

By: Representative Scott (80th)

To: Judiciary A

HOUSE BILL NO. 1251

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 BEING GRANTED 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 who  
85 have minor children, the court shall require as part of the decree  
86 that the children undergo counseling regarding the effect that the  
87 divorce will have on the children and how the parents can help the  
88 children cope with the divorce. The counselor shall be approved  
89 by the court. The counselor shall provide written verification to  
90 the court and shall state the extent to which any minor child  
91 shall need additional counseling. The court shall order one (1)  
92 or both parents to pay the costs of such counseling.



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

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

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

106           (3) If the parties are unable to agree upon adequate and  
107 sufficient provisions for the custody and maintenance of any  
108 children of that marriage or any property rights between them,  
109 they may consent to a divorce on the ground of irreconcilable  
110 differences and permit the court to decide the issues upon which  
111 they cannot agree. Such consent must be in writing, signed by  
112 both parties personally, must state that the parties voluntarily  
113 consent to permit the court to decide such issues, which shall be  
114 specifically set forth in such consent, and that the parties  
115 understand that the decision of the court shall be a binding and  
116 lawful judgment. Such consent may not be withdrawn by a party  
117 without leave of the court after the court has commenced any  
118 proceeding, including the hearing of any motion or other matter  
119 pertaining thereto. The failure or refusal of either party to  
120 agree as to adequate and sufficient provisions for the custody and  
121 maintenance of any children of that marriage or any property  
122 rights between the parties, or any portion of such issues, or the  
123 failure or refusal of any party to consent to permit the court to  
124 decide such issues, shall not be used as evidence, or in any  
125 manner, against such party. No divorce shall be granted pursuant



126 to this subsection until all matters involving custody and  
127 maintenance of any child of that marriage and property rights  
128 between the parties raised by the pleadings have been either  
129 adjudicated by the court or agreed upon by the parties and found  
130 to be adequate and sufficient by the court and included in the  
131 judgment of divorce. Appeals from any orders and judgments  
132 rendered pursuant to this subsection may be had as in other cases  
133 in chancery court only insofar as such orders and judgments relate  
134 to issues that the parties consented to have decided by the court.

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

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

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



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

160           **SECTION 3.** This act shall take effect and be in force from  
161 and after July 1, 2003.

