

By: Cameron

To: Judiciary A

HOUSE BILL NO. 94

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) Written permission of both parents of both parties,  
 14 unless deceased at the time of the application, or unless  
 15 extraordinary circumstances render written permission untenable.

16 (b) Presentation of proof that both parties have  
 17 attended premarital counseling by a clergyman or marriage  
 18 counselor, which premarital counseling included a discussion of  
 19 the seriousness of covenant marriage.

20 (c) Signatures of both parties on notarized documents  
 21 which state, "I, \_\_\_\_\_, do hereby declare my intent to enter  
 22 into covenant marriage. I do so with the full understanding that  
 23 a covenant marriage may not be dissolved except by reason of

24 adultery. I have attended premarital counseling in good faith and  
25 understand my responsibilities to the marriage. I promise to seek  
26 counsel in times of trouble. I believe that I have chosen my life  
27 mate wisely and have disclosed to him or her all facts that my  
28 adversely affect his or her decision to enter into this covenant  
29 with me."

30 SECTION 2. Notwithstanding any provisions of law to the  
31 contrary, a covenant marriage may not be dissolved except by  
32 reason of adultery. A divorce may be granted on grounds of  
33 adultery if the defendant has been guilty of adultery, but if it  
34 appears that the adultery complained of was occasioned by  
35 collusion of the parties with the intent to procure a divorce, or  
36 if it appears that both parties have been guilty of adultery, a  
37 divorce shall not be granted. If a divorce is granted, the court  
38 may consider the following guidelines:

39 (a) If the husband is guilty of adultery and the  
40 marriage is determined to be of long duration, and the marketable  
41 skills of the wife are such that her potential earning capacity  
42 would cause a reduction in her standard of living, the wife may  
43 claim alimony and suit money in the complaint or by motion as  
44 provided by law, and if the complaint is well founded, the court  
45 shall allow a reasonable sum therefor. No alimony shall be  
46 granted to an adulterous wife.

47 (b) In an action involving minor children, the court  
48 may defer the sale of the family home for one (1) year to minimize  
49 trauma to the children.

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

52 93-1-5. It shall be unlawful for the circuit court clerk to  
53 issue a marriage license until the following conditions precedent  
54 have been complied with:

55           (a) Parties desiring a marriage license shall make  
56 application therefor in writing to the clerk of the circuit court  
57 of any county in the State of Mississippi; provided, however, that  
58 if the female applicant shall be under the age of twenty-one (21)  
59 years and shall be a resident of the State of Mississippi, said  
60 application shall be made to the circuit court clerk of the county  
61 of residence of such female applicant. Said application shall be  
62 forthwith filed with the circuit court clerk and shall include the  
63 names, ages and addresses of the parties applying; the names and  
64 addresses of the parents of the parties applying, and if no  
65 parents, then names and addresses of the guardian or next of kin;  
66 the signatures of witnesses; and any other data which may be  
67 required by law or the Mississippi State Board of Health. The  
68 application shall be sworn to by both applicants.

69           (b) The application shall remain on file, open to the  
70 public, in the office of the circuit court clerk for a period of  
71 three (3) days before the clerk is authorized to issue the  
72 marriage license. Provided, however, that if satisfactory proof  
73 is furnished to the judge of any circuit, chancery or county court  
74 that sufficient reasons exist, then the judge of any such court in  
75 the judicial district where either of such parties resides if they  
76 be over the age of twenty-one (21) years, or where the female  
77 resides if she be under the age of twenty-one (21), may waive the  
78 three-day waiting period and by written instrument authorize the  
79 clerk of the court to issue the marriage license to the parties if  
80 they are otherwise qualified by law. Authorization shall be a  
81 part of the confidential files of the clerk of the court, subject  
82 to inspection only by written permission of the judge. If either

83 of the applying parties appears from the evidence to be under  
84 twenty-one (21) years of age, the circuit court clerk, immediately  
85 upon filing the application, shall cause notice of the filing of  
86 said application to be sent by prepaid certified mail to the  
87 father, mother, guardian or next of kin of both applying parties  
88 at the address named in said application.

89 (c) An affidavit showing the age of both applying  
90 parties shall be made by either the father, mother, guardian or  
91 next of kin of each of the contracting parties and filed with the  
92 clerk of the circuit court along with the application; or in lieu  
93 thereof, said both applying parties shall appear in person before  
94 the circuit court clerk and make and subscribe an oath in person,  
95 which said affidavit shall be attached to and noted on the  
96 application for the marriage license. In addition to either of  
97 the previous conditions stated, further proof of age shall be  
98 presented to the circuit court clerk in the form of either a birth  
99 certificate, baptismal record, armed service discharge, armed  
100 service identification card, life insurance policy, insurance  
101 certificate, school record, driver's license, or other official  
102 document evidencing age. Said document substantiating age and  
103 date of birth shall be examined by the circuit court clerk before  
104 whom application is made, and the circuit court clerk shall retain  
105 in his file with the application such document or a certified or  
106 photostatic copy thereof.

