

By: Representative Franks

To: Judiciary A

HOUSE BILL NO. 804

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, 2006.