

By: Watson

To: Judiciary A

HOUSE BILL NO. 505  
(As Passed the House)

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; TO PROVIDE AN EXCEPTION FOR PERSONS  
10 AGED SIXTY-FIVE YEARS OR OLDER; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

68 obligations of the other party.

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

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

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

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

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

91 SECTION 11. Sections 1 through 11 of this act shall be  
92 applied and construed to effectuate its general purposes to make  
93 uniform the law with respect to the subject of Sections 1 through  
94 11 of this act among states enacting it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

272 SECTION 15. Notwithstanding any other provisions of this act  
273 to the contrary, when two (2) persons aged sixty-five (65) or  
274 older marry over such age and execute an agreement as provided  
275 under this act, the assets of one (1) party shall not be used for  
276 Medicaid nursing home coverage for the other party unless both  
277 parties specifically agree to provide such Medicaid nursing home  
278 coverage.

279 SECTION 16. This act shall take effect and be in force from  
280 and after passage, and shall apply to any premarital agreement  
281 executed on or after that date.