107 (d) The clerk shall not issue a marriage license under  
108 the provisions of this section unless the male applicant is at  
109 least seventeen (17) years of age, and the female is at least  
110 fifteen (15) years of age; provided, however, that if satisfactory

111 proof is furnished to the judge of any circuit, chancery or county  
112 court that sufficient reasons exist and that said parties desire  
113 to be married to each other and that the parents or other person  
114 in loco parentis of the person or persons so under age consent  
115 thereto, then the judge of any such court in the county where  
116 either of such parties resides may waive the minimum age  
117 requirement and by written instrument authorize the clerk of the  
118 court to issue the marriage license to the parties if they are  
119 otherwise qualified by law. Authorization shall be a part of the  
120 confidential files of the clerk of the court, subject to  
121 inspection only by written permission of the judge.

122 (e) A medical certificate dated within thirty (30)  
123 days prior to the application shall be presented to the circuit  
124 court clerk showing that the applicant is free from syphilis, as  
125 nearly as can be determined by a blood test performed in a  
126 laboratory approved by the State Board of Health. The medical  
127 certificate may be obtained through the local health department by  
128 the applicant or applicants, or it may be obtained through any  
129 private laboratory approved by the State Board of Health. Said  
130 medical certificate shall be examined by the circuit court clerk  
131 and filed in a permanent file kept by the clerk for this purpose.

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

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

138 Any circuit clerk shall be liable under his official bond

139 because of noncompliance with the provisions of this section.

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

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

147 93-5-1. Except as otherwise provided by Section 2 of this  
148 act, divorces from the bonds of matrimony may be decreed to the  
149 injured party for any one or more of the following twelve causes,  
150 viz:

151 First. Natural impotency.

152 Second. Adultery, unless it should appear that it was  
153 committed by collusion of the parties for the purpose of procuring  
154 a divorce, or unless the parties cohabited after a knowledge by  
155 complainant of the adultery.

156 Third. Being sentenced to any penitentiary, and not pardoned  
157 before being sent there.

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

160 Fifth. Habitual drunkenness.

161 Sixth. Habitual and excessive use of opium, morphine or  
162 other like drug.

163 Seventh. Habitual cruel and inhuman treatment.

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

166 Ninth. Marriage to some other person at the time of the

167 pretended marriage between the parties.

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

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

173 Twelfth. Incurable insanity. But no divorce shall be  
174 granted upon this ground unless the insane party shall have been  
175 under regular treatment for insanity and causes thereof, confined  
176 in an institution for the insane for a period of at least three  
177 (3) years immediately preceding the commencement of the action.  
178 Provided, however, that transfer of an insane party to his or her  
179 home for treatment or a trial visit on prescription or  
180 recommendation of a licensed physician, which treatment or trial  
181 visit proves unsuccessful after a bona fide effort by the  
182 complaining party to effect a cure, upon the reconfinement of the  
183 insane party in an institution for the insane, shall be regular  
184 treatment for insanity and causes thereof, and the period of time  
185 so consumed in seeking to effect a cure, or while on a trial visit  
186 home, shall be added to the period of actual confinement in an  
187 institution for the insane in computing the required period of  
188 three (3) years confinement immediately preceding the commencement  
189 of the action. No divorce shall be granted because of insanity  
190 until after a thorough examination of such insane person by two  
191 (2) physicians who are recognized authorities on mental diseases.  
192 One (1) such physician shall be either the superintendent of the  
193 state hospital or the veterans hospital for the insane in which  
194 the patient is confined, or a member of the medical staff of such

195 hospital who has had the patient in charge. Before incurable  
196 insanity can be successfully proven as a ground for divorce, it  
197 shall be necessary that both such physicians make affidavit that  
198 such patient is a mentally disturbed person at the time of the  
199 examination and both affidavits shall be made a part of the  
200 permanent record of the divorce proceedings and shall create the  
201 prima facie presumption of incurable insanity, such as would  
202 justify a divorce based thereon. Service of process shall be made  
203 on the superintendent of the hospital in which the defendant is a  
204 patient. In event the patient is in a hospital outside the state,  
205 process shall be served by publication, as in other cases of  
206 service by publication, together with the sending of a copy by  
207 registered mail to the superintendent of said hospital. In  
208 addition thereto, process shall be served upon the next blood  
209 relative and guardian, if any. In event there is no legal  
210 guardian, the court shall appoint a guardian ad litem to represent  
211 the interest of the insane person. Such relative or guardian and  
212 superintendent of the institution shall be entitled to appear and  
213 be heard upon any and all issues. The status of the parties as to  
214 the support and maintenance of the insane person shall not be  
215 altered in any way by the granting of the divorce.

