

By: Senator(s) Ross

To: Judiciary, Division A

SENATE BILL NO. 2018

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 PROVIDE AN EXCEPTION FOR PERSONS AGED SIXTY-FIVE YEARS OR
9 OLDER; TO AMEND SECTIONS 93-3-7, 93-5-2 AND 93-5-23, MISSISSIPPI
10 CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** Sections 1 through 12 and Section 16 of this act
13 may be cited as the "Uniform Premarital Agreement Act."

14 **SECTION 2.** As used in Sections 1 through 12 and Section 16
15 of this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49 **SECTION 5.** A premarital agreement becomes effective upon
50 marriage.

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

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

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

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

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

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

67 (iii) Did not have, or reasonably could not have
68 had, an adequate knowledge of the property or financial
69 obligations of the other party.

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

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

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

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

88 **SECTION 10.** All written agreements entered into before the
89 effective date of this act between prospective spouses for the
90 purpose of affecting any of the subjects specified in Section 4 of
91 this act shall be valid and enforceable if otherwise valid as
92 contracts.

93 **SECTION 11.** Sections 1 through 12 and Section 16 of this act
94 shall be applied and construed to effectuate its general purposes
95 to make uniform the law with respect to the subject of Sections 1
96 through 12 and Section 16 of this act among states enacting it.

97 **SECTION 12.** Notwithstanding any other provisions of this act
98 to the contrary, when two (2) persons aged sixty-five (65) or
99 older marry after attaining such age and execute an agreement as
100 provided under this act, the assets of one (1) party shall not be
101 used for Medicaid nursing home coverage for the other party unless
102 both parties specifically agree to provide such Medicaid nursing
103 home coverage.

104 **SECTION 13.** Section 93-3-7, Mississippi Code of 1972, is
105 amended as follows:

106 93-3-7. (1) Except as otherwise provided in subsection (2),
107 husband and wife shall not contract with each other, so as to
108 entitle the one to claim or receive any compensation from the
109 other for work and labor, and any contract between them whereby
110 one shall claim or shall receive compensation from the other for
111 services rendered, shall be void. It shall not be lawful for the
112 husband to rent the wife's plantation, houses, horses, mules,
113 wagons, carts, or other implements, and with them, or with any of
114 her means, to operate and carry on business in his own name or on
115 his own account, but all business done with the means of the wife
116 by the husband shall be deemed and held to be on her account and
117 for her use, and by the husband as her agent and manager in
118 business, as to all persons dealing with him without notice,
119 unless the contract between the husband and wife which changes
120 this relation, be evidenced by writing, subscribed by them, duly
121 acknowledged, and filed with the chancery clerk of the county
122 where such business may be done, to be recorded as other
123 instruments.

124 (2) Nothing in this section shall prohibit or restrict the
125 subject of any premarital agreement executed under the provisions
126 of Sections 1 through 12 and Section 16 of this act.

127 **SECTION 14.** Section 93-5-2, Mississippi Code of 1972, is
128 amended as follows:

129 93-5-2. (1) Divorce from the bonds of matrimony may be
130 granted on the ground of irreconcilable differences, but only upon
131 the joint complaint of the husband and wife or a complaint where
132 the defendant has been personally served with process or where the
133 defendant has entered an appearance by written waiver of process.

134 (2) If the parties provide by written agreement for the
135 custody and maintenance of any children of that marriage and for
136 the settlement of any property rights between the parties and the
137 court finds that such provisions are adequate and sufficient, the
138 agreement may be incorporated in the judgment, and such judgment
139 may be modified as other judgments for divorce.

140 (3) If the parties are unable to agree upon adequate and
141 sufficient provisions for the custody and maintenance of any
142 children of that marriage or any property rights between them,
143 they may consent to a divorce on the ground of irreconcilable
144 differences and permit the court to decide the issues upon which
145 they cannot agree. Such consent must be in writing, signed by
146 both parties personally, must state that the parties voluntarily
147 consent to permit the court to decide such issues, which shall be
148 specifically set forth in such consent, and that the parties
149 understand that the decision of the court shall be a binding and
150 lawful judgment. Such consent may not be withdrawn by a party
151 without leave of the court after the court has commenced any
152 proceeding, including the hearing of any motion or other matter
153 pertaining thereto. The failure or refusal of either party to
154 agree as to adequate and sufficient provisions for the custody and
155 maintenance of any children of that marriage or any property
156 rights between the parties, or any portion of such issues, or the
157 failure or refusal of any party to consent to permit the court to
158 decide such issues, shall not be used as evidence, or in any
159 manner, against such party. No divorce shall be granted pursuant
160 to this subsection until all matters involving custody and
161 maintenance of any child of that marriage and property rights

162 between the parties raised by the pleadings have been either
163 adjudicated by the court or agreed upon by the parties and found
164 to be adequate and sufficient by the court and included in the
165 judgment of divorce. Appeals from any orders and judgments
166 rendered pursuant to this subsection may be had as in other cases
167 in chancery court only insofar as such orders and judgments relate
168 to issues that the parties consented to have decided by the court.

