

By: Representative Watson

To: Judiciary A

HOUSE BILL NO. 1405

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 of this act may be cited as
13 the "Uniform Premarital Agreement Act."

14 **SECTION 2.** As used in Sections 1 through 12 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 12 of this act shall be
93 applied and construed to effectuate its general purposes to make
94 uniform the law with respect to the subject of Sections 1 through
95 12 of this act among states enacting it.

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

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

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

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

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

128 93-5-2. (1) Divorce from the bonds of matrimony may be
129 granted on the ground of irreconcilable differences, but only upon
130 the joint complaint of the husband and wife or a complaint where
131 the defendant has been personally served with process or where the
132 defendant has entered an appearance by written waiver of process.

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

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

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

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

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

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

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

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

196 93-5-23. When a divorce shall be decreed from the bonds of
197 matrimony, the court * * *, in its discretion, and having regard
198 to the circumstances of the parties and the nature of the case, as
199 may seem equitable and just, may make all orders touching the
200 care, custody and maintenance of the children of the marriage, and
201 also touching the maintenance and alimony of the wife or the
202 husband, or any allowance to be made to her or him, and, if need
203 be, shall require bond, sureties or other guarantee for the
204 payment of the sum so allowed. Except as may otherwise be
205 provided in a premarital agreement executed under the provisions
206 of Sections 1 through 12 of this act, the court may make orders
207 touching the maintenance and alimony of the wife, or the husband,
208 or any allowance made to her or him, and if need be, shall require
209 bond, sureties or other guarantee for the payment of the sum so
210 allowed. Orders touching on the custody of the children of the
211 marriage shall be made in accordance with the provisions of
212 Section 93-5-24. The court may afterwards, on petition, change
213 the decree, and make from time to time such new decrees as the
214 case may require. However, where proof shows that both parents
215 have separate incomes or estates, the court may require that each
216 parent contribute to the support and maintenance of the children
217 of the marriage in proportion to the relative financial ability of
218 each. In the event a legally responsible parent has health
219 insurance available to him or her through an employer or
220 organization that may extend benefits to the dependents of such
221 parent, any order of support issued against such parent may
222 require him or her to exercise the option of additional coverage
223 in favor of such children as he or she is legally responsible to
224 support.

225 Whenever the court has ordered a party to make periodic
226 payments for the maintenance or support of a child, but no bond,

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

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

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

258 The court may investigate, hear and make a determination in a
259 custody action when a charge of abuse and/or neglect arises in the

260 course of a custody action as provided in Section 43-21-151, and
261 in such cases the court shall appoint a guardian ad litem for the
262 child as provided under Section 43-21-121, who shall be an
263 attorney. Unless the chancery court's jurisdiction has been
264 terminated, all disposition orders in such cases for placement
265 with the Department of Human Services shall be reviewed by the
266 court or designated authority at least annually to determine if
267 continued placement with the department is in the best interest of
268 the child or public.

269 The duty of support of a child terminates upon the
270 emancipation of the child. The court may determine that
271 emancipation has occurred pursuant to Section 93-11-65.

272 **SECTION 16.** This act shall take effect and be in force from
273 and after its passage, and shall apply to any premarital agreement
274 executed on or after that date.