

By: Representative Taylor

To: Judiciary A

## HOUSE BILL NO. 370

1 AN ACT TO AMEND SECTION 93-5-1, MISSISSIPPI CODE OF 1972, TO  
2 INCLUDE THE GROUND OF IRRECONCILABLE DIFFERENCES AMONG THE OTHER  
3 GROUNDS FOR WHICH DIVORCES MAY BE DECREED TO THE INJURED PARTY; TO  
4 PROVIDE THAT A DIVORCE ON THE GROUND OF IRRECONCILABLE DIFFERENCES  
5 MAY BE GRANTED UPON PROOF OF ANY BEHAVIOR OR CONDUCT ENGAGED IN BY  
6 THE OFFENDING PARTY WHICH SUBSTANTIALLY IMPAIRS THE JOINT PURPOSES  
7 OF THE MARRIAGE OR WHICH RENDERS FUTURE COHABITATION UNLIKELY; TO  
8 AMEND SECTIONS 93-5-2, 93-5-7 AND 93-5-11, MISSISSIPPI CODE OF  
9 1972, TO DISTINGUISH DIVORCES WHICH MAY BE DECREED TO THE INJURED  
10 PARTY ON THE GROUND OF IRRECONCILABLE DIFFERENCES FROM DIVORCES ON  
11 THE GROUND OF IRRECONCILABLE DIFFERENCES UPON JOINT BILL OF THE  
12 HUSBAND AND WIFE; TO AMEND SECTION 93-5-17, MISSISSIPPI CODE OF  
13 1972, TO PROVIDE THAT A DIVORCE DECREE ON THE GROUND OF  
14 IRRECONCILABLE DIFFERENCES UPON JOINT BILL OF THE HUSBAND AND WIFE  
15 NEED NOT BE ENTERED IN OPEN COURT; AND FOR RELATED PURPOSES.

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

17 SECTION 1. Section 93-5-1, Mississippi Code of 1972, is  
18 amended as follows:

19 93-5-1. Divorces from the bonds of matrimony may be decreed  
20 to the injured party for any one or more of the following thirteen  
21 (13) causes, viz:

22 First. Natural impotency.

23 Second. Adultery, unless it should appear that it was  
24 committed by collusion of the parties for the purpose of procuring  
25 a divorce, or unless the parties cohabited after a knowledge by  
26 complainant of the adultery.

27 Third. Being sentenced to any penitentiary, and not pardoned  
28 before being sent there.

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

31 Fifth. Habitual drunkenness.

32 Sixth. Habitual and excessive use of opium, morphine or

33 other like drug.

34 Seventh. Habitual cruel and inhuman treatment.

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

37 Ninth. Marriage to some other person at the time of the  
38 pretended marriage between the parties.

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

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

44 Twelfth. Incurable insanity. But no divorce shall be  
45 granted upon this ground unless the insane party shall have been  
46 under regular treatment for insanity and causes thereof, confined  
47 in an institution for the insane for a period of at least three  
48 (3) years immediately preceding the commencement of the action.  
49 Provided, however, that transfer of an insane party to his or her  
50 home for treatment or a trial visit on prescription or  
51 recommendation of a licensed physician, which treatment or trial  
52 visit proves unsuccessful after a bona fide effort by the  
53 complaining party to effect a cure, upon the reconfinement of the  
54 insane party in an institution for the insane, shall be regular  
55 treatment for insanity and causes thereof, and the period of time  
56 so consumed in seeking to effect a cure, or while on a trial visit  
57 home, shall be added to the period of actual confinement in an  
58 institution for the insane in computing the required period of  
59 three (3) years' confinement immediately preceding the  
60 commencement of the action. No divorce shall be granted because  
61 of insanity until after a thorough examination of such insane  
62 person by two (2) physicians who are recognized authorities on  
63 mental diseases. One such physician shall be either the  
64 Superintendent of the State Hospital or the Veterans Hospital for  
65 the insane in which the patient is confined, or a member of the

