

By: Smith (35th)

To: Judiciary A

HOUSE BILL NO. 1144

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.