

By: Representative Perry

To: Judiciary A

HOUSE BILL NO. 774

1 AN ACT TO CREATE THE UNIFORM PREMARITAL AGREEMENT ACT; TO
2 AUTHORIZE AGREEMENTS BETWEEN PROSPECTIVE SPOUSES MADE IN
3 CONTEMPLATION OF MARRIAGE; TO SPECIFY THE MATTERS WITH RESPECT TO
4 WHICH PARTIES MAY CONTRACT IN PREMARITAL AGREEMENTS; TO SPECIFY
5 THE EFFECTIVE DATE OF A PREMARITAL AGREEMENT AND THE MANNER IN
6 WHICH SUCH AN AGREEMENT MAY BE AMENDED OR REVOKED; TO SPECIFY
7 CONDITIONS UNDER WHICH A PREMARITAL AGREEMENT IS NOT ENFORCEABLE;
8 TO AMEND SECTIONS 93-3-7, 93-5-2 AND 93-5-23, MISSISSIPPI CODE OF
9 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

11 SECTION 1. Sections 1 through 11 of this act may be cited as
12 the "Uniform Premarital Agreement Act."

13 SECTION 2. As used in Sections 1 through 11 of this act:

14 (a) "Premarital agreement" means an agreement between
15 prospective spouses made in contemplation of marriage and to be
16 effective upon marriage.

17 (b) "Property" means an interest, present or future,
18 legal or equitable, vested or contingent, in real or personal
19 property, including income and earnings.

20 SECTION 3. A premarital agreement must be in writing and
21 signed by both parties. Such agreement is enforceable without
22 consideration.

23 SECTION 4. (1) Parties to a premarital agreement may
24 contract with respect to:

25 (a) The rights and obligations of each of the parties
26 in any of the property of either or both of them whenever and
27 wherever acquired or located;

28 (b) The right to buy, sell, use, transfer, exchange,
29 abandon, lease, consume, expend, assign, create a security

30 interest in, mortgage, encumber, dispose of, or otherwise manage
31 and control property;

32 (c) The disposition of property upon separation,
33 marital dissolution, death, or the occurrence or nonoccurrence of
34 any other event;

35 (d) The modification or elimination of spousal support;

36 (e) The making of a will, trust, or other arrangement
37 to carry out the provisions of the agreement;

38 (f) The ownership rights in and disposition of the
39 death benefit from a life insurance policy;

40 (g) The choice of law governing the construction of the
41 agreement; and

42 (h) Any other matter, including their personal rights
43 and obligations, not in violation of public policy or a statute
44 imposing a criminal penalty.

45 (2) The right of a child to support may not be adversely
46 affected by a premarital agreement.

47 SECTION 5. A premarital agreement becomes effective upon
48 marriage.

49 SECTION 6. After marriage, a premarital agreement may be
50 amended or revoked only by a written agreement signed by the
51 parties. The amended agreement or the revocation is enforceable
52 without consideration.

53 SECTION 7. (1) A premarital agreement is not enforceable if
54 the party against whom enforcement is sought proves that:

55 (a) That party did not execute the agreement
56 voluntarily; or

57 (b) The agreement was unconscionable when it was
58 executed and, before execution of the agreement, that party:

59 (i) Was not provided a fair and reasonable
60 disclosure of the property or financial obligations of the other
61 party;

62 (ii) Did not voluntarily and expressly waive, in
63 writing, any right to disclosure of the property or financial
64 obligations of the other party beyond the disclosure provided; and

65 (iii) Did not have, or reasonably could not have
66 had, an adequate knowledge of the property or financial

67 obligations of the other party.

68 (2) If a provision of the premarital agreement modifies or
69 eliminates spousal support and that modification or elimination
70 causes one (1) party to the agreement to be eligible for support
71 under a program of public assistance at the time of separation or
72 marital dissolution, a court, notwithstanding the terms of the
73 agreement, may require the other party to provide support to the
74 extent necessary to avoid that eligibility.

75 (3) An issue of unconscionability of a premarital agreement
76 shall be decided by the court as a matter of law.

77 SECTION 8. If a marriage is determined to be void, an
78 agreement that otherwise would have been a premarital agreement is
79 enforceable only to the extent necessary to avoid an inequitable
80 result.

81 SECTION 9. Any statute of limitations applicable to an
82 action asserting a claim for relief under a premarital agreement
83 is tolled during the marriage of the parties to the agreement.
84 However, equitable defenses limiting the time for enforcement,
85 including laches and estoppel, shall be available to either party.

86 SECTION 10. All written agreements entered into before July
87 1, 1998, between prospective spouses for the purpose of affecting
88 any of the subjects specified in Section 4 of this act shall be
89 valid and enforceable if otherwise valid as contracts.

