

By: Representative Rotenberry

To: Judiciary A

HOUSE BILL NO. 420

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 if necessary, unless deceased at the time of the application, or
15 unless extraordinary circumstances render written permission
16 untenable.

17 (b) Presentation of proof that both parties have
18 attended premarital counseling by a clergyman or marriage
19 counselor, which premarital counseling included a discussion of
20 the seriousness of covenant marriage.

21 (c) Signatures of both parties on notarized documents
22 which state, "I, _____, do hereby declare my intent to enter
23 into covenant marriage. I do so with the full understanding that
24 a covenant marriage may not be dissolved except by reason of
25 adultery, desertion, conviction of a felony, physical or sexual
26 abuse of spouse or children or habitual intoxication. I
27 understand that marriage is an agreement to live together as
28 husband and wife forever. I have attended premarital counseling
29 in good faith and understand my responsibilities to the marriage.

30 I promise to seek counsel in times of trouble. I believe that I
31 have chosen my life mate wisely and have disclosed to him or her
32 all facts that may adversely affect his or her decision to enter
33 into this covenant with me."

34 **SECTION 2.** (1) Notwithstanding any provisions of law to the
35 contrary, a covenant marriage may not be dissolved except by
36 reason of adultery, desertion, conviction of a felony, physical or
37 sexual abuse of spouse or children or habitual intoxication. A
38 divorce may be granted on such grounds if the defendant has been
39 guilty of one (1) of the grounds, but if it appears that the
40 ground complained of was occasioned by collusion of the parties
41 with the intent to procure a divorce, or if it appears that both
42 parties have been guilty of adultery or desertion, a divorce shall
43 not be granted. If a divorce is granted, the court may consider
44 the following guidelines:

45 (a) If the husband is guilty of adultery and the
46 marketable skills of the wife are such that her potential earning
47 capacity would cause a reduction in her standard of living, the
48 wife may claim alimony and suit money in the complaint or by
49 motion as provided by law, and if the complaint is well-founded,
50 the court shall allow a reasonable sum therefor. No alimony shall
51 be granted to an adulterous wife.

52 (b) In an action involving minor children, the court
53 may defer the sale of the family home for one (1) year to minimize
54 trauma to the children.

55 (2) Counseling by a licensed family counselor is required
56 for any minor children before a divorce may be granted.

57 **SECTION 3.** Section 93-1-5, Mississippi Code of 1972, is
58 amended as follows:

59 93-1-5. It shall be unlawful for the circuit court clerk to
60 issue a marriage license until the following conditions precedent
61 have been complied with:

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

76 (b) The application shall remain on file, open to the
77 public, in the office of the circuit court clerk for a period of
78 three (3) days before the clerk is authorized to issue the
79 marriage license. Provided, however, that if satisfactory proof
80 is furnished to the judge of any circuit, chancery or county court
81 that sufficient reasons exist, then the judge of any such court in
82 the judicial district where either of such parties resides if they
83 be over the age of twenty-one (21) years, or where the female
84 resides if she be under the age of twenty-one (21), may waive the
85 three-day waiting period and by written instrument authorize the
86 clerk of the court to issue the marriage license to the parties if
87 they are otherwise qualified by law. Authorization shall be a
88 part of the confidential files of the clerk of the court, subject
89 to inspection only by written permission of the judge. If either
90 of the applying parties appears from the evidence to be under
91 twenty-one (21) years of age, the circuit court clerk, immediately
92 upon filing the application, shall cause notice of the filing of
93 said application to be sent by prepaid certified mail to the

94 father, mother, guardian or next of kin of both applying parties
95 at the address named in said application.

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

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

127 confidential files of the clerk of the court, subject to
128 inspection only by written permission of the judge.

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

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

143 (g) The circuit clerk is authorized to grant a license
144 for a covenant marriage as provided by Section 1 of this act.

