

## SENATE BILL No. 179

By Senator Lyon

2-10

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AN ACT concerning divorce and separate maintenance; relating to grounds; amending K.S.A. 60-1601 and repealing the existing section.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 60-1601 is hereby amended to read as follows: 60-1601. (a) The district court shall grant a decree of divorce or separate maintenance for any of the following grounds: ~~(1) Incompatibility; (2) failure to perform a material marital duty or obligation; or (3) incompatibility by reason of mental illness or mental incapacity of one or both spouses.~~ (1) *If no dependent children of the marriage reside with either of the spouses and both spouses agree: A breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved; or*

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

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

(b) The ground of incompatibility by reason of mental illness or mental incapacity of one or both spouses shall require a finding of either: (1) Confinement of the spouse in an institution by reason of mental illness for a period of two years, which confinement need not be continuous; or (2) an adjudication of mental illness or mental incapacity of the spouse by a court of competent jurisdiction while the spouse is confined in an institution by reason of mental illness. In either case, there must be a

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

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

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

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