children of the  
22 parties.

23 *a.* Unless otherwise enlarged or circumscribed by a court  
24 or juvenile court having jurisdiction over the child or by  
25 operation of law, the duties of a guardian ad litem with  
26 respect to a child shall include all of the following:

27 (1) Conducting general in-person interviews with the  
28 child, if the child's age is appropriate for the interview,  
29 and interviewing each parent, guardian, or other person having  
30 custody of the child, if authorized by the person's legal  
31 counsel.

32 (2) Conducting interviews with the child, if the child's age  
33 is appropriate for the interview, prior to any court-ordered  
34 hearing.

35 (3) Visiting the home, residence, or both home and residence

1 of the child and any prospective home or residence of the  
2 child, including visiting the home or residence or prospective  
3 home or residence each time placement is changed.

4 (4) Interviewing any person providing medical, mental  
5 health, social, educational, or other services to the child,  
6 prior to any court-ordered hearing.

7 (5) Obtaining firsthand knowledge, if possible, of facts,  
8 circumstances, and parties involved in the matter in which the  
9 person is appointed guardian ad litem.

10 (6) Attending any hearings in the matter in which the person  
11 is appointed guardian ad litem.

12 *b.* The order appointing the guardian ad litem shall grant  
13 authorization to the guardian ad litem to interview any  
14 relevant person and inspect and copy any records relevant to  
15 the proceedings, if not prohibited by federal law. The order  
16 shall specify that the guardian ad litem may interview any  
17 person providing medical, mental health, social, educational,  
18 or other services to the child; may attend any meeting with  
19 the medical or mental health providers, service providers,  
20 organizations, or educational institutions regarding the child,  
21 if deemed necessary by the guardian ad litem; and may inspect  
22 and copy any records relevant to the proceedings.

23 3. The same person may serve both as the child's legal  
24 counsel and as guardian ad litem. However, the court may  
25 appoint a separate guardian ad litem, if the same person cannot  
26 properly represent the legal interests of the child as legal  
27 counsel and also represent the best interests of the child as  
28 guardian ad litem, or a separate guardian ad litem is required  
29 to fulfill the requirements of subsection 2.

30 4. The court may require that an appropriate agency make an  
31 investigation of both parties regarding the home conditions,  
32 parenting capabilities, and other matters pertinent to the best  
33 interests of the child or children in a dispute concerning  
34 custody of the child or children. The investigation report  
35 completed by the appropriate agency shall be submitted to the

1 court and available to both parties. The investigation report  
2 completed by the appropriate agency shall be a part of the  
3 record unless otherwise ordered by the court.

4 5. The court shall order an evaluation of the child by a  
5 child psychologist. The results of the evaluation shall be  
6 submitted to the court and available to both parties. The  
7 evaluation completed by the child psychologist shall be part of  
8 the record unless otherwise ordered by the court.

9 ~~5.~~ 6. The court shall enter an order in favor of the  
10 attorney, the guardian ad litem, ~~or~~ an appropriate agency, or  
11 the child psychologist for fees and disbursements, and the  
12 amount shall be charged against the party responsible for court  
13 costs unless the court determines that the party responsible  
14 for costs is indigent, in which event the fees shall be borne  
15 by the county.

16 Sec. 15. Section 598.15, subsection 5, Code 2015, is amended  
17 to read as follows:

18 5. Each judicial district shall certify approved courses  
19 for parties required to participate in a course under this  
20 section. Approved courses may include those provided by a  
21 public or private entity. At a minimum and as appropriate,  
22 an approved course shall include information relating to the  
23 parents regarding divorce and its impact on the children and  
24 family relationship, parenting skills for divorcing parents,  
25 children's needs and coping techniques, and the financial  
26 responsibilities of parents following divorce. Each judicial  
27 district shall certify an approved course to be available in  
28 video format for viewing where court is held at each county  
29 seat and in an on-demand format to be viewed at the residence  
30 of a party.