90 SECTION 11. Sections 1 through 11 of this act shall be
91 applied and construed to effectuate its general purposes to make
92 uniform the law with respect to the subject of Sections 1 through
93 11 of this act among states enacting it.

94 SECTION 12. Section 93-3-7, Mississippi Code of 1972, is
95 amended as follows:

96 93-3-7. (1) Except as otherwise provided in subsection (2),
97 husband and wife shall not contract with each other, so as to
98 entitle the one to claim or receive any compensation from the
99 other for work and labor, and any contract between them whereby

100 one shall claim or shall receive compensation from the other for
101 services rendered, shall be void. It shall not be lawful for the
102 husband to rent the wife's plantation, houses, horses, mules,
103 wagons, carts, or other implements, and with them, or with any of
104 her means, to operate and carry on business in his own name or on
105 his own account, but all business done with the means of the wife
106 by the husband shall be deemed and held to be on her account and
107 for her use, and by the husband as her agent and manager in
108 business, as to all persons dealing with him without notice,
109 unless the contract between the husband and wife which changes
110 this relation, be evidenced by writing, subscribed by them, duly
111 acknowledged, and filed with the chancery clerk of the county
112 where such business may be done, to be recorded as other
113 instruments.

114 (2) Nothing in this section shall prohibit or restrict the
115 subject of any premarital agreement executed under the provisions
116 of Sections 1 through 11 of this act.

117 SECTION 13. Section 93-5-2, Mississippi Code of 1972, is
118 amended as follows:

119 93-5-2. (1) Divorce from the bonds of matrimony may be
120 granted on the ground of irreconcilable differences, but only upon
121 the joint complaint of the husband and wife or a complaint where
122 the defendant has been personally served with process or where the
123 defendant has entered an appearance by written waiver of process.

124 (2) If the parties provide by written agreement for the
125 custody and maintenance of any children of that marriage and for
126 the settlement of any property rights between the parties and the
127 court finds that such provisions are adequate and sufficient, the
128 agreement may be incorporated in the judgment, and such judgment
129 may be modified as other judgments for divorce.

130 (3) If the parties are unable to agree upon adequate and
131 sufficient provisions for the custody and maintenance of any
132 children of that marriage or any property rights between them,

133 they may consent to a divorce on the ground of irreconcilable
134 differences and permit the court to decide the issues upon which
135 they cannot agree. Such consent must be in writing, signed by
136 both parties personally, must state that the parties voluntarily
137 consent to permit the court to decide such issues, which shall be
138 specifically set forth in such consent, and that the parties
139 understand that the decision of the court shall be a binding and
140 lawful judgment. Such consent may not be withdrawn by a party
141 without leave of the court after the court has commenced any
142 proceeding, including the hearing of any motion or other matter
143 pertaining thereto. The failure or refusal of either party to
144 agree as to adequate and sufficient provisions for the custody and
145 maintenance of any children of that marriage or any property
146 rights between the parties, or any portion of such issues, or the
147 failure or refusal of any party to consent to permit the court to
148 decide such issues, shall not be used as evidence, or in any
149 manner, against such party. No divorce shall be granted pursuant
150 to this subsection until all matters involving custody and
151 maintenance of any child of that marriage and property rights
152 between the parties raised by the pleadings have been either
153 adjudicated by the court or agreed upon by the parties and found
154 to be adequate and sufficient by the court and included in the
155 judgment of divorce. Appeals from any orders and judgments
156 rendered pursuant to this subsection may be had as in other cases
157 in chancery court only insofar as such orders and judgments relate
158 to issues that the parties consented to have decided by the court.

159 (4) Complaints for divorce on the ground of irreconcilable
160 differences must have been on file for sixty (60) days before
161 being heard. Except as otherwise provided in subsection (3) of
162 this section, a joint complaint of husband and wife or a complaint
163 where the defendant has been personally served with process or
164 where the defendant has entered an appearance by written waiver of
165 process, for divorce solely on the ground of irreconcilable

166 differences, shall be taken as proved and a final judgment entered
167 thereon, as in other cases and without proof or testimony in
168 termtime or vacation, the provisions of Section 93-5-17 to the
169 contrary notwithstanding.

170 (5) Except as otherwise provided in subsection (3) of this
171 section, no divorce shall be granted on the ground of
172 irreconcilable differences where there has been a contest or
173 denial; provided, however, that a divorce may be granted on the
174 grounds of irreconcilable differences where there has been a
175 contest or denial, if the contest or denial has been withdrawn or
176 cancelled by the party filing same by leave and order of the
177 court.

