

By: Representative Capps

To: Judiciary A

HOUSE BILL NO. 700

1 AN ACT TO AMEND SECTION 93-5-2, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE GROUNDS FOR IRRECONCILABLE DIFFERENCES DIVORCES; AND
3 FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 93-5-2, Mississippi Code of 1972, is
6 amended as follows:

7 93-5-2. (1) Divorce from the bonds of matrimony may be
8 granted on the ground of irreconcilable differences, * * * upon
9 the single application of either the husband and wife or a
10 complaint where the defendant has been * * * served with process
11 or where the defendant has entered an appearance by written waiver
12 of process.

13 (2) If the parties provide by written agreement for the
14 custody and maintenance of any children of that marriage and for
15 the settlement of any property rights between the parties and the
16 court finds that such provisions are adequate and sufficient, the
17 agreement may be incorporated in the judgment, and such judgment
18 may be modified as other judgments for divorce.

19 (3) If the parties are unable to agree upon adequate and
20 sufficient provisions for the custody and maintenance of any
21 children of that marriage or any property rights between them,
22 they may consent to a divorce on the ground of irreconcilable
23 differences and permit the court to decide the issues upon which
24 they cannot agree. Such consent must be in writing, signed by
25 both parties personally, must state that the parties voluntarily
26 consent to permit the court to decide such issues, which shall be
27 specifically set forth in such consent, and that the parties



28 understand that the decision of the court shall be a binding and
29 lawful judgment. Such consent may not be withdrawn by a party
30 without leave of the court after the court has commenced any
31 proceeding, including the hearing of any motion or other matter
32 pertaining thereto. The failure or refusal of either party to
33 agree as to adequate and sufficient provisions for the custody and
34 maintenance of any children of that marriage or any property
35 rights between the parties, or any portion of such issues, or the
36 failure or refusal of any party to consent to permit the court to
37 decide such issues, shall not be used as evidence, or in any
38 manner, against such party. No divorce shall be granted pursuant
39 to this subsection until all matters involving custody and
40 maintenance of any child of that marriage and property rights
41 between the parties raised by the pleadings have been either
42 adjudicated by the court or agreed upon by the parties and found
43 to be adequate and sufficient by the court and included in the
44 judgment of divorce. Appeals from any orders and judgments
45 rendered pursuant to this subsection may be had as in other cases
46 in chancery court only insofar as such orders and judgments relate
47 to issues that the parties consented to have decided by the court.

48 (4) Complaints for divorce on the ground of irreconcilable
49 differences must have been on file for sixty (60) days before
50 being heard. Except as otherwise provided in subsection (3) of
51 this section, a joint complaint of husband and wife or a complaint
52 where the defendant has been personally served with process or
53 where the defendant has entered an appearance by written waiver of
54 process, for divorce solely on the ground of irreconcilable
55 differences, shall be taken as proved and a final judgment entered
56 thereon, as in other cases and without proof or testimony in
57 termtime or vacation, the provisions of Section 93-5-17 to the
58 contrary notwithstanding.

59 (5) Except as otherwise provided in subsection (3) of this
60 section, a divorce * * * on the ground of irreconcilable



61 differences may be granted upon the single application of either
62 the husband or wife even though the other spouse enters a contest
63 or denial, provided that the petitioning husband or wife states
64 that the marriage is irretrievably broken and cannot be
65 reconciled.

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

69 **SECTION 2.** This act shall take effect and be in force from
70 and after July 1, 2003.

