

1 HB393
2 128104-1
3 By Representatives Melton, England, Moore (M), Morrow, Love,
4 Davis, Colston, Grimsley, Williams (P), Merrill, Robinson (O),
5 Scott, Laird, McClurkin and Bridges
6 RFD: Judiciary
7 First Read: 31-MAR-11

8 SYNOPSIS: Under existing law, a court can enter a
9 final judgment of divorce 30 days from the date of
10 the filing of the summons and complaint.

11 This bill would require a waiting period of
12 365 days before a final judgment of divorce could
13 be entered if there are minor children resulting
14 from the marriage of the parties to the divorce.

15 This bill would require a waiting period of
16 180 days before a final judgment of divorce could
17 be entered if there are no minor children of the
18 marriage or if the court finds by clear and
19 convincing evidence that there is domestic violence
20 or child abuse.

21 This bill would require the party requesting
22 a divorce to submit a family plan regarding any
23 child born to the marriage.

24 This bill would provide for the rights of a
25 parent who does not have physical custody of a
26 child born to the marriage unless the parent has
27 been convicted of domestic violence or child abuse.

This bill would require a waiting period of 180 days before a final judgment of divorce could be entered where there are no minor children resulting from the marriage of the parties to the divorce if the court finds that one or both of the parties has committed domestic violence or child abuse.

This bill would require, within the 12-month waiting period, the adult parties to a divorce to participate jointly or separately in a minimum number of marital counseling sessions.

A BILL

TO BE ENTITLED

AN ACT

To amend Section 30-2-8.1, Code of Alabama 1975, relating to divorce; to provide legislative findings; to require a 365-day waiting period before a final judgment of divorce could be entered if there are minor children resulting from the marriage of the parties to the divorce; to require a waiting period of 180 days before a final judgment of divorce could be entered where there are no minor children resulting from the marriage of the parties to the divorce if the court finds that one or both of the parties has committed domestic violence or child abuse; to require the party requesting a divorce to submit a family plan regarding any child born to

1 the marriage; and to provide for the rights of the parent who
2 does not have physical custody of a child born to the marriage
3 unless the parent has been convicted of domestic violence or
4 child abuse.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. The Legislature finds each of the
7 following:

8 (1) Social science has shown that children of single
9 parent families are twice as likely to drop out of school,
10 three times as likely to become pregnant as a teenager, six
11 times more likely to be in poverty, and 12 times more likely
12 to be incarcerated.

13 (2) Alabama has one of the highest divorce rates in
14 the United States and the people that suffer the most from
15 divorce are the minor children. The purpose of this act is to
16 encourage reconciliation and less divorce.

17 Section 2. Section 30-2-8.1, Code of Alabama 1975,
18 is amended to read as follows:

19 "§30-2-8.1.

20 "(a) (1) A court shall not enter a final judgment of
21 divorce until after the expiration of 30 days from the date of
22 the filing of the summons and complaint. Except as provided in
23 subdivision (2), if a court finds there are minor children of
24 the marriage, the court may not enter a final judgment of
25 divorce until after the expiration of 365 days from the date
26 of the filing of the summons and complaint after each party
27 submits to the court certification of completion of the

1 marital counseling as required by subsection (e), unless the
2 court finds that one of the parties has willfully failed or
3 otherwise cannot complete or attend marital counseling.

4 "(2) A court may enter a final judgment of divorce
5 after the expiration of 180 days from the date of the filing
6 of the summons and complaint if:

7 "a. There are no minor children of the marriage.
8 "b. There are minor children of the marriage but the
9 court finds by clear and convincing evidence there is domestic
10 violence or child abuse.

11 "c. Each party submits to the court certification of
12 completion of the marital counseling as required by subsection
13 (e) unless the court finds that one of the parties has
14 willfully failed or otherwise cannot complete or attend
15 marital counseling.

16 "(b) This section shall not restrict the power of
17 the court to enter any temporary orders necessary prior to the
18 expiration of the waiting period. The temporary orders may
19 include, but shall not be limited to, temporary orders on
20 custody, spousal or child support, visitation, exclusive
21 occupancy of the marital residence, or restraining the
22 parties. When minor children are the product of the marriage,
23 the court shall refer to subsections (c) and (d).

24 "(c) The court shall require a temporary family plan
25 to be submitted to the court by the parties requesting a
26 divorce where minor children are the product of the marriage.
27 A plan may be submitted by either party or a joint plan agreed

1 upon by both parties. The plan shall include, but not be
2 limited to, occupancy of the marital residence, financial
3 responsibility of marital residence, spousal support for the
4 minor children, child support, parenting time, transportation,
5 school and church to attend, holiday schedule, and medical and
6 dental insurance. The court shall give preference to any joint
7 agreed upon temporary family plan submitted by the parties.
8 The court may not deviate from a joint plan agreed to by the
9 parties unless by the clear and convincing evidence standard,
10 the plan places either party or the minor children in imminent
11 danger. If one party willfully refuses to submit a plan, the
12 plan submitted by the other party shall have preference. If
13 both parties willfully refuse to submit a plan, the court
14 shall enter a plan using the least restrictive means
15 available.

16 "(d) The following are the rights of a parent where
17 a child is not in the physical care of that parent unless that
18 parent has been convicted by a court of proper jurisdiction of
19 domestic violence or child abuse:

20 "(1) The right to unimpeded telephone conversations
21 with each child at least twice a week.

22 "(2) The right to send mail or email to each child,
23 which the other parent will not open or censor.

24 "(3) The right to receive notice and relevant
25 information as soon as practicable but within 24 hours of any
26 event of hospitalization, major illness, or death of each
27 child.

"(4) The right to receive directly from the school of each child, upon written request which includes a current mailing address, copies of each report card, attendance of each child, records, names of teachers, class schedules, standardized test scores, and any other records customarily made available to parents.

"(5) The right to receive, directly from each child's physician and other health care providers, copies of each child's medical records, provided that a written request is made to the provider with a current mailing address and payment for reasonable cost of duplicating and mailing records.

"(6) The right to be notified as soon as practicable but within 24 hours in advance of any extracurricular activities in which each child is participating.

"(e) (1) Within the waiting periods as prescribed by subdivisions (1) and (2), the adult parties to the action shall participate jointly or separately in at least 10 one-hour marital counseling sessions. The marital counseling, which may be provided by a paid or volunteer counselor, clergy member, or any state certified or licensed marriage mediator, shall include at least four sessions that focus on post-marital financial planning.

"(2) The court may not require both parties to attend the same course at the same time. Each party shall arrange for his or her participation in the marital counseling sessions. Each party shall be responsible for the fees or

1 costs of the marital counseling sessions unless there is a
2 finding of financial hardship by the court. The court may
3 assess the counseling fees or costs as the court deems
4 equitable."

5 Section 3. All laws or parts of laws which conflict
6 with this act are repealed.

7 Section 4. This act shall become effective on the
8 first day of the third month following its passage and
9 approval by the Governor, or its otherwise becoming law.