

By: Representative Gunn

To: Judiciary A

## HOUSE BILL NO. 875

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) Presentation of proof that both parties have  
14 attended premarital counseling by a clergyman or marriage  
15 counselor, which premarital counseling included a discussion of  
16 the seriousness of covenant marriage.

17 (b) Signatures of both parties on notarized documents  
18 which state, "I, \_\_\_\_\_, do hereby declare my intent to enter  
19 into covenant marriage. I do so with the full understanding that  
20 a covenant marriage may not be dissolved except by reason of  
21 adultery or desertion. I have attended premarital counseling in  
22 good faith and understand my responsibilities to the marriage. I  
23 promise to seek counsel in times of trouble. I believe that I  
24 have chosen my life mate wisely and have disclosed to him or her  
25 all facts that may adversely affect his or her decision to enter  
26 into this covenant with me."

27 **SECTION 2.** Notwithstanding any provisions of law to the  
28 contrary, a covenant marriage may not be dissolved except by



29 reason of adultery or desertion. A divorce may be granted on  
30 grounds of adultery or desertion if the defendant has been guilty  
31 of adultery or desertion, but if it appears that the adultery or  
32 desertion complained of was occasioned by collusion of the parties  
33 with the intent to procure a divorce, or if it appears that both  
34 parties have been guilty of adultery or desertion, a divorce shall  
35 not be granted. If a divorce is granted, the court may consider  
36 the following guidelines:

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

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

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

49 93-1-5. It shall be unlawful for the circuit court clerk to  
50 issue a marriage license until the following conditions precedent  
51 have been complied with:

52 (a) Parties desiring a marriage license shall make  
53 application for the license in writing to the clerk of the circuit  
54 court of any county in the State of Mississippi; however, if the  
55 female applicant is under the age of twenty-one (21) years and is  
56 a resident of the State of Mississippi, the application shall be  
57 made to the circuit court clerk of the county of residence of the  
58 female applicant. The application shall be immediately filed with  
59 the circuit court clerk and shall include the names, ages and  
60 addresses of the parties applying; the names and addresses of the  
61 parents of the parties applying, and if no parents, then names and



62 addresses of the guardian or next of kin; the signatures of  
63 witnesses; and any other data that may be required by law or the  
64 State Board of Health. The application shall be sworn to by both  
65 applicants.

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

86 (c) An affidavit showing the age of both applying  
87 parties shall be made by either the father, mother, guardian or  
88 next of kin of each of the contracting parties and filed with the  
89 clerk of the circuit court along with the application; or in lieu  
90 thereof, both applying parties shall appear in person before the  
91 circuit court clerk and make and subscribe an oath in person,  
92 which affidavit shall be attached to and noted on the application  
93 for the marriage license. In addition to either of the previous  
94 conditions stated, further proof of age shall be presented to the



95 circuit court clerk in the form of either a birth certificate,  
96 baptismal record, armed service discharge, armed service  
97 identification card, life insurance policy, insurance certificate,  
98 school record, driver's license, or other official document  
99 evidencing age. The document substantiating age and date of birth  
100 shall be examined by the circuit court clerk before whom  
101 application is made, and the circuit court clerk shall retain in  
102 his file with the application the document or a certified or  
103 photostatic copy of the document.

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

119 (e) A medical certificate dated within thirty (30) days  
120 before the application shall be presented to the circuit court  
121 clerk showing that the applicant is free from syphilis, as nearly  
122 as can be determined by a blood test performed in a laboratory  
123 approved by the State Board of Health. The medical certificate  
124 may be obtained through the local health department by the  
125 applicant or applicants, or it may be obtained through any private  
126 laboratory approved by the State Board of Health. The medical



127 certificate shall be examined by the circuit court clerk and filed  
128 in a permanent file kept by the clerk for this purpose.

129 (f) In no event shall a license be issued by the  
130 circuit court clerk when it appears to the circuit court clerk  
131 that the applicants are, or either of them is, drunk or a person  
132 with mental illness or mental retardation, to the extent that the  
133 clerk believes that the person does not understand the nature and  
134 consequences of the request.

135 (g) The circuit clerk is authorized to grant a license  
136 for a covenant marriage as provided in Section 1 of the act.

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

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

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

146 93-5-1. Except as otherwise provided by Section 2 on this  
147 act, divorces from the bonds of matrimony may be decreed to the  
148 injured party for any one or more of the following twelve (12)  
149 causes:

150 First. Natural impotency.

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

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

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

159 Fifth. Habitual drunkenness.



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

162 Seventh. Habitual cruel and inhuman treatment.

163 Eighth. Mental illness or mental retardation at the time of  
164 marriage, if the party complaining did not know of that infirmity.

