HOUSE BILL NO. 1394

AN ACT TO CREATE A FORM OF MARRIAGE TO BE KNOWN AS COVENANT MARRIAGE REQUIRING CERTAIN DECLARATIONS; TO ALLOW MARRIED COUPLES TO DESIGNATE THEIR MARRIAGE AS A COVENANT MARRIAGE; TO PROVIDE THAT A COVENANT MARRIAGE MAY BE DISSOLVED ONLY IN CERTAIN CASES; TO PROVIDE FOR SEPARATION FROM BED AND BOARD; TO REQUIRE THE ATTORNEY GENERAL TO PROMULGATE A COVENANT MARRIAGE PAMPHLET; TO AMEND SECTIONS 93-1-5, 93-1-13, 93-5-1 AND 93-5-23, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) A covenant marriage is a marriage entered into by one male and one female who understand and agree that the marriage between them is a lifelong relationship. Parties to a covenant marriage have received counseling emphasizing the nature and purposes of marriage and the responsibilities thereto. Only when there has been a complete and total breach of the marital covenant commitment may the nonbreaching party seek a declaration that the marriage is no longer legally recognized.

(2) A man and woman may contract a covenant marriage by declaring their intent to do so on their application for a marriage license, and executing a declaration of intent to contract a covenant marriage, as provided in Section 2 of this act. The application for a marriage license and the declaration of intent shall be filed with the official who issues the marriage license.

SECTION 2. (1) A declaration of intent to contract a covenant marriage shall contain all of the following:

(a) A recitation by the parties to the following effect:

"A COVENANT MARRIAGE"
We do solemnly declare that marriage is a covenant between a man and a woman who agree to live together as husband and wife for so long as they both may live. We have chosen each other carefully and disclosed to one another everything which could adversely affect the decision to enter into this marriage. We have received premarital counseling on the nature, purposes and responsibilities of marriage. We have read the Covenant Marriage Act, and we understand that a Covenant Marriage is for life. If we experience marital difficulties, we commit ourselves to take all reasonable efforts to preserve our marriage, including marital counseling.

With full knowledge of what this commitment means, we do hereby declare that our marriage will be bound by Mississippi law on Covenant Marriages and we promise to love, honor and care for one another as husband and wife for the rest of our lives."

(b) (i) An affidavit by the parties that they have received premarital counseling from a priest, minister, rabbi, clerk of the Religious Society of Friends, any clergyman of any religious sect, or a marriage counselor, which counseling shall include a discussion of the seriousness of covenant marriage, communication of the fact that a covenant marriage is a commitment for life, a discussion of the obligation to seek marital counseling in times of marital difficulties, and a discussion of the exclusive grounds for legally terminating a covenant marriage by divorce or by divorce after a judgment of separation from bed and board.

(ii) A notarized attestation, signed by the counselor and attached to or included in the parties' affidavit, confirming that the parties were counseled as to the nature and purpose of the marriage and the grounds for termination thereof and an acknowledging that the counselor provided to the parties the informational pamphlet developed and promulgated by the Office of the Attorney General, which pamphlet entitled the Covenant
Marriage Act provides a full explanation of the terms and conditions of a covenant marriage.

(c) (i) The signature of both parties witnessed by a notary.

(ii) If one (1) or both of the parties are minors, the written consent or authorization of those persons required to consent to or authorize the marriage of minors.

(2) The declaration shall contain two (2) separate documents, the recitation and the affidavit, the latter of which shall include the attestation either included therein or attached thereto. The recitation shall be prepared in duplicate originals, one (1) of which shall be retained by the parties and the other, together with the affidavit and attestation, shall be filed as provided in Section 1 of this act.

SECTION 3. (1) On or after July 1, 2002, married couples may execute a declaration of intent to designate their marriage as a covenant marriage to be governed by the laws relative thereto.

(2) (a) This declaration of intent in the form and containing the contents required by subsection (3) of this section must be presented to the officer who issued the couple's marriage license and with whom the couple's marriage certificate is filed. If the couple was married outside of this state, a copy of the foreign marriage certificate, with the declaration of intent attached thereto, shall be filed with the officer who issues marriage licenses in the county in which the couple is domiciled. The officer shall make a notation on the marriage certificate of the declaration of intent of a covenant marriage and attach a copy of the declaration to the certificate.

