

By: Representative Smith (35th)

To: Judiciary A

HOUSE BILL NO. 523

1 AN ACT TO CREATE A FORM OF MARRIAGE TO BE KNOWN AS COVENANT
2 MARRIAGE REQUIRING CERTAIN DECLARATIONS; TO PROVIDE THAT A
3 COVENANT MARRIAGE MAY BE DISSOLVED IN CASES OF ADULTERY; TO ALLOW
4 THE DEFERRED SALE OF PROPERTY; TO AMEND SECTIONS 93-1-5, 93-5-1
5 AND 93-5-23, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND
6 FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 SECTION 1. There is created in the state a union between man
9 and woman to be known as "covenant marriage." In order to be
10 eligible to enter into a covenant marriage, each party shall make
11 a declaration of intent to do so upon application for a marriage
12 license. The declaration of intent shall contain the following:

13 (a) An affidavit by the parties that they have received
14 premarital counseling from a priest, minister, rabbi, clerk of the
15 Religious Society of Friends, any clergyman of any religious sect,
16 or a marriage counselor, which counseling shall include a
17 discussion of the seriousness of covenant marriage, communication
18 of the fact that a covenant marriage is a commitment for life, a
19 discussion of the obligation to seek marital counseling in times
20 of marital difficulties and a discussion of the exclusive grounds
21 for legally terminating a covenant marriage by divorce.

22 (b) A notarized attestation, signed by the counselor
23 and attached to or included in the parties' affidavit confirming
24 that the parties were counseled as to the nature and purpose of
25 the marriage and the grounds for termination thereof and an
26 acknowledging that the counselor provided to the parties the
27 informational pamphlet developed and promulgated by the Office of
28 the Attorney General, which pamphlet entitled the "Covenant

29 Marriage Act," provides a full explanation of the terms and
30 conditions of a covenant marriage.

31 (c) Signature of both parties on a notarized document
32 of intent which states, "I, _____, do hereby declare my
33 intent to enter into a covenant marriage. I do solemnly declare
34 that marriage is a covenant between a man and a woman who agree to
35 live together as husband and wife for so long as they both may
36 live. I have chosen my life mate wisely and have disclosed to him
37 or her all facts that may adversely affect his or her decision to
38 enter into this covenant with me. I have received premarital
39 counseling on the nature, purposes and responsibilities of
40 marriage. I have read the Covenant Marriage Act and understand
41 that a covenant marriage is for life. If we experience marital
42 difficulties, I commit myself to take all reasonable efforts to
43 preserve this marriage, including marital counseling. I
44 understand that a covenant marriage may not be dissolved except
45 for the limited reasons listed in Section 2 of the Covenant
46 Marriage Act.

47 With full knowledge of what this commitment means, I do
48 hereby declare my intent that our marriage will be bound by
49 Mississippi law on covenant marriages and I promise to love, honor
50 and care for my spouse for the rest of our lives."

51 (d) If one or both of the parties are minors, the
52 written consent or authorization of those persons required by law
53 to consent to or authorize the marriage of minors, shall be
54 obtained.

55 SECTION 2. (1) Notwithstanding any provisions of law to the
56 contrary, a covenant marriage may be dissolved for only the
57 following reasons:

58 (a) Adultery.

59 (b) The other spouse has committed a felony and has
60 been sentenced to death or imprisonment at hard labor.

61 (c) Willful, continued and obstinate desertion for the
62 space of two (2) years.

63 (d) The other spouse has physically or sexually abused
64 the spouse seeking the divorce or a child of one or both of the
65 spouses.

66 (2) If a divorce is granted, the court may consider the
67 following guidelines:

68 (a) If the defendant spouse is guilty of adultery and
69 the marriage is determined to be of long duration, and the
70 marketable skills of the other spouse are such that his or her
71 potential earning capacity would cause a deduction in his or her
72 standard of living, the complaining spouse may claim alimony and
73 court costs and attorney's fees in the complaint or by motion, as
74 provided by law, and if the complaint is well founded, the court
75 shall allow a reasonable sum therefor. No alimony shall be
76 granted to an adulterous spouse.

77 (b) If the spouse is guilty of physically or sexually
78 abusing the other spouse or a child of one or both spouses, the
79 complaining spouse may claim alimony and court costs and
80 attorney's fees in the complaint or by motion, as provided by law,
81 and if the complaint is well founded, the court shall allow a
82 reasonable sum therefor.

83 (c) In addition to any other awards to which the
84 claimant spouse may be entitled, the spouse proven guilty of
85 either physical or sexual abuse of the other spouse or a child of
86 one or both spouses, shall be responsible for the reasonable cost
87 of medical treatment and professional counseling for the victim of
88 the abuse.