165 Ninth. Marriage to some other person at the time of the  
166 pretended marriage between the parties.

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

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

172 Twelfth. Incurable mental illness. However, no divorce  
173 shall be granted upon this ground unless the party with mental  
174 illness has been under regular treatment for mental illness and  
175 causes thereof, confined in an institution for persons with mental  
176 illness for a period of at least three (3) years immediately  
177 preceding the commencement of the action. However, transfer of a  
178 party with mental illness to his or her home for treatment or a  
179 trial visit on prescription or recommendation of a licensed  
180 physician, which treatment or trial visit proves unsuccessful  
181 after a bona fide effort by the complaining party to effect a  
182 cure, upon the reconfinement of the party with mental illness in  
183 an institution for persons with mental illness, shall be regular  
184 treatment for mental illness and causes thereof, and the period of  
185 time so consumed in seeking to effect a cure or while on a trial  
186 visit home shall be added to the period of actual confinement in  
187 an institution for persons with mental illness in computing the  
188 required period of three (3) years confinement immediately  
189 preceding the beginning of the action. No divorce shall be  
190 granted because of mental illness until after a thorough  
191 examination of the person with mental illness by two (2)  
192 physicians who are recognized authorities on mental diseases. One



193 (1) of those physicians shall be either the superintendent of a  
194 state psychiatric hospital or institution or a veterans hospital  
195 for persons with mental illness in which the patient is confined,  
196 or a member of the medical staff of that hospital or institution  
197 who has had the patient in charge. Before incurable mental  
198 illness can be successfully proven as a ground for divorce, it  
199 shall be necessary that both of those physicians make affidavit  
200 that the patient is a person with mental illness at the time of  
201 the examination, and both affidavits shall be made a part of the  
202 permanent record of the divorce proceedings and shall create the  
203 prima facie presumption of incurable mental illness, such as would  
204 justify a divorce based on that ground. Service of process shall  
205 be made on the superintendent of the hospital or institution in  
206 which the defendant is a patient. If the patient is in a hospital  
207 or institution outside the state, process shall be served by  
208 publication, as in other cases of service by publication, together  
209 with the sending of a copy by registered mail to the  
210 superintendent of the hospital or institution. In addition,  
211 process shall be served upon the next blood relative and guardian,  
212 if any. If there is no legal guardian, the court shall appoint a  
213 guardian ad litem to represent the interest of the person with  
214 mental illness. The relative or guardian and superintendent of  
215 the hospital or institution shall be entitled to appear and be  
216 heard upon any and all issues. The status of the parties as to  
217 the support and maintenance of the person with mental illness  
218 shall not be altered in any way by the granting of the divorce.

219 However, in the discretion of the chancery court, and in  
220 those cases as the court may deem it necessary and proper, before  
221 any such decree is granted on the ground of incurable mental  
222 illness, the complainant, when ordered by the court, shall enter  
223 into bond, to be approved by the court, in such an amount as the  
224 court may think just and proper, conditioned for the care and  
225 keeping of the person with mental illness during the remainder of



226 his or her natural life, unless the person with mental illness has  
227 a sufficient estate in his or her own right for that purpose.

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

230 93-5-23. When a divorce shall be decreed from the bonds of  
231 matrimony, the court may, in its discretion, having regard to the  
232 circumstances of the parties and the nature of the case, as may  
233 seem equitable and just, make all orders touching the care,  
234 custody and maintenance of the children of the marriage, and also  
235 touching the maintenance and alimony of the wife or the husband,  
236 or any allowance to be made to her or him, and shall, if need be,  
237 require bond, sureties or other guarantee for the payment of the  
238 sum so allowed. Orders touching on the custody of the children of  
239 the marriage shall be made in accordance with the provisions of  
240 Section 93-5-24. For the purposes of orders touching the  
241 maintenance and alimony of the wife or husband, "property" and "an  
242 asset of a spouse" shall not include any interest a party may have  
243 as an heir at law of a living person or any interest under a  
244 third-party will, nor shall any such interest be considered as an  
245 economic circumstance or other factor. The court may afterwards,  
246 on petition, change the decree, and make from time to time such  
247 new decrees as the case may require. However, where proof shows  
248 that both parents have separate incomes or estates, the court may  
249 require that each parent contribute to the support and maintenance  
250 of the children of the marriage in proportion to the relative  
251 financial ability of each. In the event a legally responsible  
252 parent has health insurance available to him or her through an  
253 employer or organization that may extend benefits to the  
254 dependents of such parent, any order of support issued against  
255 such parent may require him or her to exercise the option of  
256 additional coverage in favor of such children as he or she is  
257 legally responsible to support.





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

270 At the discretion of the court, any person found in contempt  
271 for failure to pay child support and imprisoned therefor may be  
272 referred for placement in a state, county or municipal  
273 restitution, house arrest or restorative justice center or  
274 program, provided such person meets the qualifications prescribed  
275 in Section 99-37-19.

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



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

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

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

311 Custody and visitation upon military temporary duty,  
312 deployment or mobilization shall be governed by Section 93-5-34.

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

315 **SECTION 6.** This act shall take effect and be in force from  
316 and after July 1, 2010.