(b) On or before the fifteenth day of each calendar month, the officer shall forward to the state registrar of vital records each declaration of intent of a covenant marriage filed with him during the preceding calendar month pursuant to this section.
(3) (a) A declaration of intent to designate a marriage as a covenant marriage shall contain all of the following:

(i) A recitation by the parties to the following effect:

"A COVENANT MARRIAGE

We do solemnly declare the marriage is a covenant between a man and a woman who agree to live together as husband and wife for so long as they both may live. We understand the nature, purpose and responsibilities of marriage. We have read the Covenant Marriage Act, and we understand that a Covenant Marriage is for life. If we experience marital difficulties, we commit ourselves to take all reasonable efforts to preserve our marriage, including marital counseling.

With full knowledge of what this commitment means, we do hereby declare that our marriage will be bound by Mississippi law on Covenant Marriage, and we renew our promise to love, honor and care for one another as husband and wife for the rest of our lives."

(ii) 1. An affidavit by the parties that they have discussed their intent to designate their marriage as a covenant marriage with a priest, minister, rabbi, clerk of the Religious Society of Friends, any clergyman of any religious sect or a marriage counselor, which included a discussion of the obligation to seek marital counseling in times of marital difficulties and the exclusive grounds for legally terminating a covenant marriage by divorce or by divorce after a judgment of separation from bed and board.

2. A notarized attestation, signed by the counselor and attached to the parties' affidavit, acknowledging that the counselor provided to the parties the information pamphlet developed and promulgated by the Office of the Attorney General, which pamphlet entitled the Covenant Marriage Act.
provides a full explanation of the terms and conditions of a covenant marriage.

3. The signature of both parties witnessed by a notary.

(b) The declaration shall contain two (2) separate documents, the recitation and the affidavit, the latter of which shall include the attestation either included therein or attached thereto. The recitation shall be prepared in duplicate originals, one (1) of which shall be retained by the parties and the other, together with the affidavit and attestation, shall be filed as provided in subsection (2) of this section.

SECTION 4. (1) Notwithstanding any other law to the contrary and subsequent to the parties obtaining counseling, a spouse to a covenant marriage may obtain a judgment of divorce only upon proof of any of the following:

(a) The other spouse has committed adultery.

(b) The other spouse has committed a felony and has been sentenced to death, life imprisonment or life imprisonment without eligibility for parole.

(c) The other spouse has abandoned the matrimonial domicile for a period of one (1) year and constantly refuses to return.

(d) The other spouse has physically or sexually abused the spouse seeking the divorce or a child of one (1) of the spouses.

(e) The spouses have been living separate and apart continuously without reconciliation for a period of two (2) years.

(f) (i) The spouses have been living separate and apart continuously without reconciliation for a period of one (1) year from the date the judgment of separation from bed and board was signed.

(ii) If there is a minor child or children of the marriage, the spouses have been living separate and apart
continuously without reconciliation for a period of one (1) year
and six (6) months from the date the judgment of separation from
bed and board was signed; however, if abuse of a child of the
marriage or a child of one (1) of the spouses is the basis for
which the judgment of separation from bed and board was obtained,
then a judgment of divorce may be obtained if the spouses have
been living separate and apart continuously without reconciliation
for a period of one (1) year from the date the judgment of
separation from bed and board was signed.

(2) Notwithstanding any other law to the contrary and
subsequent to the parties obtaining counseling, a spouse to a
covenant marriage may obtain a judgment of separation from bed and
board only upon proof of any of the following:
(a) The other spouse has committed adultery.
(b) The other spouse has committed a felony and has
been sentenced to death, life imprisonment or life imprisonment
without eligibility for parole.
(c) The other spouse has abandoned the matrimonial
domicile for a period of one (1) year and constantly refuses to
return.
(d) The other spouse has physically or sexually abused
the spouse seeking the divorce or a child of one (1) of the
spouses.
(e) The spouses have been living separate and apart
continuously without reconciliation for a period of two (2) years.
(f) On account of habitual intemperance of the other
spouse, or excesses, cruel treatment, or outrages of the other
spouse, if such habitual intemperance, or such ill-treatment is of
such a nature as to render their living together insupportable.

SECTION 5. (1) Unless judicially separated, spouses in a
covenant marriage may not sue each other except for causes of
action pertaining to contracts; for restitution of separate
property; for separation from bed and board in covenant marriages,
for divorce, or for declaration of nullity of the marriage; and
for causes of action pertaining to spousal support or the support
or custody of a child while the spouses are living separate and
apart, although not judicially separated.

