

By: Senator(s) Doty, Wiggins, Branning,
Jackson (11th)

To: Judiciary, Division A

SENATE BILL NO. 2703
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 93-5-1, MISSISSIPPI CODE OF 1972, TO
2 CREATE DOMESTIC VIOLENCE AS ADDITIONAL GROUNDS FOR FAULT DIVORCE;
3 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 twelve
9 (12) 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. * * * Cruel and inhuman treatment, including
23 spousal domestic abuse.

24 Eighth. Having mental illness or an intellectual disability
25 at the time of marriage, if the party complaining did not know of
26 that infirmity.

27 Ninth. Marriage to some other person at the time of the
28 pretended marriage between the parties.

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

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

34 Twelfth. Incurable mental illness. However, no divorce
35 shall be granted upon this ground unless the party with mental
36 illness has been under regular treatment for mental illness and
37 causes thereof, confined in an institution for persons with mental
38 illness for a period of at least three (3) years immediately
39 preceding the commencement of the action. However, transfer of a
40 party with mental illness to his or her home for treatment or a
41 trial visit on prescription or recommendation of a licensed
42 physician, which treatment or trial visit proves unsuccessful
43 after a bona fide effort by the complaining party to effect a



44 cure, upon the reconfinement of the party with mental illness in
45 an institution for persons with mental illness, shall be regular
46 treatment for mental illness and causes thereof, and the period of
47 time so consumed in seeking to effect a cure or while on a trial
48 visit home shall be added to the period of actual confinement in
49 an institution for persons with mental illness in computing the
50 required period of three (3) years confinement immediately
51 preceding the beginning of the action. No divorce shall be
52 granted because of mental illness until after a thorough
53 examination of the person with mental illness by two (2)
54 physicians who are recognized authorities on mental diseases. One
55 (1) of those physicians shall be either the superintendent of a
56 state psychiatric hospital or institution or a veterans hospital
57 for persons with mental illness in which the patient is confined,
58 or a member of the medical staff of that hospital or institution
59 who has had the patient in charge. Before incurable mental
60 illness can be successfully proven as a ground for divorce, it
61 shall be necessary that both of those physicians make affidavit
62 that the patient is a person with mental illness at the time of
63 the examination, and both affidavits shall be made a part of the
64 permanent record of the divorce proceedings and shall create the
65 prima facie presumption of incurable mental illness, such as would
66 justify a divorce based on that ground. Service of process shall
67 be made on the superintendent of the hospital or institution in
68 which the defendant is a patient. If the patient is in a hospital



69 or institution outside the state, process shall be served by
70 publication, as in other cases of service by publication, together
71 with the sending of a copy by registered mail to the
72 superintendent of the hospital or institution. In addition,
73 process shall be served upon the next blood relative and guardian,
74 if any. If there is no legal guardian, the court shall appoint a
75 guardian ad litem to represent the interest of the person with
76 mental illness. The relative or guardian and superintendent of
77 the hospital or institution shall be entitled to appear and be
78 heard upon any and all issues. The status of the parties as to
79 the support and maintenance of the person with mental illness
80 shall not be altered in any way by the granting of the divorce.

81 However, in the discretion of the chancery court, and in
82 those cases as the court may deem it necessary and proper, before
83 any such decree is granted on the ground of incurable mental
84 illness, the complainant, when ordered by the court, shall enter
85 into bond, to be approved by the court, in such an amount as the
86 court may think just and proper, conditioned for the care and
87 keeping of the person with mental illness during the remainder of
88 his or her natural life, unless the person with mental illness has
89 a sufficient estate in his or her own right for that purpose.

90 **SECTION 2.** This act shall take effect and be in force from
91 and after July 1, 2017.

