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To: Judiciary A

HOUSE BILL NO. 696

1 AN ACT TO AMEND SECTIONS 93-5-1 AND 93-5-2, MISSISSIPPI CODE
2 OF 1972, TO REQUIRE COUNSELING FOR CHILDREN OF PARENTS WHO WISH TO
3 DIVORCE; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 93-5-1, Mississippi Code of 1972, is
6 amended as follows:[HS1]

7 93-5-1. Divorces from the bonds of matrimony may be decreed
8 to the injured party for any one or more of the following twelve
9 (12) causes, viz:

10 First. Natural impotency.

11 Second. Adultery, unless it should appear that it was
12 committed by collusion of the parties for the purpose of procuring
13 a divorce, or unless the parties cohabited after a knowledge by
14 complainant of the adultery.

15 Third. Being sentenced to any penitentiary, and not pardoned
16 before being sent there.

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

19 Fifth. Habitual drunkenness.

20 Sixth. Habitual and excessive use of opium, morphine or
21 other like drug.

22 Seventh. Habitual cruel and inhuman treatment.

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

25 Ninth. Marriage to some other person at the time of the
26 pretended marriage between the parties.

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

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

32 Twelfth. Incurable insanity. But no divorce shall be
33 granted upon this ground unless the insane party shall have been
34 under regular treatment for insanity and causes thereof, confined
35 in an institution for the insane for a period of at least three
36 (3) years immediately preceding the commencement of the action.
37 Provided, however, that transfer of an insane party to his or her
38 home for treatment or a trial visit on prescription or
39 recommendation of a licensed physician, which treatment or trial
40 visit proves unsuccessful after a bona fide effort by the
41 complaining party to effect a cure, upon the reconfinement of the
42 insane party in an institution for the insane, shall be regular
43 treatment for insanity and causes thereof, and the period of time
44 so consumed in seeking to effect a cure, or while on a trial visit
45 home, shall be added to the period of actual confinement in an
46 institution for the insane in computing the required period of
47 three (3) years confinement immediately preceding the commencement
48 of the action. No divorce shall be granted because of insanity
49 until after a thorough examination of such insane person by two
50 (2) physicians who are recognized authorities on mental diseases.
51 One (1) such physician shall be either the superintendent of the
52 state hospital or the veterans hospital for the insane in which

53 the patient is confined, or a member of the medical staff of such
54 hospital who has had the patient in charge. Before incurable
55 insanity can be successfully proven as a ground for divorce, it
56 shall be necessary that both such physicians make affidavit that
57 such patient is a mentally disturbed person at the time of the
58 examination and both affidavits shall be made a part of the
59 permanent record of the divorce proceedings and shall create the
60 prima facie presumption of incurable insanity, such as would
61 justify a divorce based thereon. Service of process shall be made
62 on the superintendent of the hospital in which the defendant is a
63 patient. In event the patient is in a hospital outside the state,
64 process shall be served by publication, as in other cases of
65 service by publication, together with the sending of a copy by
66 registered mail to the superintendent of said hospital. In
67 addition thereto, process shall be served upon the next blood
68 relative and guardian, if any. In event there is no legal
69 guardian, the court shall appoint a guardian ad litem to represent
70 the interest of the insane person. Such relative or guardian and
71 superintendent of the institution shall be entitled to appear and
72 be heard upon any and all issues. The status of the parties as to
73 the support and maintenance of the insane person shall not be
74 altered in any way by the granting of the divorce.

75 However, in the discretion of the chancery court, and in such
76 cases as the court may deem it necessary and proper, before any
77 such decree is granted on the ground of incurable insanity, the
78 complainant, when ordered by the court, shall enter into bond, to
79 be approved by the court, in such an amount as the court may think
80 just and proper, conditioned for the care and keeping of such

81 insane person during the remainder of his or her natural life,
82 unless such insane person has a sufficient estate in his or her
83 own right for such purpose.

84 Before any decree of divorce is granted to a husband and wife
85 who have any minor children, the court shall require that the
86 children undergo counseling as often as the court determines
87 necessary regarding the effect that the divorce will have on the
88 children. The costs of the counseling shall be paid by the
89 parents. The counselor shall be approved by the court. The
90 counselor shall provide written verification to the court that the
91 requirements of this paragraph have been met.

92 SECTION 2. Section 93-5-2, Mississippi Code of 1972, is
93 amended as follows:

94 93-5-2. (1) Divorce from the bonds of matrimony may be
95 granted on the ground of irreconcilable differences, but only upon
96 the joint complaint of the husband and wife or a complaint where
97 the defendant has been personally served with process or where the
98 defendant has entered an appearance by written waiver of process.

99 (2) If the parties provide by written agreement for the
100 custody and maintenance of any children of that marriage and for
101 the settlement of any property rights between the parties and the
102 court finds that such provisions are adequate and sufficient, the
103 agreement may be incorporated in the judgment, and such judgment
104 may be modified as other judgments for divorce.

105 (3) If the parties are unable to agree upon adequate and
106 sufficient provisions for the custody and maintenance of any
107 children of that marriage or any property rights between them,
108 they may consent to a divorce on the ground of irreconcilable

109 differences and permit the court to decide the issues upon which
110 they cannot agree. Such consent must be in writing, signed by
111 both parties personally, must state that the parties voluntarily
112 consent to permit the court to decide such issues, which shall be
113 specifically set forth in such consent, and that the parties
114 understand that the decision of the court shall be a binding and
115 lawful judgment. Such consent may not be withdrawn by a party
116 without leave of the court after the court has commenced any
117 proceeding, including the hearing of any motion or other matter
118 pertaining thereto. The failure or refusal of either party to
119 agree as to adequate and sufficient provisions for the custody and
120 maintenance of any children of that marriage or any property
121 rights between the parties, or any portion of such issues, or the
122 failure or refusal of any party to consent to permit the court to
123 decide such issues, shall not be used as evidence, or in any
124 manner, against such party. No divorce shall be granted pursuant
125 to this subsection until all matters involving custody and
126 maintenance of any child of that marriage and property rights
127 between the parties raised by the pleadings have been either
128 adjudicated by the court or agreed upon by the parties and found
129 to be adequate and sufficient by the court and included in the
130 judgment of divorce. Appeals from any orders and judgments
131 rendered pursuant to this subsection may be had as in other cases
132 in chancery court only insofar as such orders and judgments relate
133 to issues that the parties consented to have decided by the court.

134 (4) Complaints for divorce on the ground of irreconcilable
135 differences must have been on file for sixty (60) days before
136 being heard. Except as otherwise provided in subsection (3) of

137 this section, a joint complaint of husband and wife or a complaint
138 where the defendant has been personally served with process or
139 where the defendant has entered an appearance by written waiver of
140 process, for divorce solely on the ground of irreconcilable
141 differences, shall be taken as proved and a final judgment entered
142 thereon, as in other cases and without proof or testimony in
143 termtime or vacation, the provisions of Section 93-5-17 to the
144 contrary notwithstanding.

145 (5) Except as otherwise provided in subsection (3) of this
146 section, no divorce shall be granted on the ground of
147 irreconcilable differences where there has been a contest or
148 denial; provided, however, that a divorce may be granted on the
149 grounds of irreconcilable differences where there has been a
150 contest or denial, if the contest or denial has been withdrawn or
151 cancelled by the party filing same by leave and order of the
152 court.

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

156 (7) Before granting a decree of divorce to a husband and
157 wife who have minor children, the court shall require counseling
158 for the children as provided in Section 93-5-1.

159 SECTION 3. This act shall take effect and be in force from
160 and after July 1, 2000.