

By: Senator(s) Doty

To: Judiciary, Division A

SENATE BILL NO. 2702

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

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

6 93-5-1. Divorces from the bonds of matrimony may be decreed
7 to the injured party for any one or more of the following * * *
8 thirteen (13) causes:

9 First. Natural impotency.

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

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

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

18 Fifth. Habitual drunkenness.



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

21 Seventh. Habitual cruel and inhuman treatment.

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

25 Ninth. Marriage to some other person at the time of the
26 pretended marriage between the parties.

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

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

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



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



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

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

88 Thirteenth. Willful and continued separation without
89 cohabitation, with the intent not to return or resume or otherwise
90 continue the marital relationship, for not less than three (3)
91 years. Either party may have a divorce based on this cause.

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

