

By: Representative Hughes

To: Judiciary B

HOUSE BILL NO. 1340

1 AN ACT TO AMEND SECTION 93-5-1, MISSISSIPPI CODE OF 1972, TO
2 CREATE BONA FIDE SEPARATION AS AN ADDITIONAL GROUNDS FOR A
3 FAULT-BASED DIVORCE; AND FOR RELATED PURPOSES.

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

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

7 93-5-1. Divorces from the bonds of matrimony may be decreed
8 to the injured party for any one or more of the following * * *
9 thirteen (13) causes:

10 First. Natural impotency.

11 Second. Adultery, unless it should appear that it was
12 committed by collusion of the parties for the purpose of procuring
13 a divorce, or unless the parties cohabited after a knowledge by
14 complainant of the adultery.

15 Third. Being sentenced to any penitentiary, and not pardoned
16 before being sent there.

17 Fourth. Willful, continued and obstinate desertion for the
18 space of one (1) year.



19 Fifth. Habitual drunkenness.

20 Sixth. Habitual and excessive use of opium, morphine or
21 other like drug.

22 Seventh. Habitual cruel and inhuman treatment, including
23 spousal domestic abuse.

24 Spousal domestic abuse may be established through the
25 reliable testimony of a single credible witness, who may be the
26 injured party, and includes, but is not limited to:

27 That the injured party's spouse attempted to cause, or
28 purposely, knowingly or recklessly caused bodily injury to the
29 injured party, or that the injured party's spouse attempted by
30 physical menace to put the injured party in fear of imminent
31 serious bodily harm; or

32 That the injured party's spouse engaged in a pattern of
33 behavior against the injured party of threats or intimidation,
34 emotional or verbal abuse, forced isolation, sexual extortion or
35 sexual abuse, or stalking or aggravated stalking as defined in
36 Section 97-3-107, if the pattern of behavior rises above the level
37 of unkindness or rudeness or incompatibility or want of affection.

38 Eighth. Having mental illness or an intellectual disability
39 at the time of marriage, if the party complaining did not know of
40 that infirmity.

41 Ninth. Marriage to some other person at the time of the
42 pretended marriage between the parties.



43 Tenth. Pregnancy of the wife by another person at the time
44 of the marriage, if the husband did not know of the pregnancy.

45 Eleventh. Either party may have a divorce if they are
46 related to each other within the degrees of kindred between whom
47 marriage is prohibited by law.

48 Twelfth. Incurable mental illness. However, no divorce
49 shall be granted upon this ground unless the party with mental
50 illness has been under regular treatment for mental illness and
51 causes thereof, confined in an institution for persons with mental
52 illness for a period of at least three (3) years immediately
53 preceding the commencement of the action. However, transfer of a
54 party with mental illness to his or her home for treatment or a
55 trial visit on prescription or recommendation of a licensed
56 physician, which treatment or trial visit proves unsuccessful
57 after a bona fide effort by the complaining party to effect a
58 cure, upon the reconfinement of the party with mental illness in
59 an institution for persons with mental illness, shall be regular
60 treatment for mental illness and causes thereof, and the period of
61 time so consumed in seeking to effect a cure or while on a trial
62 visit home shall be added to the period of actual confinement in
63 an institution for persons with mental illness in computing the
64 required period of three (3) years confinement immediately
65 preceding the beginning of the action. No divorce shall be
66 granted because of mental illness until after a thorough
67 examination of the person with mental illness by two (2)



68 physicians who are recognized authorities on mental diseases. One
69 (1) of those physicians shall be either the superintendent of a
70 state psychiatric hospital or institution or a veterans hospital
71 for persons with mental illness in which the patient is confined,
72 or a member of the medical staff of that hospital or institution
73 who has had the patient in charge. Before incurable mental
74 illness can be successfully proven as a ground for divorce, it
75 shall be necessary that both of those physicians make affidavit
76 that the patient is a person with mental illness at the time of
77 the examination, and both affidavits shall be made a part of the
78 permanent record of the divorce proceedings and shall create the
79 prima facie presumption of incurable mental illness, such as would
80 justify a divorce based on that ground. Service of process shall
81 be made on the superintendent of the hospital or institution in
82 which the defendant is a patient. If the patient is in a hospital
83 or institution outside the state, process shall be served by
84 publication, as in other cases of service by publication, together
85 with the sending of a copy by registered mail to the
86 superintendent of the hospital or institution. In addition,
87 process shall be served upon the next blood relative and guardian,
88 if any. If there is no legal guardian, the court shall appoint a
89 guardian ad litem to represent the interest of the person with
90 mental illness. The relative or guardian and superintendent of
91 the hospital or institution shall be entitled to appear and be
92 heard upon any and all issues. The status of the parties as to



93 the support and maintenance of the person with mental illness
94 shall not be altered in any way by the granting of the divorce.

95 However, in the discretion of the chancery court, and in
96 those cases as the court may deem it necessary and proper, before
97 any such decree is granted on the ground of incurable mental
98 illness, the complainant, when ordered by the court, shall enter
99 into bond, to be approved by the court, in such an amount as the
100 court may think just and proper, conditioned for the care and
101 keeping of the person with mental illness during the remainder of
102 his or her natural life, unless the person with mental illness has
103 a sufficient estate in his or her own right for that purpose.

104 Thirteenth. Willful and continued separation without
105 cohabitation, with the intent not to return or resume or otherwise
106 continue the marital relationship, for not less than two (2)
107 years. Either party may have a divorce based on this cause.

108 **SECTION 2.** This act shall take effect and be in force from
109 and after July 1, 2018.