216       However, in the discretion of the chancery court, and in such  
217 cases as the court may deem it necessary and proper, before any  
218 such decree is granted on the ground of incurable insanity, the  
219 complainant, when ordered by the court, shall enter into bond, to  
220 be approved by the court, in such an amount as the court may think  
221 just and proper, conditioned for the care and keeping of such  
222 insane person during the remainder of his or her natural life,

223 unless such insane person has a sufficient estate in his or her  
224 own right for such purpose.

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

227 93-5-23. When a divorce shall be decreed from the bonds of  
228 matrimony, the court may, in its discretion, having regard to the  
229 circumstances of the parties and the nature of the case, as may  
230 seem equitable and just, make all orders touching the care,  
231 custody and maintenance of the children of the marriage, and also  
232 touching the maintenance and alimony of the wife or the husband,  
233 or any allowance to be made to her or him, and shall, if need be,  
234 require bond, sureties or other guarantee for the payment of the  
235 sum so allowed. Orders touching on the custody of the children of  
236 the marriage may be made in accordance with the provisions of  
237 Section 93-5-24. The court may afterwards, on petition, change  
238 the decree, and make from time to time such new decrees as the  
239 case may require. However, where proof shows that both parents  
240 have separate incomes or estates, the court may require that each  
241 parent contribute to the support and maintenance of the children  
242 of the marriage in proportion to the relative financial ability of  
243 each. In the event a legally responsible parent has health  
244 insurance available to him or her through an employer or  
245 organization that may extend benefits to the dependents of such  
246 parent, any order of support issued against such parent may  
247 require him or her to exercise the option of additional coverage  
248 in favor of such children as he or she is legally responsible to  
249 support.

250 Whenever the court has ordered a party to make periodic

251 payments for the maintenance or support of a child, but no bond,  
252 sureties or other guarantee has been required to secure such  
253 payments, and whenever such payments as have become due remain  
254 unpaid for a period of at least thirty (30) days, the court may,  
255 upon petition of the person to whom such payments are owing, or  
256 such person's legal representative, enter an order requiring that  
257 bond, sureties or other security be given by the person obligated  
258 to make such payments, the amount and sufficiency of which shall  
259 be approved by the court. The obligor shall, as in other civil  
260 actions, be served with process and shall be entitled to a hearing  
261 in such case.

262 Whenever in any proceeding in the chancery court concerning  
263 the custody of a child a party alleges that the child whose  
264 custody is at issue has been the victim of sexual or physical  
265 abuse by the other party, the court may, on its own motion, grant  
266 a continuance in the custody proceeding only until such allegation  
267 has been investigated by the Department of Human Services. At the  
268 time of ordering such continuance the court may direct the party,  
269 and his attorney, making such allegation of child abuse to report  
270 in writing and provide all evidence touching on the allegation of  
271 abuse to the Department of Human Services. The Department of  
272 Human Services shall investigate such allegation and take such  
273 action as it deems appropriate and as provided in such cases under  
274 the Youth Court Law (being Chapter 21 of Title 43, Mississippi  
275 Code of 1972) or under the laws establishing family courts (being  
276 Chapter 23 of Title 43, Mississippi Code of 1972).

277 If after investigation by the Department of Human Services or  
278 final disposition by the youth court or family court allegations

279 of child abuse are found to be without foundation, the chancery  
280 court shall order the alleging party to pay all court costs and  
281 reasonable attorney's fees incurred by the defending party in  
282 responding to such allegation.

283         The court may investigate, hear and make a determination in a  
284 custody action when a charge of abuse and/or neglect arises in the  
285 course of a custody action as provided in Section 43-21-151, and  
286 in such cases the court shall appoint a guardian ad litem for the  
287 child as provided under Section 43-21-121, who shall be an  
288 attorney. Unless the chancery court's jurisdiction has been  
289 terminated, all disposition orders in such cases for placement  
290 with the Department of Human Services shall be reviewed by the  
291 court or designated authority at least annually to determine if  
292 continued placement with the department is in the best interest of  
293 the child or public.

294         The duty of support of a child terminates upon the  
295 emancipation of the child. The court may determine that  
296 emancipation has occurred and no other support obligation exists  
297 when the child:

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

299                 (b) Marries, or

300                 (c) Discontinues full-time enrollment in school and

301 obtains full-time employment prior to attaining the age of

302 twenty-one (21) years, or

303                 (d) Voluntarily moves from the home of the custodial  
304 parent or guardian and establishes independent living arrangements

305 and obtains full-time employment prior to attaining the age of

306 twenty-one (21) years.

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

309        SECTION 6. This act shall take effect and be in force from  
310 and after July 1, 2000.