89 (d) In an action involving minor children, the court
90 may defer the sale of the family home for one (1) year to minimize
91 trauma to the children.

92 SECTION 3. Section 93-1-5, Mississippi Code of 1972, is
93 amended as follows:

94 93-1-5. It shall be unlawful for the circuit court clerk to
95 issue a marriage license until the following conditions precedent
96 have been complied with:

97 (a) Parties desiring a marriage license shall make
98 application therefor in writing to the clerk of the circuit court

99 of any county in the State of Mississippi; provided, however, that
100 if the female applicant shall be under the age of twenty-one (21)
101 years and shall be a resident of the State of Mississippi, said
102 application shall be made to the circuit court clerk of the county
103 of residence of such female applicant. Said application shall be
104 forthwith filed with the circuit court clerk and shall include the
105 names, ages and addresses of the parties applying; the names and
106 addresses of the parents of the parties applying, and if no
107 parents, then names and addresses of the guardian or next of kin;
108 the signatures of witnesses; and any other data which may be
109 required by law or the Mississippi State Board of Health. The
110 application shall be sworn to by both applicants.

111 (b) The application shall remain on file, open to the
112 public, in the office of the circuit court clerk for a period of
113 three (3) days before the clerk is authorized to issue the
114 marriage license. Provided, however, that if satisfactory proof
115 is furnished to the judge of any circuit, chancery or county court
116 that sufficient reasons exist, then the judge of any such court in
117 the judicial district where either of such parties resides if they
118 be over the age of twenty-one (21) years, or where the female
119 resides if she be under the age of twenty-one (21), may waive the
120 three-day waiting period and by written instrument authorize the
121 clerk of the court to issue the marriage license to the parties if
122 they are otherwise qualified by law. Authorization shall be a
123 part of the confidential files of the clerk of the court, subject
124 to inspection only by written permission of the judge. If either
125 of the applying parties appears from the evidence to be under
126 twenty-one (21) years of age, the circuit court clerk, immediately
127 upon filing the application, shall cause notice of the filing of
128 said application to be sent by prepaid certified mail to the
129 father, mother, guardian or next of kin of both applying parties
130 at the address named in said application.

131 (c) An affidavit showing the age of both applying

132 parties shall be made by either the father, mother, guardian or
133 next of kin of each of the contracting parties and filed with the
134 clerk of the circuit court along with the application; or in lieu
135 thereof, said both applying parties shall appear in person before
136 the circuit court clerk and make and subscribe an oath in person,
137 which said affidavit shall be attached to and noted on the
138 application for the marriage license. In addition to either of
139 the previous conditions stated, further proof of age shall be
140 presented to the circuit court clerk in the form of either a birth
141 certificate, baptismal record, armed service discharge, armed
142 service identification card, life insurance policy, insurance
143 certificate, school record, driver's license, or other official
144 document evidencing age. Said document substantiating age and
145 date of birth shall be examined by the circuit court clerk before
146 whom application is made, and the circuit court clerk shall retain
147 in his file with the application such document or a certified or
148 photostatic copy thereof.

149 (d) The clerk shall not issue a marriage license under
150 the provisions of this section unless the male applicant is at
151 least seventeen (17) years of age, and the female is at least
152 fifteen (15) years of age; provided, however, that if satisfactory
153 proof is furnished to the judge of any circuit, chancery or county
154 court that sufficient reasons exist and that said parties desire
155 to be married to each other and that the parents or other person
156 in loco parentis of the person or persons so under age consent
157 thereto, then the judge of any such court in the county where
158 either of such parties resides may waive the minimum age
159 requirement and by written instrument authorize the clerk of the
160 court to issue the marriage license to the parties if they are
161 otherwise qualified by law. Authorization shall be a part of the
162 confidential files of the clerk of the court, subject to
163 inspection only by written permission of the judge.

164 (e) A medical certificate dated within thirty (30)

165 days prior to the application shall be presented to the circuit
166 court clerk showing that the applicant is free from syphilis, as
167 nearly as can be determined by a blood test performed in a
168 laboratory approved by the State Board of Health. The medical
169 certificate may be obtained through the local health department by
170 the applicant or applicants, or it may be obtained through any
171 private laboratory approved by the State Board of Health. Said
172 medical certificate shall be examined by the circuit court clerk
173 and filed in a permanent file kept by the clerk for this purpose.

174 (f) In no event shall a license be issued by the
175 circuit court clerk when it appears to the circuit court clerk
176 that the applicants are, or either of them is, drunk, insane or an
177 imbecile.