66 medical staff of such hospital who has had the patient in charge.  
67 Before incurable insanity can be successfully proven as a ground  
68 for divorce, it shall be necessary that both such physicians make  
69 affidavit that such patient is a mentally disturbed person at the  
70 time of the examination and both affidavits shall be made a part  
71 of the permanent record of the divorce proceedings and shall  
72 create the prima facie presumption of incurable insanity, such as  
73 would justify a divorce based thereon. Service of process shall  
74 be made on the superintendent of the hospital in which the  
75 defendant is a patient. In event the patient is in a hospital  
76 outside the state, process shall be served by publication, as in  
77 other cases of service by publication, together with the sending  
78 of a copy by registered mail to the superintendent of said  
79 hospital. In addition thereto, process shall be served upon the  
80 next blood relative and guardian, if any. In event there is no  
81 legal guardian, the court shall appoint a guardian ad litem to  
82 represent the interest of the insane person. Such relative or  
83 guardian and superintendent of the institution shall be entitled  
84 to appear and be heard upon any and all issues. The status of the  
85 parties as to the support and maintenance of the insane person  
86 shall not be altered in any way by the granting of the divorce.

87 However, in the discretion of the chancery court, and in such  
88 cases as the court may deem it necessary and proper, before any  
89 such decree is granted on the ground of incurable insanity, the  
90 complainant, when ordered by the court, shall enter into bond, to  
91 be approved by the court, in such an amount as the court may think  
92 just and proper, conditioned for the care and keeping of such  
93 insane person during the remainder of his or her natural life,  
94 unless such insane person has a sufficient estate in his or her  
95 own right for such purpose.

96 Thirteenth. Irreconcilable differences. The complaining  
97 party may have a divorce on the ground of irreconcilable  
98 differences upon proof of any behavior, conduct, habit or demeanor

99 engaged in or assumed by the offending party which substantially  
100 impairs the joint purposes of the marriage or which has rendered  
101 future cohabitation between the parties unlikely.

102 SECTION 2. Section 93-5-2, Mississippi Code of 1972, is  
103 amended as follows:

104 93-5-2. (1) Divorce from the bonds of matrimony may be  
105 granted on the ground of irreconcilable differences, as provided  
106 under this section, but only upon the joint complaint of the  
107 husband and wife or a complaint where the defendant has been  
108 personally served with process or where the defendant has entered  
109 an appearance by written waiver of process.

110 (2) If the parties provide by written agreement for the  
111 custody and maintenance of any children of that marriage and for  
112 the settlement of any property rights between the parties and the  
113 court finds that such provisions are adequate and sufficient, the  
114 agreement may be incorporated in the judgment, and such judgment  
115 may be modified as other judgments for divorce.

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

132 rights between the parties, or any portion of such issues, or the  
133 failure or refusal of any party to consent to permit the court to  
134 decide such issues, shall not be used as evidence, or in any  
135 manner, against such party. No divorce shall be granted on the  
136 ground of irreconcilable differences under this subsection until  
137 all matters involving custody and maintenance of any child of that  
138 marriage and property rights between the parties raised by the  
139 pleadings have been either adjudicated by the court or agreed upon  
140 by the parties and found to be adequate and sufficient by the  
141 court and included in the judgment of divorce. Appeals from any  
142 orders and judgments rendered pursuant to this subsection may be  
143 had as in other cases in chancery court only insofar as such  
144 orders and judgments relate to issues that the parties consented  
145 to have decided by the court.

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

157 (5) Except as otherwise provided in subsection (3) of this  
158 section, no divorce shall be granted on the ground of  
159 irreconcilable differences under this section where there has been  
160 a contest or denial; provided, however, that a divorce may be  
161 granted on the grounds of irreconcilable differences under this  
162 section where there has been a contest or denial, if the contest  
163 or denial has been withdrawn or cancelled by the party filing same  
164 by leave and order of the court.

