

By: Representative Whittington

To: Public Health and Human  
Services

HOUSE BILL NO. 439

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 (3) 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 wife  
86 who have any minor children, the court shall require that the  
87 husband and wife and the children undergo counseling as often as  
88 the court determines necessary regarding the effect that the  
89 divorce will have on such children and how the parents can help  
90 the children cope with the divorce. The counselor shall be  
91 approved by the court. The counselor shall provide written  
92 verification to the court that the requirements of this paragraph

93 have been met. The court shall order one (1) or both parents to  
94 pay the costs of such counseling.

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

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

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

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 Such consent may not be withdrawn by a party  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

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

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

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

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

159           (7) Before granting a decree of divorce to a husband and  
160 wife who have any minor children, the court shall require  
161 counseling for the husband and wife and the children as provided  
162 in Section 93-5-1.

163           **SECTION 3.** This act shall take effect and be in force from  
164 and after July 1, 2006.