

HOUSE BILL 438

By DuBois

AN ACT to amend Tennessee Code Annotated, Title 36,
Chapter 4, relative to divorce.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-4-101, is amended by designating all of the current language as subsection (a) and by adding the following new subsections:

(b) Bills for divorce on the ground of irreconcilable differences must have been on file for sixty (60) days before being heard if the parties have no unmarried child under the age of eighteen (18) years. Absent mutual consent as provided for in subsection (c), if the grounds for divorce are those set forth in subdivisions (a)(11), (12) or (14), then the bill for divorce must have been on file for at least one hundred eighty (180) days if the parties have unmarried children between the ages of fifteen (15) and eighteen (18) years before being heard and at least three hundred sixty five (365) days if the parties have an unmarried child under the age of fifteen (15) years; but this requirement shall not prohibit the granting of a legal separation pursuant to § 36-4-102. The time periods for which bills for divorce must be on file pursuant to this subsection (b) shall commence on the date the original bill was filed and not on the date the bill was amended to include the ground of irreconcilable differences.

(c) In any case pending and commenced on the grounds set forth in subdivision (a)(11) or (12), the court may grant a divorce without regard for the waiting periods set forth in (b) if the court is informed that the defendant:

(1) Filed for a divorce in this state during a period beginning shortly before the plaintiff's filing in another venue and ending when the final order concerning the divorce is entered;

(2) Consents during the period described in subsection (b) orally, in person, in open court or by transmitting to the court where the case is pending any pleading, form, or signed writing which consents to the divorce;

(3) Has agreed in a binding written contract, premarital agreement, marital agreement, or separation agreement, to consent to, or not to file objection to, a divorce on "no-fault" or "irreconcilable differences" grounds; or

(4) Has agreed, in a written agreement or court form completed by both spouses at the time of the marriage that provided a choice of divorce laws, that the marriage may legally be dissolved on "no-fault" or "irreconcilable differences" grounds with no pre-divorce counseling required, and there has been no later written agreement or joint declaration revoking or superseding that agreement or form.

(d)(1) The court may grant a divorce pursuant to subsection (c) without regard to the following:

(A) Any previously filed or asserted contest or denial of the grounds of irreconcilable differences made pursuant to § 36-4-103(e);

(B) Whether the defendant filed for divorce as described in subdivision (c)(1) in a proper venue; or

(C) Whether the allegations in the original pleadings were true or proved, unless it finds they were made in bad faith.

(2) The court need not and shall not reopen a case, after a final order granting a divorce, to change the grounds of the divorce to consent grounds, except at its discretion upon motion of both parties.

SECTION 2. Tennessee Code Annotated, Section 36-4-102, is amended by deleting the existing subsection (b) in its entirety and by substituting instead the following:

(b) If the other party specifically objects to legal separation, the court may, after a hearing, grant an order of legal separation, notwithstanding such objections, if the court determines the plaintiff will suffer immediate and irreparable injury or the plaintiff is more likely than not to establish one (1) or more of the grounds set forth in § 36-4-101(a). The court also has the power to grant an absolute divorce to either party where there has been an order of legal separation for more than two (2) years upon a petition being filed by either party that sets forth the original order for legal separation and that the parties have not become reconciled. The court granting the divorce shall make a final and complete adjudication of the support and property rights of the parties. However, nothing in this subsection (b) shall preclude the court from granting an absolute divorce before the two-year period has expired.

SECTION 3. Tennessee Code Annotated, Section 36-4-103, is amended by deleting subdivision (c)(1) in its entirety and by designating the existing subdivision (c)(2) as subsection (c).

SECTION 4. Tennessee Code Annotated, Title 36, Chapter 4, is amended by adding the following as a new appropriately designated section:

§ 36-4-134.

(a) When the parties to a divorce action choose to enter into marital counseling together with a counselor of their choosing, the counselor shall not divulge information disclosed to the counselor by the parties or by others in the course of counseling. All records, reports, and other documents developed by the counselor or provided by the parties to the counselor in connection with the counseling are confidential and privileged.

(b) Communications made during counseling may be disclosed only:

(1) When all parties to the counseling agree, in writing, to waive the confidentiality of the written information;

(2) In a subsequent action between the counselor and a party to the counseling for damages arising out of the counseling;

(3) When statements, memoranda, materials and other tangible evidence are otherwise subject to discovery and were not prepared specifically for use in and actually used in counseling;

(4) When the parties to the mediation are engaged in litigation with a third party and the court determines that fairness to the third party requires that the fact or substance of an agreement resulting from mediation be disclosed; or

(5) When the disclosure reveals abuse or neglect of a child by one (1) of the parties.

(c) The counselor shall not be compelled to testify in any proceeding, unless all parties to the counseling and the counselor agree in writing.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.