

By: Representative Banks

To: Judiciary A

HOUSE BILL NO. 998

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, 2001.