

By: Representatives Clarke, Thomas

To: Judiciary A

HOUSE BILL NO. 1421

1 AN ACT TO AMEND SECTIONS 93-5-1 AND 93-5-2, MISSISSIPPI CODE
2 OF 1972, TO REQUIRE COUNSELING FOR THE MINOR CHILDREN OF PARENTS
3 WHO ARE SEEKING A DIVORCE AND FOR THE PARENTS BEFORE A DECREE OF
4 DIVORCE CAN BE GRANTED; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 93-5-1, Mississippi Code of 1972, is
7 amended as follows:

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

11 First. Natural impotency.

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

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

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

20 Fifth. Habitual drunkenness.

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

23 Seventh. Habitual cruel and inhuman treatment.

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

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



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

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

33 Twelfth. Incurable insanity. But no divorce shall be
34 granted upon this ground unless the insane party shall have been
35 under regular treatment for insanity and causes thereof, confined
36 in an institution for the insane for a period of at least three
37 years immediately preceding the commencement of the action.
38 Provided, however, that transfer of an insane party to his or her
39 home for treatment or a trial visit on prescription or
40 recommendation of a licensed physician, which treatment or trial
41 visit proves unsuccessful after a bona fide effort by the
42 complaining party to effect a cure, upon the reconfinement of the
43 insane party in an institution for the insane, shall be regular
44 treatment for insanity and causes thereof, and the period of time
45 so consumed in seeking to effect a cure, or while on a trial visit
46 home, shall be added to the period of actual confinement in an
47 institution for the insane in computing the required period of
48 three (3) years confinement immediately preceding the commencement
49 of the action. No divorce shall be granted because of insanity
50 until after a thorough examination of such insane person by two
51 (2) physicians who are recognized authorities on mental diseases.
52 One (1) such physician shall be either the superintendent of the
53 state hospital or the veterans hospital for the insane in which
54 the patient is confined, or a member of the medical staff of such
55 hospital who has had the patient in charge. Before incurable
56 insanity can be successfully proven as a ground for divorce, it
57 shall be necessary that both such physicians make affidavit that
58 such patient is a mentally disturbed person at the time of the
59 examination and both affidavits shall be made a part of the
60 permanent record of the divorce proceedings and shall create the



61 prima facie presumption of incurable insanity, such as would
62 justify a divorce based thereon. Service of process shall be made
63 on the superintendent of the hospital in which the defendant is a
64 patient. In event the patient is in a hospital outside the state,
65 process shall be served by publication, as in other cases of
66 service by publication, together with the sending of a copy by
67 registered mail to the superintendent of said hospital. In
68 addition thereto, process shall be served upon the next blood
69 relative and guardian, if any. In event there is no legal
70 guardian, the court shall appoint a guardian ad litem to represent
71 the interest of the insane person. Such relative or guardian and
72 superintendent of the institution shall be entitled to appear and
73 be heard upon any and all issues. The status of the parties as to
74 the support and maintenance of the insane person shall not be
75 altered in any way by the granting of the divorce.

76 However, in the discretion of the chancery court, and in such
77 cases as the court may deem it necessary and proper, before any
78 such decree is granted on the ground of incurable insanity, the
79 complainant, when ordered by the court, shall enter into bond, to
80 be approved by the court, in such an amount as the court may think
81 just and proper, conditioned for the care and keeping of such
82 insane person during the remainder of his or her natural life,
83 unless such insane person has a sufficient estate in his or her
84 own right for such purpose.

85 Before any decree of divorce is granted to a husband and
86 wife, the court shall require that the husband and wife undergo
87 counseling as often as the court determines necessary in order to
88 salvage the marriage. The counselor shall be approved by the
89 court. The counselor shall provide written verification to the
90 court that the requirements of this paragraph have been met.

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



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

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

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



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

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

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

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

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



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

