

**WEST VIRGINIA LEGISLATURE**

**REGULAR SESSION, 1935**



**ENROLLED**

**SENATE BILL No.** 47

(By Mr. Belknap)



**PASSED** March 9 1935

**In Effect** from Passage

47

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**Senate Bill No. 47**

(BY MR. BELKNAP) (by request)

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[Passed March 9, 1935; in effect from passage.]

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AN ACT to amend and reenact article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, relating to divorces, by amending and reenacting sections one, three, four, fifteen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-five, twenty-seven and twenty-nine of said article, and by repealing sections five and sixteen of said article.

*Be it enacted by the Legislature of West Virginia:*

That sections five and sixteen, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-

one be repealed, and that sections one, three, four, fifteen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-five, twenty-seven and twenty-nine, of said article, be amended and reenacted to read as follows:

Section 1. All marriages between a white person and a  
2 negro; all marriages which are prohibited by law on account of  
3 either of the parties having a former wife or husband then  
4 living; all marriages which are prohibited by law on account  
5 of consanguinity or affinity between the parties; all marriages  
6 solemnized when either of the parties was an insane person,  
7 feeble-minded person, idiot, imbecile, or an epileptic, or was  
8 afflicted with a venereal disease, or was incapable, because of  
9 natural or incurable impotency of body, of entering into the  
10 marriage state, or was under the age of consent; all marriages  
11 solemnized when either of the parties, prior to the marriage,  
12 without the knowledge of the other, had been convicted of an  
13 infamous offense, or when, at the time of marriage, the wife,  
14 without the knowledge of the husband, was with child by some  
15 person other than the husband, or prior to such marriage had  
16 been, without the knowledge of the husband, notoriously a  
17 prostitute, or when, prior to such marriage the husband, with-

18 out the knowledge of the wife, had been notoriously a licen-  
19 tious person, shall be void from the time they are so declared  
20 by a decree of nullity.

Sec. 3. A suit for annulling a marriage may not be insti-  
2 tuted:

3 (a) Where the cause is the natural or incurable impotency  
4 of body of either of the parties to enter the marriage state, by  
5 the party who had knowledge of such incapacity at the time  
6 of marriage; or

7 (b) Where the cause is fraud, force or coercion, by the  
8 party who was guilty of such fraud, force or coercion, nor by  
9 the injured party if, after knowledge of the facts, he or she  
10 has by acts or conduct confirmed such marriage; or

11 (c) Where the cause is affliction with a venereal disease ex-  
12 isting at the time of marriage, by the party who was so afflicted  
13 if such party has subsequent to the marriage become cured of  
14 such disease, nor by the person who was not so afflicted if he or  
15 she after the curing of the afflicted person has by acts or con-  
16 duct confirmed the marriage; or

17 (d) Where the cause is the nonage of either of the parties,  
18 by the party who was capable of consenting, nor by the party

19 not so capable if he or she has by acts or conduct confirmed  
20 the marriage after arriving at the age of consent; or

21 (e) Where the cause is lack of consent on the party of  
22 either of the parties, by the party consenting or bringing about  
23 the marriage; or

24 (f) Where the cause is that either of the parties has been  
25 convicted of an infamous offense prior to marriage, by the  
26 other party if, after knowledge of such fact, he or she has  
27 cohabited with the party so convicted; or

28 (g) Where the cause is that the wife was at the time of  
29 marriage with child by some person other than the husband,  
30 or that prior to the marriage the wife had been notoriously a  
31 prostitute, by the husband, if, after knowledge of the fact, he  
32 has cohabited with the wife; or

33 (h) Where the cause is that the husband was prior to the  
34 marriage notoriously a licentious person, by the wife, if, after  
35 knowledge of the fact, she has cohabited with the husband.

Sec. 4. A divorce from the bond of matrimony may be de-  
2 creed:

3 (a) For adultery; or

4 (b) When either of the parties subsequent to the marriage

5 has, in or out of this state, been sentenced to imprisonment for  
6 the commission of a crime which under the laws of this state is  
7 a felony, and such sentence has become final, if the suit for di-  
8 vorce be commenced while such party is actually imprisoned  
9 under such sentence, or before the parties have again cohab-  
10 ited; and no pardon granted to the party so sentenced, if suit  
11 for divorce shall have been commenced before the granting of  
12 such pardon, shall restore such party to his or her conjugal  
13 rights; or

14 (c) To the party abandoned, when either party wilfully  
15 abandons or deserts the other for two years; or

16 (d) For cruel or inhuman treatment, or reasonable ap-  
17 prehension of bodily hurt, and a charge of prostitution made by  
18 the husband against the wife falsely shall be deemed cruel  
19 treatment within the meaning of this paragraph; or

20 (e) For habitual drunkenness of either party subsequent  
21 to the marriage; or

22 (f) For the addiction of either party, subsequent to the  
23 marriage, to the habitual use of opium, morphine, cocaine or  
24 other like drug.