(2) (a) Any court which is competent to preside over
divorce proceedings, has jurisdiction of an action for separation
from bed and board in a covenant marriage, if:

(i) One (1) or both of the spouses are domiciled
in this state and the ground therefor was committed or occurred in
this state or while the matrimonial domicile was in this state.

(ii) The ground therefor occurred elsewhere while
either or both of the spouses were domiciled elsewhere, provided
the person obtaining the separation from bed and board was
domiciled in this state prior to the time the cause of action
accrued and is domiciled in this state at the time the action is
filed.

(b) An action for a separation from bed and board in a
covenant marriage shall be brought in a county where either party
is domiciled, or in the county of the last matrimonial domicile.

(c) The venue provided herein may not be waived, and a
judgment of separation rendered by a court of improper venue is an
absolute nullity.

(3) Judgments on the pleadings and summary judgments shall
not be granted in any action for separation from bed and board in
a covenant marriage.

(4) In a proceeding for a separation from bed and board in a
covenant marriage or thereafter, a court may award a spouse all
incidental relief afforded in a proceeding for divorce, including
but not limited to, spousal support, claims for contributions to
education, child custody, visitation rights, child support,
injunctive relief and possession and use of a family residence or
community movables or immovables.
SECTION 6.  (1)  (a) Separation from bed and board in a covenant marriage does not dissolve the bond of matrimony, since the separated husband and wife are not at liberty to marry again; but it puts an end to their conjugal cohabitation and to the common concerns which existed between them.

(b) Spouses who are judicially separated from bed and board in a covenant marriage shall retain that status until either reconciliation or divorce.

(2)  (a) The judgment of separation from bed and board carries with it the separation of goods and effects and is retroactive to the date on which the original petition was filed in the action in which the judgment is rendered, but such retroactive effect shall be without prejudice (i) to the liability of the community for the attorney's fees and costs incurred by the spouses in the action in which the judgment is rendered, or (ii) to rights validly acquired in the interim between commencement of the action and recordation of the judgment.

(b) Upon reconciliation of the spouses, the community shall be reestablished between the spouses, as of the date of filing of the original petition in the action in which the judgment was rendered, unless the spouses execute prior to the reconciliation a matrimonial agreement that the community shall not be reestablished upon reconciliation. This matrimonial agreement shall not require court approval.

(c) Reestablishment of the community under the provisions of this section shall be effective toward third persons only upon filing notice of the reestablishment for registry. The reestablishment of the community shall not prejudice the rights of third persons validly acquired prior to filing notice of the reestablishment nor shall it affect a prior community property partition between the spouses.

SECTION 7. The Office of Attorney General, Department of Justice shall, prior to July 1, 2002, promulgate an informational
pamphlet, entitled "Covenant Marriage Act," which shall outline in sufficient detail the consequences of entering into a covenant marriage. The informational pamphlet shall be made available to any counselor who provides marriage counseling as provided for by this act.

SECTION 8. Section 93-1-5, Mississippi Code of 1972, is amended as follows:

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

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

(b) The application shall remain on file, open to the public, in the office of the circuit court clerk for a period of three (3) days before the clerk is authorized to issue the marriage license. Provided, however, that if satisfactory proof is furnished to the judge of any circuit, chancery or county court that sufficient reasons exist, then the judge of any such court in the judicial district where either of such parties resides if they be over the age of twenty-one (21) years, or where the female resides if she be under the age of twenty-one (21), may waive the
three-day waiting period and by written instrument authorize the clerk of the court to issue the marriage license to the parties if they are otherwise qualified by law. Authorization shall be a part of the confidential files of the clerk of the court, subject to inspection only by written permission of the judge. If either of the applying parties appears from the evidence to be under twenty-one (21) years of age, the circuit court clerk, immediately upon filing the application, shall cause notice of the filing of said application to be sent by prepaid certified mail to the father, mother, guardian or next of kin of both applying parties at the address named in said application.

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

(d) The clerk shall not issue a marriage license under the provisions of this section unless the male applicant is at least seventeen (17) years of age, and the female is at least fifteen (15) years of age; provided, however, that if satisfactory
proof is furnished to the judge of any circuit, chancery or county
court that sufficient reasons exist and that said parties desire
to be married to each other and that the parents or other person
in loco parentis of the person or persons so under age consent
thereunto, then the judge of any such court in the county where
either of such parties resides may waive the minimum age
requirement and by written instrument authorize the clerk of the
court to issue the marriage license to the parties if they are
otherwise qualified by law. Authorization shall be a part of the
confidential files of the clerk of the court, subject to
inspection only by written permission of the judge.

