

By: Senator(s) Doxey

To: Judiciary, Division A

SENATE BILL NO. 2100
(As Passed the Senate)

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 and Section 15 of this act
12 may be cited as the "Uniform Premarital Agreement Act."

13 **SECTION 2.** As used in Sections 1 through 11 and Section 15
14 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 the
88 effective date of this act between prospective spouses for the
89 purpose of affecting any of the subjects specified in Section 4 of
90 this act shall be valid and enforceable if otherwise valid as
91 contracts.

92 **SECTION 11.** Sections 1 through 11 and Section 15 of this act
93 shall be applied and construed to effectuate its general purposes
94 to make uniform the law with respect to the subject of Sections 1
95 through 11 and Section 15 of this act among states enacting it.

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

98 93-3-7. (1) Except as otherwise provided in subsection (2),
99 husband and wife shall not contract with each other, so as to
100 entitle the one to claim or receive any compensation from the
101 other for work and labor, and any contract between them whereby
102 one shall claim or shall receive compensation from the other for
103 services rendered, shall be void. It shall not be lawful for the
104 husband to rent the wife's plantation, houses, horses, mules,
105 wagons, carts, or other implements, and with them, or with any of
106 her means, to operate and carry on business in his own name or on
107 his own account, but all business done with the means of the wife
108 by the husband shall be deemed and held to be on her account and
109 for her use, and by the husband as her agent and manager in
110 business, as to all persons dealing with him without notice,
111 unless the contract between the husband and wife which changes
112 this relation, be evidenced by writing, subscribed by them, duly
113 acknowledged, and filed with the chancery clerk of the county
114 where such business may be done, to be recorded as other
115 instruments.

116 (2) Nothing in this section shall prohibit or restrict the
117 subject of any premarital agreement executed under the provisions
118 of Sections 1 through 11 and Section 15 of this act.

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

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

126 (2) If the parties provide by written agreement for the
127 custody and maintenance of any children of that marriage and for
128 the settlement of any property rights between the parties and the

129 court finds that such provisions are adequate and sufficient, the
130 agreement may be incorporated in the judgment, and such judgment
131 may be modified as other judgments for divorce.

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

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

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

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

183 (7) Nothing contained in subsections (2) and (3) of this
184 section shall prohibit or restrict the subject of any premarital
185 agreement executed under the provisions of Sections 1 through 11
186 and Section 15 of this act.

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

189 93-5-23. When a divorce shall be decreed from the bonds of
190 matrimony, the court * * *, in its discretion, and having regard
191 to the circumstances of the parties and the nature of the case, as
192 may seem equitable and just, may make all orders touching the
193 care, custody and maintenance of the children of the marriage,

194 and * * *, if need be, shall require bond, sureties or other
195 guarantee for the payment of the sum so allowed. Orders touching
196 on the custody of the children of the marriage shall be made in
197 accordance with the provisions of Section 93-5-24. Except as may
198 be otherwise provided in a premarital agreement executed under the
199 provisions of Sections 1 through 11 and Section 15 of this act,
200 the court may make orders touching the maintenance and alimony of
201 the wife or the husband, or any allowance to be made to her or
202 him, and if need be, shall require bond, sureties or other
203 guarantee for the payment of the sum so allowed. The court may
204 afterwards, on petition, change the decree, and make from time to
205 time such new decrees as the case may require. However, where
206 proof shows that both parents have separate incomes or estates,
207 the court may require that each parent contribute to the support
208 and maintenance of the children of the marriage in proportion to
209 the relative financial ability of each. In the event a legally
210 responsible parent has health insurance available to him or her
211 through an employer or organization that may extend benefits to
212 the dependents of such parent, any order of support issued against
213 such parent may require him or her to exercise the option of
214 additional coverage in favor of such children as he or she is
215 legally responsible to support.

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

226 actions, be served with process and shall be entitled to a hearing
227 in such case.

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

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

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

258 continued placement with the department is in the best interest of
259 the child or public.

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

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

265 (b) Marries, or

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

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

273 **SECTION 15.** This act shall take effect and be in force from
274 and after January 1, 2007, and shall apply to any premarital
275 agreement executed on or after that date.