Sec. 5 is hereby repealed.

Sec. 15. Upon decreeing a divorce, the court may make such  
2 further decree as it shall deem expedient, concerning the main-  
3 tenance of the parties, or either of them; and upon decreeing  
4 the annulment of a marriage, or a divorce, the court may make  
5 such further decree as it shall deem expedient, concerning the  
6 care, custody, education and maintenance of the minor chil-  
7 dren, and may determine with which of the parents the chil-  
8 dren or any of them, may remain; and the court may, from  
9 time to time afterward, on the petition of either of the parties;  
10 revise or alter such decree concerning the maintenance of the  
11 parties, or either of them, and make a new decree concerning  
12 the same, as the altered circumstances or needs of the parties  
13 may render necessary to meet the ends of justice; and the court  
14 may also from time to time afterward, on the petition of either  
15 of the parties, revise or alter such decree concerning the care,  
16 custody, education and maintenance of the children, and make  
17 a new decree concerning the same, as the circumstances of the  
18 parents and the benefit of the children may require. In any  
19 case where the divorce or the annulment is denied, if the par-  
20 ties are living separate and apart from each other, the court  
21 shall retain jurisdiction of the case for the purpose of deter-

22 mining with which of the parents the children or any of them  
23 may remain and of making such order or decree concerning  
24 the care, custody, education and maintenance of the minor  
25 children, or any of them, as to the court may seem proper and  
26 the benefit of the child or children may require; and such order  
27 or decree may, from time to time afterward, on petition of  
28 either of the parties, be revised or altered, and a new order or  
29 decree made, as the circumstances of the parties or the needs  
30 of the children may require. For the purpose of making effec-  
31 tual any order or decree provided for in this section the court  
32 may make any order or decree concerning the estate of the  
33 parties, or either of them, as it shall deem expedient.

Sec. 16 is hereby repealed.

Sec. 18. When a divorce shall be granted, all rights of either  
2 husband or wife to dower shall be thereby barred; but the  
3 court when granting any divorce shall, in every proper case,  
4 compel the guilty party to compensate the innocent party for  
5 any inchoate right of dower, in any then existing property,  
6 that may be barred by the divorce; and to secure the payment  
7 of such compensation the court may make such compensation a  
8 lien upon the real estate of the party liable therefor.



Sec. 19. Upon decreeing the annulment of a marriage, or  
2 upon decreeing a divorce, the court shall have power to award  
3 to either of the parties whatever of his or her property, real or  
4 personal, may be in the possession, or under the control, or in  
5 the name, of the other, and to compel a transfer or conveyance  
6 thereof as in other cases of chancery.

Sec. 20. Any decree of divorce from bed and board entered  
2 before the passage of this act, may be revoked at any time by the  
3 same court by which it was pronounced, under such regulations  
4 and restrictions as the court may impose, upon the joint applica-  
5 tion of the parties, and upon their producing satisfactory evi-  
6 dence of their reconciliation. Either party to a suit in which a  
7 divorce from bed and board has been granted prior to the  
8 passage of this act may proceed to have the same made final in  
9 the manner prescribed by the code of West Virginia. All suits  
10 now pending for divorce from bed and board shall be converted  
11 forthwith into suits for divorce from the bonds of matrimony  
12 or withdrawn, at the option of the plaintiff. The court shall, in  
13 each case when a suit for divorce from bed and board is con-  
14 verted into a suit for divorce from the bonds of matrimony,  
15 enter a memorandum to this effect in the chancery records, and

16 notice thereof shall be given to the defendant in the manner pro-  
17 vided for service of original process.

Sec. 21. The court upon granting a divorce to a woman may,  
2 if there are no children of such marriage, allow her to resume  
3 her maiden name, or the name of a former deceased husband.

Sec. 22. When a divorce is decreed neither party to the  
2 marriage so dissolved shall in any case again marry within  
3 sixty days from the date of the decree, or pending an appeal of  
4 the case in the supreme court. The court may, in its discretion,  
5 further prohibit the guilty party from marrying again within  
6 a certain time, not to exceed one year from the date of the de-  
7 cree. The foregoing shall not prevent the divorced parties from  
8 being remarried to each other at any time. The periods within  
9 which both parties are prohibited from marrying again,  
10 whether prescribed by law or by the court, shall be stated in  
11 the decree; and any marriage contracted by any divorced  
12 party, except a remarriage to the person from whom divorced,  
13 within the prohibited period, shall be void, and the party shall  
14 be criminally liable the same as if no divorce had been granted.