178 (6) Irreconcilable differences may be asserted as a sole
179 ground for divorce or as an alternate ground for divorce with any
180 other cause for divorce set out in Section 93-5-1.

181 (7) Nothing in subsections (2) and (3) of this section shall
182 prohibit or restrict the subject of any premarital agreement
183 executed under the provisions of Sections 1 through 11 of this
184 act.

185 SECTION 14. Section 93-5-23, Mississippi Code of 1972, is
186 amended as follows:

187 93-5-23. When a divorce shall be decreed from the bonds of
188 matrimony, the court * * *, in its discretion, and having regard
189 to the circumstances of the parties and the nature of the case, as
190 may seem equitable and just, may make all orders touching the
191 care, custody and maintenance of the children of the marriage, and
192 * * * if need be, require bond, sureties or other guarantee for
193 the payment of the sum so allowed. Except as may be otherwise
194 provided in a premarital agreement executed under the provisions
195 of Sections 1 through 11 of this act, the court may make orders
196 touching the maintenance and alimony of the wife or the husband,
197 or any allowance to be made to her or him, and if need be, shall
198 require bond, sureties or other guarantee for the payment of the

199 sum so allowed. Orders touching on the custody of the children of
200 the marriage may be made in accordance with the provisions of
201 Section 93-5-24. The court may afterwards, on petition, change
202 the decree, and make from time to time such new decrees as the
203 case may require. However, where proof shows that both parents
204 have separate incomes or estates, the court may require that each
205 parent contribute to the support and maintenance of the children
206 of the marriage in proportion to the relative financial ability of
207 each. In the event a legally responsible parent has health
208 insurance available to him or her through an employer or
209 organization that may extend benefits to the dependents of such
210 parent, any order of support issued against such parent may
211 require him or her to exercise the option of additional coverage
212 in favor of such children as he or she is legally responsible to
213 support.

214 Whenever the court has ordered a party to make periodic
215 payments for the maintenance or support of a child, but no bond,
216 sureties or other guarantee has been required to secure such
217 payments, and whenever such payments as have become due remain
218 unpaid for a period of at least thirty (30) days, the court may,
219 upon petition of the person to whom such payments are owing, or
220 such person's legal representative, enter an order requiring that
221 bond, sureties or other security be given by the person obligated
222 to make such payments, the amount and sufficiency of which shall
223 be approved by the court. The obligor shall, as in other civil
224 actions, be served with process and shall be entitled to a hearing
225 in such case.

226 Whenever in any proceeding in the chancery court concerning
227 the custody of a child a party alleges that the child whose
228 custody is at issue has been the victim of sexual or physical
229 abuse by the other party, the court may, on its own motion, grant
230 a continuance in the custody proceeding only until such allegation
231 has been investigated by the Department of Human Services. At the

232 time of ordering such continuance the court may direct the party,
233 and his attorney, making such allegation of child abuse to report
234 in writing and provide all evidence touching on the allegation of
235 abuse to the Department of Human Services. The Department of
236 Human Services shall investigate such allegation and take such
237 action as it deems appropriate and as provided in such cases under
238 the Youth Court Law (being Chapter 21 of Title 43, Mississippi
239 Code of 1972) or under the laws establishing family courts (being
240 Chapter 23 of Title 43, Mississippi Code of 1972).

241 If after investigation by the Department of Human Services or
242 final disposition by the youth court or family court allegations
243 of child abuse are found to be without foundation, the chancery
244 court shall order the alleging party to pay all court costs and
245 reasonable attorney's fees incurred by the defending party in
246 responding to such allegation.

247 The court may investigate, hear and make a determination in a
248 custody action when a charge of abuse and/or neglect arises in the
249 course of a custody action as provided in Section 43-21-151, and
250 in such cases the court shall appoint a guardian ad litem for the
251 child as provided under Section 43-21-121, who shall be an
252 attorney. Unless the chancery court's jurisdiction has been
253 terminated, all disposition orders in such cases for placement
254 with the Department of Human Services shall be reviewed by the
255 court or designated authority at least annually to determine if
256 continued placement with the department is in the best interest of
257 the child or public.

258 The duty of support of a child terminates upon the
259 emancipation of the child. The court may determine that
260 emancipation has occurred and no other support obligation exists
261 when the child:

- 262 (a) Attains the age of twenty-one (21) years, or
263 (b) Marries, or
264 (c) Discontinues full-time enrollment in school and

265 obtains full-time employment prior to attaining the age of
266 twenty-one (21) years, or

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

271 SECTION 15. This act shall take effect and be in force from
272 and after July 1, 1999, and shall apply to any premarital
273 agreement executed on or after that date.