31 Sec. 16. Section 598.21A, Code 2015, is amended by adding  
32 the following new subsection:

33 NEW SUBSECTION. 1A. *Unemployed party — vocational*  
34 *assessment.* If a party seeking support is not employed, the  
35 court shall order a vocational assessment of the party, and

1 if the assessment determines there are positions available  
2 consistent with the party's skills but the party has not sought  
3 employment, the court shall assign a potential income to the  
4 party based on the type of position identified and shall adjust  
5 any award of support accordingly.

6 Sec. 17. Section 598.41, subsection 1, paragraph a, Code  
7 2015, is amended to read as follows:

8 a. The court ~~may~~ shall provide for joint custody of  
9 the child by the parties, unless the court cites clear and  
10 convincing evidence pursuant to the factors in subsection  
11 3, that joint custody is unreasonable and not in the best  
12 interest of the child to the extent that the legal custodial  
13 relationship between the child and a parent should be severed.  
14 The court, insofar as is reasonable and in the best interest  
15 of the child, shall order the custody award, including liberal  
16 visitation rights where appropriate, which will assure the  
17 child the opportunity for the maximum continuing physical and  
18 emotional contact with both parents after the parents have  
19 separated or dissolved the marriage, and which will encourage  
20 parents to share the rights and responsibilities of raising the  
21 child unless direct physical harm or significant emotional harm  
22 to the child, other children, or a parent is likely to result  
23 from such contact with one parent.

24 Sec. 18. Section 598.41, Code 2015, is amended by adding the  
25 following new subsection:

26 NEW SUBSECTION. 4A. If the court awards joint legal custody  
27 to the parents, but the parents are in disagreement over a  
28 minor child's educational setting, the court shall consider,  
29 and include a provision in the custody order regarding, the  
30 educational setting of the minor child. There is a rebuttable  
31 presumption that it is in the best interest of the minor child  
32 to remain in the educational setting in which the minor child  
33 was enrolled during the immediately preceding school year.

34 EXPLANATION

35 The inclusion of this explanation does not constitute agreement with

1           the explanation's substance by the members of the general assembly.

2       This bill relates to marriage and dissolution of marriage  
3 proceedings.

4       Division I of the bill establishes the procedure and  
5 requirements for a covenant marriage. The bill requires the  
6 county registrar to provide each applicant for a marriage  
7 license with an informational pamphlet on covenant marriage,  
8 prepared by the office of the attorney general. The bill  
9 requires the certificate of marriage to include a place to  
10 allow the parties to designate the marriage as a covenant  
11 marriage. After the marriage is solemnized, the officiating  
12 minister or magistrate is directed to return the completed  
13 certificate of marriage with the section designating the  
14 marriage a covenant marriage clearly indicated to the county  
15 registrar in the county in which the parties applied for  
16 a license to marry, within 15 days of the solemnization.  
17 Additionally, the parties are directed to record the  
18 declaration of intent with the county recorder in the county in  
19 which the parties applied for the license to marry.

20       The bill describes a covenant marriage, requires that the  
21 parties to a covenant marriage complete at least 12 hours of  
22 premarital education, and provides that the declaration of  
23 intent to enter a covenant marriage is aspirational and failure  
24 of a party to comply with the statements included in the  
25 declaration does not provide additional grounds for dissolution  
26 beyond those provided in the bill.

27       The bill specifies the content of the declaration of intent  
28 and requires a statement relating to the intent of the parties  
29 to designate their marriage as a covenant marriage, requires a  
30 statement from the person who provided the premarital education  
31 relating to confirmation of the completion by the parties of  
32 the required education, and requires the signature of each  
33 party, or if one or both of the parties are minors, the written  
34 consent or authorization of those persons designated by law to  
35 provide consent or authorization. The declaration of intent is

1 to be prepared in duplicate originals with one original being  
2 retained by the parties and one original being filed with the  
3 county recorder in the county in which the parties applied for  
4 the license to marry.