Sec. 23. Suit for divorce or annulment shall mature the  
2 same as other cases in chancery, and when properly matured

3 the case shall be placed on the docket for trial, and the same  
4 shall be tried before the court in chambers, and all witnesses  
5 shall appear and testify at the trial the same as witnesses in  
6 an action at law; and the law governing the taking and read-  
7 ing of depositions in an action at law shall apply to the deposi-  
8 tions in the trial of divorce cases: *Provided*, That the court may,  
9 instead of proceeding with the case under this section, refer  
10 the same to a commissioner in chancery, or a special commis-  
11 sioner, as hereinafter provided.

Sec. 25. The plaintiff shall, in every case which is to be  
2 heard before the court, at least thirty days before the first  
3 day of the term at which it is expected to try the case before  
4 the court, give the divorce commissioner of the county, if one  
5 has been appointed under the provisions of section twenty-four  
6 of this article, notice in writing that a trial will be demanded. If  
7 the plaintiff has not in the bill stated the residence and post-  
8 office address of the defendant, he shall furnish it to the di-  
9 vorce commissioner at the time of giving such notice;  
10 but if the residence and postoffice address of the defendant  
11 are unknown to the plaintiff, at the time of the giving of no-

12 tice, an affidavit of this fact, by the plaintiff, delivered to the  
13 divorce commissioner with the notice shall be sufficient.

Sec. 27. The commissioner to whom any case is referred  
2 under the provisions of the previous section shall, before pro-  
3 ceeding to execute the requirements of the decree of reference,  
4 give to the parties or their attorneys, and the divorce commis-  
5 sioner, if one has been appointed under the provisions of sec-  
6 tion twenty-four of this article, at least ten days' notice of the  
7 time and place when and where he will commence proceedings,  
8 but if any party is not represented by an attorney and personal  
9 service cannot be had on the party on account of absence from  
10 the state or nonresidence, then it shall be sufficient to publish  
11 the notice in a newspaper of general circulation in the county  
12 wherein the suit is pending for such length of time as the court  
13 may direct.

Sec. 29. Whenever a husband shall, without good and suffi-  
2 cient cause, have failed to provide suitable support for his wife,  
3 or have abandoned or deserted her, or if the wife, for such  
4 cause as would entitle her to a divorce, is actually living apart  
5 from her husband, and such husband is in either case of suffi-

6 cient ability to support his wife, the circuit court of any county  
7 that would have jurisdiction of a suit for divorce between the  
8 parties, shall, at the suit of the wife, in chancery, whether or  
9 not a divorce be prayed for, decree to the wife as alimony and  
10 separate maintenance such sum out of the husband's earnings  
11 and income as the court may determine, considering the cir-  
12 cumstances of the parties and their stations in life, and may  
13 prohibit the husband from imposing any restraint on her  
14 personal liberty, and may free her real and personal property  
15 from possession, control or any interest of the husband; and  
16 during the pendency of the suit the court, or judge thereof in  
17 vacation, shall have the same powers to make such orders as  
18 are provided for suits for divorce by section thirteen of this  
19 article. Any decree entered in the case shall be effective dur-  
20 ing such time as the court shall by its order direct, or until  
21 the further order of the court thereon, and, upon the petition  
22 of either party, the court may, from time to time afterwards,  
23 revise or alter such decree, or make further decrees, concern-  
24 ing the maintenance of the wife and the interest of the hus-  
25 band in the property of the wife, and the care, custody, edu-

26 cation and maintenance of the minor children of the parties,  
27 and may determine with which of their parents the children  
28 or any of them shall remain.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Clinton L. Howard*

Chairman Senate Committee

*Arnold M. Vickers*

Chairman House Committee

Originated in the

*Senate*

Takes effect

*from*

passage.

*Phaedrus M. Lytle*

Clerk of the Senate

*Geo. S. Hall*

Clerk of the House of Delegates

*Chas. E. Hodge*

President of the Senate

*John R. Belton*

Speaker House of Delegates

The within.....this the.....

day of....., 1935.

.....  
Governor

Filed in the office of the Secretary of State  
of West Virginia. **MAR 15 1935**

Wm. S. O'BRIEN,  
Secretary of State

I certify that the foregoing act, having been presented to the Governor for his approval, and not having been returned by him to the House of the Legislature in which it originated within the time prescribed by the constitution of the state, has become a law without his approval.

This the 15th day of March,

1935.

  
17 SECRETARY OF STATE