

By: Johnson (38th), Walls

To: Judiciary

SENATE BILL NO. 2809

1 AN ACT TO AMEND SECTION 93-5-1, MISSISSIPPI CODE OF 1972, TO
2 CREATE IRRECONCILABLE DIFFERENCES AS A 13TH GROUND FOR DIVORCE; TO
3 ENACT LIMITATIONS; TO AMEND SECTION 93-5-2, MISSISSIPPI CODE OF
4 1972, IN CONFORMITY; 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:[CSQ1]

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 thirteen
10 (13) 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. Willful, 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 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 Thirteenth. Irreconcilable differences, if the parties have
86 lived separate and apart for five (5) or more years and have not
87 cohabited in any way during that period. Both parties in such
88 cases are deemed to be an injured party; however, for purposes of
89 determining the custody and maintenance of any children of the
90 marriage or any property rights between the parties, unless the
91 parties have provided by written agreement for the custody and
92 maintenance of any children of the marriage and for the settlement
93 of any property rights between the parties that the court finds is

94 adequate and sufficient, the court shall determine the injured
95 party and thereafter issue such orders and decrees necessary to
96 resolve issues of child custody and maintenance and property
97 rights between the parties.

98 SECTION 2. Section 93-5-2, Mississippi Code of 1972, is
99 amended as follows:[CSQ2]

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

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

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

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

141 (4) Complaints for divorce on the ground of irreconcilable
142 differences must have been on file for sixty (60) days before
143 being heard. Except as otherwise provided in subsection (3) of
144 this section, a joint complaint of husband and wife or a complaint
145 where the defendant has been personally served with process or
146 where the defendant has entered an appearance by written waiver of
147 process, for divorce solely on the ground of irreconcilable
148 differences, shall be taken as proved and a final judgment entered
149 thereon, 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 where there has been a contest or
155 denial; provided, however, that a divorce may be granted on the
156 grounds of irreconcilable differences where there has been a
157 contest or denial, if the contest or denial has been withdrawn or
158 cancelled by the party filing same by leave and order of the
159 court.

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

163 SECTION 3. This act shall take effect and be in force from
164 and after July 1, 2000.