

By: Senator(s) Ross

To: Judiciary

SENATE BILL NO. 2993

1 AN ACT TO AMEND SECTION 93-5-1, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE GROUNDS FOR DIVORCE FOUNDED UPON FAULT; AND FOR RELATED
3 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 twelve
9 (12) causes, viz:

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 year.

19 Fifth. Habitual drunkenness.

20 Sixth. Habitual and excessive use of opium, morphine,
21 cocaine, crack-cocaine or other like drug or narcotic controlled
22 substance.

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 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 state
53 hospital or the veterans hospital for the insane in which the
54 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 SECTION 2. This act shall take effect and be in force from
86 and after July 1, 2001.