

By: Representatives Banks, Evans

To: Judiciary A

## HOUSE BILL NO. 1376

1 AN ACT TO AMEND SECTION 93-5-1, MISSISSIPPI CODE OF 1972, TO  
2 DELETE NATURAL IMPOTENCY AND BEING SENTENCED TO THE PENITENTIARY  
3 AS GROUNDS FOR DIVORCE; TO INCLUDE IRRECONCILABLE DIFFERENCES IN  
4 THE GROUND OF HABITUAL CRUEL AND INHUMAN TREATMENT; TO AMEND  
5 SECTION 93-5-2, 93-5-7, 93-5-11 AND 93-5-17, MISSISSIPPI CODE OF  
6 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED  
7 PURPOSES.

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

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

11 93-5-1. Divorces from the bonds of matrimony may be decreed  
12 to the injured party for any one or more of the following ten (10)  
13 causes, viz:

14 \* \* \*

15 First. Adultery, unless it should appear that it was  
16 committed by collusion of the parties for the purpose of procuring  
17 a divorce, or unless the parties cohabited after a knowledge by  
18 complainant of the adultery.

19 \* \* \*

20 Second. Wilful, continued and obstinate desertion for the  
21 space of one year.

22 Third. Habitual drunkenness.

23 Fourth. Habitual and excessive use of opium, morphine or  
24 other like drug.

25 Fifth. Habitual cruel and inhuman treatment, which may  
26 include irreconcilable differences as provided in Section 93-5-2  
27 if determined by the court for the court to grant a divorce on the  
28 ground of habitual cruel and inhuman treatment based on

29 irreconcilable difference the court must base its decision upon  
30 proof of a continuous pattern of outrageous or illegal behavior or  
31 conduct, engaged in or assumed by the offending party which  
32 substantially impairs the joint purposes of the marriage or which  
33 has rendered future cohabitation between the parties improbable  
34 and which is determined as cruel and inhuman treatment.

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

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

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

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

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

66 has had the patient in charge. Before incurable insanity can be  
67 successfully proven as a ground for divorce, it shall be necessary  
68 that both such physicians make affidavit that such patient is a  
69 mentally disturbed person at the time of the examination and both  
70 affidavits shall be made a part of the permanent record of the  
71 divorce proceedings and shall create the prima facie presumption  
72 of incurable insanity, such as would justify a divorce based  
73 thereon. Service of process shall be made on the superintendent of  
74 the hospital in which the defendant is a patient. In event the  
75 patient is in a hospital outside the state, process shall be  
76 served by publication, as in other cases of service by  
77 publication, together with the sending of a copy by registered  
78 mail to the superintendent of said hospital. In addition thereto,  
79 process shall be served upon the next blood relative and guardian,  
80 if any. In event there is no legal guardian, the court shall  
81 appoint a guardian ad litem to represent the interest of the  
82 insane person. Such relative or guardian and superintendent of the  
83 institution shall be entitled to appear and be heard upon any and  
84 all issues. The status of the parties as to the support and  
85 maintenance of the insane person shall not be altered in any way  
86 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       SECTION 2. Section 93-5-2, Mississippi Code of 1972, is  
97 amended as follows:

98       93-5-2. (1) Divorce from the bonds of matrimony may be

99 granted on the ground of irreconcilable differences, as provided  
100 under this section, but only upon the joint complaint of the  
101 husband and wife or a complaint where the defendant has been  
102 personally served with process or where the defendant has entered  
103 an appearance by written waiver of process.

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

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

132 marriage and property rights between the parties raised by the  
133 pleadings have been either adjudicated by the court or agreed upon  
134 by the parties and found to be adequate and sufficient by the  
135 court and included in the judgment of divorce. Appeals from any  
136 orders and judgments rendered pursuant to this subsection may be  
137 had as in other cases in chancery court only insofar as such  
138 orders and judgments relate to issues that the parties consented  
139 to have decided by the court.

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

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

160 (6) Irreconcilable differences under this section may be  
161 asserted as a sole ground for divorce or as an alternate ground  
162 for divorce with any other cause for divorce set out in Section  
163 93-5-1.

164 SECTION 3. Section 93-5-7, Mississippi Code of 1972, is

165 amended as follows:

166           93-5-7. The proceedings to obtain a divorce shall be by  
167 complaint in chancery, and shall be conducted as other suits in  
168 chancery, except that (1) the defendant shall not be required to  
169 answer on oath; (2) no judgment by default may be granted but a  
170 divorce may be granted on the ground of irreconcilable differences  
171 under Section 93-5-2 in termtime or vacation; (3) admissions made  
172 in the answer shall not be taken as evidence; (4) the clerk shall  
173 not set down on the issue docket any divorce case unless upon the  
174 request of one (1) of the parties; (5) the plaintiff may allege  
175 only the statutory language as cause for divorce in a separate  
176 paragraph in the complaint; provided, however, the defendant shall  
177 be entitled to discover any matter, not privileged, which is  
178 relevant to the issues raised by the claims or defenses of the  
179 other; (6) the court shall have full power in its discretion to  
180 grant continuances in such cases without the compliance by the  
181 parties with any of the requirements of law respecting  
182 continuances in other cases; and (7) in all cases, except  
183 complaints seeking a divorce on the ground of irreconcilable  
184 differences under Section 93-5-2, the complaint must be  
185 accompanied with an affidavit of plaintiff that it is not filed by  
186 collusion with the defendant for the purpose of obtaining a  
187 divorce, but that the cause or causes for divorce stated in the  
188 complaint are true as stated.

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

191           93-5-11. All complaints, except those based solely on the  
192 ground of irreconcilable differences under Section 93-5-2, must be  
193 filed in the county in which the plaintiff resides, if the  
194 defendant be a nonresident of this state, or be absent, so that  
195 process cannot be served; and the manner of making the parties  
196 defendants so as to authorize a judgment against them in other  
197 chancery cases, shall be observed. If the defendant be a resident

198 of this state, the complaint shall be filed in the county in which  
199 the defendant resides or may be found at the time, or in the  
200 county of the residence of the parties at the time of separation,  
201 if the plaintiff be still a resident of the county when the suit  
202 is instituted.

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

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

211 93-5-17. (1) The proceedings to obtain a divorce shall not  
212 be heard or considered nor a judgment of divorce entered except in  
213 open court, except in cases where divorce is granted solely on the  
214 ground of irreconcilable differences under Section 93-5-2. A  
215 chancellor may, in his discretion, hear or consider proceedings to  
216 obtain a divorce in vacation and make and enter judgments of  
217 divorce in the same manner as he may in other cases that may be  
218 heard in vacation pursuant to Section 9-5-91. Any judgment made  
219 or entered contrary to the provisions of this section shall be  
220 null and void.

221 (2) The chancellor in vacation may, upon reasonable notice,  
222 hear complaints for temporary alimony, temporary custody of  
223 children and temporary child support and make all proper orders  
224 and judgments thereon.

225 (3) As used in this section, the term "chancellor in  
226 vacation" shall include any chancellor who is holding court at any  
227 location in any county in his district.

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