5 The bill also provides a procedure for parties to an existing  
6 marriage on or after January 1, 2016, to designate their  
7 marriage as a covenant marriage.

8 The bill provides the exclusive grounds for obtaining a  
9 dissolution of a covenant marriage which include: that a  
10 party commits adultery, commits a felony and is imprisoned,  
11 abandons the matrimonial domicile for at least one year and  
12 refuses to return, physically or sexually abuses the other  
13 party or a child of one of the parties, or is living separate  
14 and apart continuously without reconciliation for a period of  
15 at least two years. The bill provides that notwithstanding the  
16 exclusive grounds specified, a party to a covenant marriage may  
17 obtain a dissolution if the parties agree to the dissolution  
18 and there are no children of the marriage. In all proceedings  
19 for dissolution based on a covenant marriage, the court is to  
20 order the parties to complete at least 12 hours of marital  
21 counseling. The court may waive the requirement to the  
22 extent that the parties have already completed other required  
23 education.

24 The bill provides that nonconflicting provisions of the  
25 marriage chapter (Code chapter 595) and the dissolution chapter  
26 (Code chapter 598) apply to covenant marriages.

27 The bill directs the office of the attorney general, prior to  
28 July 1, 2015, to develop a pamphlet entitled "Covenant Marriage  
29 Option" to outline the requirements of a covenant marriage,  
30 the implications of entering into a covenant marriage, the  
31 grounds for dissolution of a covenant marriage, and the legal  
32 differences between covenant and noncovenant marriages. The  
33 pamphlet is to be available at the offices of the county  
34 registrar and to all persons who provide premarital and marital  
35 education. This section of this division of the bill takes

1 effect upon enactment.

2 Division II of the bill relates to dissolution of marriage  
3 proceedings.

4 This division of the bill provides that in determining  
5 temporary custody orders or the award of joint legal custody  
6 for a minor child, if the parents are in disagreement over the  
7 minor child's educational setting, the court is to consider  
8 the educational setting of the minor child. In the case of  
9 awarding joint legal custody, the court is also to include a  
10 provision in the order regarding the educational setting of  
11 the minor child. There is a rebuttable presumption that it  
12 is in the best interest of the minor child to remain in the  
13 educational setting in which the minor child was enrolled  
14 during the immediately preceding school year. The division  
15 also defines "educational setting".

16 The division requires the court in a dissolution of  
17 marriage action to order an evaluation of the child by a  
18 child psychologist. The results of the evaluation are to be  
19 submitted to the court and be available to both parties. The  
20 evaluation completed by the child psychologist is to be part of  
21 the record unless otherwise ordered by the court. The court is  
22 also directed to provide for payment of the child psychologist  
23 charged against the party responsible for court costs unless  
24 the court determines that the party responsible for costs is  
25 indigent, in which event the fees shall be borne by the county.

26 The division directs each judicial district to certify a  
27 court-approved course to educate and sensitize the parties to  
28 the needs of any child or party during and subsequent to the  
29 proceeding to be available in video format for viewing where  
30 court is held at each county seat and in an on-demand format to  
31 be viewed at the residence of a party.

32 The division also provides that if a party seeking support is  
33 not employed, the court shall order a vocational assessment of  
34 the party, and if the assessment determines there are positions  
35 available consistent with the party's skills but the party

1 has not sought employment, the court shall assign a potential  
2 income to the party based on the type of position identified  
3 and shall adjust any award of support accordingly.

4 The division requires the court to provide for joint custody  
5 of the child by the parties unless the court cites clear and  
6 convincing evidence pursuant to the factors specified for  
7 consideration by the court in determining the best interest  
8 of the child, that joint custody is unreasonable and not in  
9 the best interest of the child to the extent that the legal  
10 custodial relationship between the child and a parent should  
11 be severed.