165 (6) Irreconcilable differences under this section may be  
166 asserted as a sole ground for divorce or as an alternate ground  
167 for divorce with any other cause for divorce set out in Section  
168 93-5-1.

169 SECTION 3. Section 93-5-7, Mississippi Code of 1972, is  
170 amended as follows:

171 93-5-7. The proceedings to obtain a divorce shall be by  
172 complaint in chancery, and shall be conducted as other suits in  
173 chancery, except that (1) the defendant shall not be required to  
174 answer on oath; (2) no judgment by default may be granted but a  
175 divorce may be granted on the ground of irreconcilable differences  
176 under Section 93-5-2 in termtime or vacation; (3) admissions made  
177 in the answer shall not be taken as evidence; (4) the clerk shall  
178 not set down on the issue docket any divorce case unless upon the  
179 request of one (1) of the parties; (5) the plaintiff may allege  
180 only the statutory language as cause for divorce in a separate  
181 paragraph in the complaint; provided, however, the defendant shall  
182 be entitled to discover any matter, not privileged, which is  
183 relevant to the issues raised by the claims or defenses of the  
184 other; (6) the court shall have full power in its discretion to  
185 grant continuances in such cases without the compliance by the  
186 parties with any of the requirements of law respecting  
187 continuances in other cases; and (7) in all cases, except  
188 complaints seeking a divorce on the ground of irreconcilable  
189 differences under Section 93-5-2, the complaint must be  
190 accompanied with an affidavit of plaintiff that it is not filed by  
191 collusion with the defendant for the purpose of obtaining a  
192 divorce, but that the cause or causes for divorce stated in the  
193 complaint are true as stated.

194 SECTION 4. Section 93-5-11, Mississippi Code of 1972, is  
195 amended as follows:

196 93-5-11. All complaints, except those based solely on the  
197 ground of irreconcilable differences under Section 93-5-2, must be

198 filed in the county in which the plaintiff resides, if the  
199 defendant be a nonresident of this state, or be absent, so that  
200 process cannot be served; and the manner of making such parties  
201 defendants so as to authorize a judgment against them in other  
202 chancery cases, shall be observed. If the defendant be a resident  
203 of this state, the complaint shall be filed in the county in which  
204 such defendant resides or may be found at the time, or in the  
205 county of the residence of the parties at the time of separation,  
206 if the plaintiff be still a resident of such county when the suit  
207 is instituted.

208 A complaint for divorce based solely on the grounds of  
209 irreconcilable differences under Section 93-5-2, shall be filed in  
210 the county of residence of either party where both parties are  
211 residents of this state. If one (1) party is not a resident of  
212 this state, then the complaint shall be filed in the county where  
213 the resident party resides.

214 SECTION 5. Section 93-5-17, Mississippi Code of 1972, is  
215 amended as follows:

216 93-5-17. (1) The proceedings to obtain a divorce shall not  
217 be heard or considered nor a judgment of divorce entered except in  
218 open court, except in cases where divorce is granted solely on the  
219 ground of irreconcilable differences under Section 93-5-2. A  
220 chancellor may, in his discretion, hear or consider proceedings to  
221 obtain a divorce in vacation and make and enter judgments of  
222 divorce in the same manner as he may in other cases that may be  
223 heard in vacation pursuant to Section 9-5-91. Any judgment made  
224 or entered contrary to the provisions of this section shall be  
225 null and void.

226 (2) The chancellor in vacation may, upon reasonable notice,  
227 hear complaints for temporary alimony, temporary custody of  
228 children and temporary child support and make all proper orders  
229 and judgments thereon.

230 (3) As used in this section, the term "chancellor in

231 vacation" shall include any chancellor who is holding court at any  
232 location in any county in his district.

233 SECTION 6. This act shall take effect and be in force from  
234 and after July 1, 1999.