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4 **SENATE BILL No. 173**

5  
6 By Committee on Judiciary

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8 1-31

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10 AN ACT concerning divorce and separate maintenance; relating to  
11 grounds; amending K.S.A. 60-1601 and repealing the existing section.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 60-1601 is hereby amended to read as follows: 60-  
15 1601. (a) The district court shall grant a decree of divorce or separate  
16 maintenance for any of the following grounds: ~~(1) Incompatibility; (2)~~  
17 ~~failure to perform a material marital duty or obligation; or (3) incompat-~~  
18 ~~ibility by reason of mental illness or mental incapacity of one or both~~  
19 ~~spouses. (1) If no dependent children of the marriage reside with either~~  
20 ~~of the spouses and both spouses agree. A breakdown of the marriage~~  
21 ~~relationship to the extent that the objects of matrimony have been de-~~  
22 ~~stroyed and there remains no reasonable likelihood that the marriage can~~  
23 ~~be preserved: (A) **Incompatibility; (B) failure to perform a material**~~  
24 ~~**marital duty or obligation; or (C) incompatibility by reason of men-**~~  
25 ~~**tal illness or mental incapacity of one or both spouses; or**~~

26 (2) ~~if a dependent child of the marriage resides with a spouse or one~~  
27 ~~of the spouses objects to the divorce:~~

- 28 (A) *Gross neglect of marital duty;*  
29 (B) *incompatibility by reason of mental illness or mental capacity of*  
30 *one or both spouses;*  
31 (C) *incompatibility by reason of impotency;*  
32 (D) *adultery;*  
33 (E) *pregnancy by the wife at the time of the marriage by a person*  
34 *other than her husband;*  
35 (F) *extreme cruelty;*  
36 (G) *habitual use of alcohol or a controlled substance;*  
37 (H) *abandonment for one or more years; or*  
38 (I) *conviction and imprisonment for a felony subsequent to the*  
39 *marriage.*

40 (b) The ground of incompatibility by reason of mental illness or men-  
41 tal incapacity of one or both spouses shall require a finding of either: (1)  
42 Confinement of the spouse in an institution by reason of mental illness  
43 for a period of two years, which confinement need not be continuous; or

1 (2) an adjudication of mental illness or mental incapacity of the spouse  
2 by a court of competent jurisdiction while the spouse is confined in an  
3 institution by reason of mental illness. In either case, there must be a  
4 finding by at least two of three physicians, appointed by the court before  
5 which the action is pending, that the mentally ill or mentally incapacitated  
6 spouse has a poor prognosis for recovery from the mental illness or mental  
7 incapacity, based upon general knowledge available at the time. A decree  
8 granted on the ground of incompatibility by reason of mental illness or  
9 mental incapacity of one or both spouses shall not relieve a party from  
10 contributing to the support and maintenance of the mentally ill or men-  
11 tally incapacitated spouse. If both spouses are confined to institutions  
12 because of mental illness or mental incapacity, the guardian of either  
13 spouse may file a petition for divorce and the court may grant the divorce  
14 on the ground of incompatibility by reason of mental illness or mental  
15 incapacity.

16 Sec. 2. K.S.A. 60-1601 is hereby repealed.

17 Sec. 3. This act shall take effect and be in force from and after its  
18 publication in the statute book.

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