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

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

152 **SECTION 4.** Section 93-5-1, Mississippi Code of 1972, is
153 amended as follows:

154 93-5-1. Except as otherwise provided by Section 2 of this
155 act, divorces from the bonds of matrimony may be decreed to the
156 injured party for any one or more of the following twelve causes,
157 viz:

158 First. Natural impotency.

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

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

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

167 Fifth. Habitual drunkenness.

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

170 Seventh. Habitual cruel and inhuman treatment.

171 Eighth. Insanity or idiocy at the time of marriage, if the
172 party complaining did not know of such infirmity.

173 Ninth. Marriage to some other person at the time of the
174 pretended marriage between the parties.

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

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

180 Twelfth. Incurable insanity. But no divorce shall be
181 granted upon this ground unless the insane party shall have been
182 under regular treatment for insanity and causes thereof, confined
183 in an institution for the insane for a period of at least three
184 (3) years immediately preceding the commencement of the action.
185 Provided, however, that transfer of an insane party to his or her
186 home for treatment or a trial visit on prescription or
187 recommendation of a licensed physician, which treatment or trial
188 visit proves unsuccessful after a bona fide effort by the
189 complaining party to effect a cure, upon the reconfinement of the
190 insane party in an institution for the insane, shall be regular
191 treatment for insanity and causes thereof, and the period of time

192 so consumed in seeking to effect a cure, or while on a trial visit
193 home, shall be added to the period of actual confinement in an
194 institution for the insane in computing the required period of
195 three (3) years confinement immediately preceding the commencement
196 of the action. No divorce shall be granted because of insanity
197 until after a thorough examination of such insane person by two
198 (2) physicians who are recognized authorities on mental diseases.
199 One (1) such physician shall be either the superintendent of the
200 state hospital or the veterans hospital for the insane in which
201 the patient is confined, or a member of the medical staff of such
202 hospital who has had the patient in charge. Before incurable
203 insanity can be successfully proven as a ground for divorce, it
204 shall be necessary that both such physicians make affidavit that
205 such patient is a mentally disturbed person at the time of the
206 examination and both affidavits shall be made a part of the
207 permanent record of the divorce proceedings and shall create the
208 prima facie presumption of incurable insanity, such as would
209 justify a divorce based thereon. Service of process shall be made
210 on the superintendent of the hospital in which the defendant is a
211 patient. In event the patient is in a hospital outside the state,
212 process shall be served by publication, as in other cases of
213 service by publication, together with the sending of a copy by
214 registered mail to the superintendent of said hospital. In
215 addition thereto, process shall be served upon the next blood
216 relative and guardian, if any. In event there is no legal
217 guardian, the court shall appoint a guardian ad litem to represent
218 the interest of the insane person. Such relative or guardian and
219 superintendent of the institution shall be entitled to appear and
220 be heard upon any and all issues. The status of the parties as to
221 the support and maintenance of the insane person shall not be
222 altered in any way by the granting of the divorce.

223 However, in the discretion of the chancery court, and in such
224 cases as the court may deem it necessary and proper, before any

225 such decree is granted on the ground of incurable insanity, the
226 complainant, when ordered by the court, shall enter into bond, to
227 be approved by the court, in such an amount as the court may think
228 just and proper, conditioned for the care and keeping of such
229 insane person during the remainder of his or her natural life,
230 unless such insane person has a sufficient estate in his or her
231 own right for such purpose.

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

234 93-5-23. When a divorce shall be decreed from the bonds of
235 matrimony, the court may, in its discretion, having regard to the
236 circumstances of the parties and the nature of the case, as may
237 seem equitable and just, make all orders touching the care,
238 custody and maintenance of the children of the marriage, and also
239 touching the maintenance and alimony of the wife or the husband,
240 or any allowance to be made to her or him, and shall, if need be,
241 require bond, sureties or other guarantee for the payment of the
242 sum so allowed. Orders touching on the custody of the children of
243 the marriage shall be made in accordance with the provisions of
244 Section 93-5-24. The court may afterwards, on petition, change
245 the decree, and make from time to time such new decrees as the
246 case may require. However, where proof shows that both parents
247 have separate incomes or estates, the court may require that each
248 parent contribute to the support and maintenance of the children
249 of the marriage in proportion to the relative financial ability of
250 each. In the event a legally responsible parent has health
251 insurance available to him or her through an employer or
252 organization that may extend benefits to the dependents of such
253 parent, any order of support issued against such parent may
254 require him or her to exercise the option of additional coverage
255 in favor of such children as he or she is legally responsible to
256 support.

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

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

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

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

301 The duty of support of a child terminates upon the
302 emancipation of the child. The court may determine that
303 emancipation has occurred and no other support obligation exists
304 when the child:

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

306 (b) Marries, or

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

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

314 The court may enter an order for alimony consistent with the
315 provisions of Section 2 of this act.

316 **SECTION 6.** This act shall take effect and be in force from
317 and after July 1, 2005.