169 (4) Complaints for divorce on the ground of irreconcilable
170 differences must have been on file for sixty (60) days before
171 being heard. Except as otherwise provided in subsection (3) of
172 this section, a joint complaint of husband and wife or a complaint
173 where the defendant has been personally served with process or
174 where the defendant has entered an appearance by written waiver of
175 process, for divorce solely on the ground of irreconcilable
176 differences, shall be taken as proved and a final judgment entered
177 thereon, as in other cases and without proof or testimony in
178 termtime or vacation, the provisions of Section 93-5-17 to the
179 contrary notwithstanding.

180 (5) Except as otherwise provided in subsection (3) of this
181 section, no divorce shall be granted on the ground of
182 irreconcilable differences where there has been a contest or
183 denial; provided, however, that a divorce may be granted on the
184 grounds of irreconcilable differences where there has been a
185 contest or denial, if the contest or denial has been withdrawn or
186 cancelled by the party filing same by leave and order of the
187 court.

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

191 (7) Nothing contained in subsections (2) and (3) of this
192 section shall prohibit or restrict the subject of any premarital
193 agreement executed under the provisions of Section 1 through 12 of
194 this act and Section 16.

195 **SECTION 15.** Section 93-5-23, Mississippi Code of 1972, is
196 amended as follows:

197 93-5-23. When a divorce shall be decreed from the bonds of
198 matrimony, the court * * *, in its discretion, and having regard
199 to the circumstances of the parties and the nature of the case, as
200 may seem equitable and just, may make all orders touching the
201 care, custody and maintenance of the children of the marriage,
202 and * * *, if need be, shall require bond, sureties or other
203 guarantee for the payment of the sum so allowed. Orders touching
204 on the custody of the children of the marriage shall be made in
205 accordance with the provisions of Section 93-5-24. Except as may
206 be otherwise provided in a premarital agreement executed under the
207 provisions of Sections 1 and 12 and Section 16 of this act, the
208 court may make orders touching the maintenance and alimony of the
209 wife or the husband, or any allowance to be made to her or him,
210 and if need be, shall require bond, sureties or other guarantee
211 for the payment of the sum so allowed. The court may afterwards,
212 on petition, change the decree, and make from time to time such
213 new decrees as the case may require. However, where proof shows
214 that both parents have separate incomes or estates, the court may
215 require that each parent contribute to the support and maintenance
216 of the children of the marriage in proportion to the relative
217 financial ability of each. In the event a legally responsible
218 parent has health insurance available to him or her through an
219 employer or organization that may extend benefits to the
220 dependents of such parent, any order of support issued against
221 such parent may require him or her to exercise the option of
222 additional coverage in favor of such children as he or she is
223 legally responsible to support.

224 Whenever the court has ordered a party to make periodic
225 payments for the maintenance or support of a child, but no bond,
226 sureties or other guarantee has been required to secure such
227 payments, and whenever such payments as have become due remain

228 unpaid for a period of at least thirty (30) days, the court may,
229 upon petition of the person to whom such payments are owing, or
230 such person's legal representative, enter an order requiring that
231 bond, sureties or other security be given by the person obligated
232 to make such payments, the amount and sufficiency of which shall
233 be approved by the court. The obligor shall, as in other civil
234 actions, be served with process and shall be entitled to a hearing
235 in such case.

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

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

257 The court may investigate, hear and make a determination in a
258 custody action when a charge of abuse and/or neglect arises in the
259 course of a custody action as provided in Section 43-21-151, and
260 in such cases the court shall appoint a guardian ad litem for the

261 child as provided under Section 43-21-121, who shall be an
262 attorney. Unless the chancery court's jurisdiction has been
263 terminated, all disposition orders in such cases for placement
264 with the Department of Human Services shall be reviewed by the
265 court or designated authority at least annually to determine if
266 continued placement with the department is in the best interest of
267 the child or public.

268 The duty of support of a child terminates upon the
269 emancipation of the child. The court may determine that
270 emancipation has occurred and no other support obligation exists
271 when the child:

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

273 (b) Marries, or

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

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

281 **SECTION 16.** This act shall take effect and be in force from
282 and after July 1, 2005, and shall apply to any premarital
283 agreement executed on or after that date.