

By: Representative Scott (80th)

To: Judiciary A

HOUSE BILL NO. 1197

1 AN ACT TO AMEND SECTIONS 93-5-1 AND 93-5-2, MISSISSIPPI CODE
2 OF 1972, TO REQUIRE COUNSELING OF CHILDREN OF PARENTS WHO ARE
3 SEEKING A 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:

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 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 When a decree of divorce is granted to a husband and wife
85 who have any minor children, the court shall require as part of
86 the decree granting the divorce that the children undergo
87 counseling regarding the effect that the divorce will have on such
88 children and how the parents can help the children cope with the
89 divorce. The counselor shall be approved by the court. The
90 counselor shall provide written verification to the court and
91 shall state the extent to which any minor child shall need



92 additional counseling. The court shall order one (1) or both
93 parents to pay the costs of such counseling.

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

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

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

107 (3) If the parties are unable to agree upon adequate and
108 sufficient provisions for the custody and maintenance of any
109 children of that marriage or any property rights between them,
110 they may consent to a divorce on the ground of irreconcilable
111 differences and permit the court to decide the issues upon which
112 they cannot agree. Such consent must be in writing, signed by
113 both parties personally, must state that the parties voluntarily
114 consent to permit the court to decide such issues, which shall be
115 specifically set forth in such consent, and that the parties
116 understand that the decision of the court shall be a binding and
117 lawful judgment. Such consent may not be withdrawn by a party
118 without leave of the court after the court has commenced any
119 proceeding, including the hearing of any motion or other matter
120 pertaining thereto. The failure or refusal of either party to
121 agree as to adequate and sufficient provisions for the custody and
122 maintenance of any children of that marriage or any property
123 rights between the parties, or any portion of such issues, or the
124 failure or refusal of any party to consent to permit the court to



125 decide such issues, shall not be used as evidence, or in any
126 manner, against such party. No divorce shall be granted pursuant
127 to this subsection until all matters involving custody and
128 maintenance of any child of that marriage and property rights
129 between the parties raised by the pleadings have been either
130 adjudicated by the court or agreed upon by the parties and found
131 to be adequate and sufficient by the court and included in the
132 judgment of divorce. Appeals from any orders and judgments
133 rendered pursuant to this subsection may be had as in other cases
134 in chancery court only insofar as such orders and judgments relate
135 to issues that the parties consented to have decided by the court.

136 (4) Complaints for divorce on the ground of irreconcilable
137 differences must have been on file for sixty (60) days before
138 being heard. Except as otherwise provided in subsection (3) of
139 this section, a joint complaint of husband and wife or a complaint
140 where the defendant has been personally served with process or
141 where the defendant has entered an appearance by written waiver of
142 process, for divorce solely on the ground of irreconcilable
143 differences, shall be taken as proved and a final judgment entered
144 thereon, as in other cases and without proof or testimony in
145 termtime or vacation, the provisions of Section 93-5-17 to the
146 contrary notwithstanding.

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

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



158 (7) A decree of divorce to a husband and wife who have any
159 minor children shall include a provision requiring counseling for
160 the children as provided in Section 93-5-1.

161 **SECTION 3.** This act shall take effect and be in force from
162 and after July 1, 2002.

