

By: Representative Franks

To: Judiciary A

## HOUSE BILL NO. 1258

1 AN ACT TO PROVIDE THAT DIVORCE OR ANNULMENT SHALL CAUSE  
2 PROPERTY IN THE WILL TO PASS AS THOUGH THE FORMER SPOUSE  
3 PREDECEASED THE TESTATOR UNLESS THE WILL EXPRESSLY PROVIDES  
4 OTHERWISE; TO AMEND SECTION 91-5-3, MISSISSIPPI CODE OF 1972, IN  
5 CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED  
6 PURPOSES.

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

8 **SECTION 1.** If after executing a will the testator is  
9 divorced, the divorce shall cause all property in the will to pass  
10 as though the former spouse predeceased the testator, unless the  
11 will expressly provides otherwise. The divorce shall also nullify  
12 any provision conferring a general or special power of appointment  
13 on the former spouse and any nomination of the former spouse as  
14 executor, trustee, conservator or guardian, unless the will  
15 expressly provides otherwise. Property prevented from passing to  
16 the former spouse because of this section shall be passed as if  
17 the spouse predeceased the testator. Other provisions of the will  
18 conferring a power or office on the former spouse shall be  
19 interpreted as if the spouse predeceased the testator. Remarriage  
20 to the former spouse revives any provisions of the will that were  
21 nullified under this section, unless another will has been  
22 executed. For the purpose of this section, divorce means any  
23 divorce that would exclude the spouse as a surviving spouse within  
24 the meaning of Sections 93-5-1 and 93-5-2.

25 **SECTION 2.** If after executing a will the testator's marriage  
26 is annulled, the annulment shall cause all property in the will to  
27 pass as though the former spouse predeceased the testator, unless  
28 the will expressly provides otherwise. The annulment shall also  
29 nullify any provision conferring a general or special power of

30 appointment on the former spouse and any nomination of the former  
31 spouse as executor, trustee, conservator or guardian, unless the  
32 will expressly provides otherwise. Property prevented from  
33 passing to the former spouse because of this section shall be  
34 passed as if the spouse predeceased the testator. Other  
35 provisions of the will conferring a power or office on the former  
36 spouse shall be interpreted as if the spouse predeceased the  
37 testator. Remarriage to the former spouse revives any provisions  
38 of the will that were nullified under this section. For the  
39 purpose of this section, annulment means any annulment that would  
40 exclude the spouse as a surviving spouse within the meaning of  
41 Section 93-7-1.

42 **SECTION 3.** Section 91-5-3, Mississippi Code of 1972, is  
43 amended as follows:

44 91-5-3. A devise so made, or any clause thereof, shall not  
45 be revocable but by the testator or testatrix destroying,  
46 canceling, or obliterating the same, or causing it to be done in  
47 his or her presence, or by subsequent will, codicil, or  
48 declaration, in writing, made and executed, or as provided in  
49 Section 1 or 2 of this act. Every last will and testament made  
50 when the testator or testatrix had no child living, wherein any  
51 child he or she might have is not provided for or not mentioned,  
52 if at the time of his or her death he or she have a child, or if  
53 the testator leave his wife enceinte of a child who shall be born,  
54 shall have no effect during the life of any such after-born child  
55 and shall be void unless the child die without having been  
56 married, or without leaving issue capable of inheriting, and  
57 before he or she shall have attained twenty-one (21) years. The  
58 estate, both real and personal, so devised shall descend to such  
59 child in the same manner as if the testator or testatrix had died  
60 intestate, subject, nevertheless, to the bequests made in the last  
61 will and testament in case of the death of such child before  
62 marriage, or without issue capable of inheriting, and under the

63 age of twenty-one (21) years. When a testator shall leave  
64 children born and his wife enceinte, the posthumous child or  
65 children, if unprovided for by settlement and neither provided for  
66 nor disinherited, but only pretermitted, by the last will and  
67 testament, shall succeed to the same portion of the father's  
68 estate as such child or children would have been entitled to if  
69 the father had died intestate, towards raising which portion the  
70 devisees and legatees shall contribute proportionably out of the  
71 parts devised and bequeathed to them by the same will and  
72 testament.

73       **SECTION 4.** This act shall take effect and be in force from  
74 and after July 1, 2004.