178 (g) The circuit clerk is authorized to grant a license
179 for a covenant marriage as provided by Section 1 of this act.

180 Any circuit clerk shall be liable under his official bond
181 because of noncompliance with the provisions of this section.

182 Any circuit court clerk who issues a marriage license without
183 complying with the provisions of this section shall be guilty of a
184 misdemeanor, and upon conviction shall be punished by a fine of
185 not less than Fifty Dollars (\$50.00) and not more than Five
186 Hundred Dollars (\$500.00).

187 SECTION 4. Section 93-5-1, Mississippi Code of 1972, is
188 amended as follows:

189 93-5-1. Except as otherwise provided by Section 2 of this
190 act, divorces from the bonds of matrimony may be decreed to the
191 injured party for any one or more of the following twelve causes,
192 viz:

193 First. Natural impotency.

194 Second. Adultery, unless it should appear that it was
195 committed by collusion of the parties for the purpose of procuring
196 a divorce, or unless the parties cohabited after a knowledge by
197 complainant of the adultery.

198 Third. Being sentenced to any penitentiary, and not pardoned
199 before being sent there.

200 Fourth. Wilful, continued and obstinate desertion for the
201 space of one (1) year.

202 Fifth. Habitual drunkenness.

203 Sixth. Habitual and excessive use of opium, morphine or
204 other like drug.

205 Seventh. Habitual cruel and inhuman treatment.

206 Eighth. Insanity or idiocy at the time of marriage, if the
207 party complaining did not know of such infirmity.

208 Ninth. Marriage to some other person at the time of the
209 pretended marriage between the parties.

210 Tenth. Pregnancy of the wife by another person at the time
211 of the marriage, if the husband did not know of such pregnancy.

212 Eleventh. Either party may have a divorce if they be related
213 to each other within the degrees of kindred between whom marriage
214 is prohibited by law.

215 Twelfth. Incurable insanity. But no divorce shall be
216 granted upon this ground unless the insane party shall have been
217 under regular treatment for insanity and causes thereof, confined
218 in an institution for the insane for a period of at least three
219 (3) years immediately preceding the commencement of the action.
220 Provided, however, that transfer of an insane party to his or her
221 home for treatment or a trial visit on prescription or
222 recommendation of a licensed physician, which treatment or trial
223 visit proves unsuccessful after a bona fide effort by the
224 complaining party to effect a cure, upon the reconfinement of the
225 insane party in an institution for the insane, shall be regular
226 treatment for insanity and causes thereof, and the period of time
227 so consumed in seeking to effect a cure, or while on a trial visit
228 home, shall be added to the period of actual confinement in an
229 institution for the insane in computing the required period of
230 three (3) years confinement immediately preceding the commencement

231 of the action. No divorce shall be granted because of insanity
232 until after a thorough examination of such insane person by two
233 (2) physicians who are recognized authorities on mental diseases.
234 One (1) such physician shall be either the superintendent of the
235 state hospital or the veterans hospital for the insane in which
236 the patient is confined, or a member of the medical staff of such
237 hospital who has had the patient in charge. Before incurable
238 insanity can be successfully proven as a ground for divorce, it
239 shall be necessary that both such physicians make affidavit that
240 such patient is a mentally disturbed person at the time of the
241 examination and both affidavits shall be made a part of the
242 permanent record of the divorce proceedings and shall create the
243 prima facie presumption of incurable insanity, such as would
244 justify a divorce based thereon. Service of process shall be made
245 on the superintendent of the hospital in which the defendant is a
246 patient. In event the patient is in a hospital outside the state,
247 process shall be served by publication, as in other cases of
248 service by publication, together with the sending of a copy by
249 registered mail to the superintendent of said hospital. In
250 addition thereto, process shall be served upon the next blood
251 relative and guardian, if any. In event there is no legal
252 guardian, the court shall appoint a guardian ad litem to represent
253 the interest of the insane person. Such relative or guardian and
254 superintendent of the institution shall be entitled to appear and
255 be heard upon any and all issues. The status of the parties as to
256 the support and maintenance of the insane person shall not be
257 altered in any way by the granting of the divorce.

258 However, in the discretion of the chancery court, and in such
259 cases as the court may deem it necessary and proper, before any
260 such decree is granted on the ground of incurable insanity, the
261 complainant, when ordered by the court, shall enter into bond, to
262 be approved by the court, in such an amount as the court may think
263 just and proper, conditioned for the care and keeping of such

264 insane person during the remainder of his or her natural life,
265 unless such insane person has a sufficient estate in his or her
266 own right for such purpose.