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

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

(g) The circuit clerk is authorized to grant a license
for a covenant marriage as provided by Sections 1 through 7 of
this act and the clerk shall indicate on the license whether the
parties intend to enter into a covenant marriage.

Any circuit clerk shall be liable under his official bond
because of noncompliance with the provisions of this section.

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

SECTION 9. Section 93-1-13, Mississippi Code of 1972, is
amended as follows:

93-1-13. A marriage shall not be contracted or solemnized
unless a license therefor shall first have been duly issued. If
applicable, the license shall designate that the parties entered
into a covenant marriage. No irregularity in the issuance of or
omission in the license shall invalidate any marriage, nor shall
this section be construed so as to invalidate any marriage that is
good at common law.

SECTION 10. Section 93-5-1, Mississippi Code of 1972, is
amended as follows:

93-5-1. Except as otherwise provided by Sections 1 through 7
of this act, divorces from the bonds of matrimony may be decreed
to the injured party for any one or more of the following twelve
causes, viz:

First. Natural impotency.

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

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

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

Fifth. Habitual drunkenness.

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

Seventh. Habitual cruel and inhuman treatment.

Eighth. Insanity or idiocy at the time of marriage, if the
party complaining did not know of such infirmity.
Ninth. Marriage to some other person at the time of the pretended marriage between the parties.

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

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

Twelfth. Incurable insanity. But no divorce shall be granted upon this ground unless the insane party shall have been under regular treatment for insanity and causes thereof, confined in an institution for the insane for a period of at least three (3) years immediately preceding the commencement of the action.

Provided, however, that transfer of an insane party to his or her home for treatment or a trial visit on prescription or recommendation of a licensed physician, which treatment or trial visit proves unsuccessful after a bona fide effort by the complaining party to effect a cure, upon the reconfinement of the insane party in an institution for the insane, shall be regular treatment for insanity and causes thereof, and the period of time so consumed in seeking to effect a cure, or while on a trial visit home, shall be added to the period of actual confinement in an institution for the insane in computing the required period of three (3) years confinement immediately preceding the commencement of the action. No divorce shall be granted because of insanity until after a thorough examination of such insane person by two (2) physicians who are recognized authorities on mental diseases. One (1) such physician shall be either the superintendent of the state hospital or the veterans hospital for the insane in which the patient is confined, or a member of the medical staff of such hospital who has had the patient in charge. Before incurable insanity can be successfully proven as a ground for divorce, it shall be necessary that both such physicians make affidavit that such patient is a mentally disturbed person at the time of the
examination and both affidavits shall be made a part of the permanent record of the divorce proceedings and shall create the prima facie presumption of incurable insanity, such as would justify a divorce based thereon. Service of process shall be made on the superintendent of the hospital in which the defendant is a patient. In event the patient is in a hospital outside the state, process shall be served by publication, as in other cases of service by publication, together with the sending of a copy by registered mail to the superintendent of said hospital. In addition thereto, process shall be served upon the next blood relative and guardian, if any. In event there is no legal guardian, the court shall appoint a guardian ad litem to represent the interest of the insane person. Such relative or guardian and superintendent of the institution shall be entitled to appear and be heard upon any and all issues. The status of the parties as to the support and maintenance of the insane person shall not be altered in any way by the granting of the divorce.

However, in the discretion of the chancery court, and in such cases as the court may deem it necessary and proper, before any such decree is granted on the ground of incurable insanity, the complainant, when ordered by the court, shall enter into bond, to be approved by the court, in such an amount as the court may think just and proper, conditioned for the care and keeping of such insane person during the remainder of his or her natural life, unless such insane person has a sufficient estate in his or her own right for such purpose.

SECTION 11. Section 93-5-23, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

The duty of support of a child terminates upon the
emancipation of the child. The court may determine that
emancipation has occurred and no other support obligation exists
when the child:
(a) Attains the age of twenty-one (21) years, or

(b) Marries, or

(c) Discontinues full-time enrollment in school and obtains full-time employment prior to attaining the age of twenty-one (21) years, or

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

The court may enter an order for alimony consistent with the provisions of Sections 1 through 7 of this act.

SECTION 12. This act shall take effect and be in force from and after July 1, 2002.