

By: Watson

To: Judiciary A

## HOUSE BILL NO. 505

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, 2000, and shall apply to any premarital  
273 agreement executed on or after that date.