267 SECTION 5. Section 93-5-23, Mississippi Code of 1972, is
268 amended as follows:

269 93-5-23. When a divorce shall be decreed from the bonds of
270 matrimony, the court may, in its discretion, having regard to the
271 circumstances of the parties and the nature of the case, as may
272 seem equitable and just, make all orders touching the care,
273 custody and maintenance of the children of the marriage, and also
274 touching the maintenance and alimony of the wife or the husband,
275 or any allowance to be made to her or him, and shall, if need be,
276 require bond, sureties or other guarantee for the payment of the
277 sum so allowed. Orders touching on the custody of the children of
278 the marriage may be made in accordance with the provisions of
279 Section 93-5-24. The court may afterwards, on petition, change
280 the decree, and make from time to time such new decrees as the
281 case may require. However, where proof shows that both parents
282 have separate incomes or estates, the court may require that each
283 parent contribute to the support and maintenance of the children
284 of the marriage in proportion to the relative financial ability of
285 each. In the event a legally responsible parent has health
286 insurance available to him or her through an employer or
287 organization that may extend benefits to the dependents of such
288 parent, any order of support issued against such parent may
289 require him or her to exercise the option of additional coverage
290 in favor of such children as he or she is legally responsible to
291 support.

292 Whenever the court has ordered a party to make periodic
293 payments for the maintenance or support of a child, but no bond,
294 sureties or other guarantee has been required to secure such
295 payments, and whenever such payments as have become due remain
296 unpaid for a period of at least thirty (30) days, the court may,

297 upon petition of the person to whom such payments are owing, or
298 such person's legal representative, enter an order requiring that
299 bond, sureties or other security be given by the person obligated
300 to make such payments, the amount and sufficiency of which shall
301 be approved by the court. The obligor shall, as in other civil
302 actions, be served with process and shall be entitled to a hearing
303 in such case.

304 Whenever in any proceeding in the chancery court concerning
305 the custody of a child a party alleges that the child whose
306 custody is at issue has been the victim of sexual or physical
307 abuse by the other party, the court may, on its own motion, grant
308 a continuance in the custody proceeding only until such allegation
309 has been investigated by the Department of Human Services. At the
310 time of ordering such continuance the court may direct the party,
311 and his attorney, making such allegation of child abuse to report
312 in writing and provide all evidence touching on the allegation of
313 abuse to the Department of Human Services. The Department of
314 Human Services shall investigate such allegation and take such
315 action as it deems appropriate and as provided in such cases under
316 the Youth Court Law (being Chapter 21 of Title 43, Mississippi
317 Code of 1972) or under the laws establishing family courts (being
318 Chapter 23 of Title 43, Mississippi Code of 1972).

319 If after investigation by the Department of Human Services or
320 final disposition by the youth court or family court allegations
321 of child abuse are found to be without foundation, the chancery
322 court shall order the alleging party to pay all court costs and
323 reasonable attorney's fees incurred by the defending party in
324 responding to such allegation.

325 The court may investigate, hear and make a determination in a
326 custody action when a charge of abuse and/or neglect arises in the
327 course of a custody action as provided in Section 43-21-151, and
328 in such cases the court shall appoint a guardian ad litem for the
329 child as provided under Section 43-21-121, who shall be an

330 attorney. Unless the chancery court's jurisdiction has been
331 terminated, all disposition orders in such cases for placement
332 with the Department of Human Services shall be reviewed by the
333 court or designated authority at least annually to determine if
334 continued placement with the department is in the best interest of
335 the child or public.

336 The duty of support of a child terminates upon the
337 emancipation of the child. The court may determine that
338 emancipation has occurred and no other support obligation exists
339 when the child:

340 (a) Attains the age of twenty-one (21) years, or

341 (b) Marries, or

342 (c) Discontinues full-time enrollment in school and
343 obtains full-time employment prior to attaining the age of
344 twenty-one (21) years, or

345 (d) Voluntarily moves from the home of the custodial
346 parent or guardian and establishes independent living arrangements
347 and obtains full-time employment prior to attaining the age of
348 twenty-one (21) years.

349 The court may enter an order for alimony consistent with the
350 provisions of Section 2 of this act.

351 SECTION 6. The Attorney General shall, prior to July 1,
352 1999, promulgate an informational pamphlet, entitled "Covenant
353 Marriage Act," which shall outline in sufficient detail the
354 consequences of entering into a covenant marriage and the
355 requirements of this act. The informational pamphlet shall be
356 made available to any counselor who provides marriage counseling
357 as provided by this act.

358 SECTION 7. This act shall take effect and be in force from
359 and after July 1, 1999.