

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1945

## ENROLLED

SENATE BILL No. 166

(By Mr. Vickers, Mr. President,

PASSED March 5 1945

In Effect 90-days from Passage

166  
3-7

**ENROLLED**  
**Senate Bill No. 166**

(BY MR. VICKERS, MR. PRESIDENT)

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[Passed March 5, 1945; in effect ninety days from passage.]

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AN ACT to amend and reenact section twenty-six, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the procedure to be followed upon the reference to a commissioner in chancery of divorce suits and suits to annul or affirm marriages.

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

That section twenty-six, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 26. *Reference to Commissioner in Chancery;*2 *Taking of Depositions; Oral Testimony before Court.—*

3 Instead of proceeding with the cause under the provisions  
4 of the twenty-third section of this article, the court may,  
5 in its discretion, refer it to one of the commissioners in  
6 chancery of such court, or to a special commissioner in  
7 chancery, who shall take and return the testimony in  
8 such cause, with a report of all such facts as the com-  
9 missioner may be able to obtain as to property rights of  
10 the parties, their income, their character, conduct, health,  
11 habits, their children, their respective places of residence  
12 from the time of their marriage up to the time of such  
13 report, and any other matter deemed necessary by the  
14 court, together with his recommendation concerning  
15 whether a divorce, annulment or affirmation, as the case  
16 may be, should be granted, and concerning any other  
17 matter on which the court may request his recommenda-  
18 tion. All such facts so reported and the recommendation  
19 of the commissioner shall be considered by the court in  
20 passing on the merits of the cause, whether the same be  
21 referred to in the pleadings or evidence, or not. Except

22 as otherwise expressly provided herein, the procedure in  
23 respect to the reference of such a cause to a commissioner  
24 shall be governed in all respects by the rules applicable  
25 to references to commissioners in other chancery cases.

26 If testimony is to be taken in a county other than that  
27 in which the cause is pending, the same shall be taken  
28 before one of the commissioners in chancery of the cir-  
29 cuit court of the county in which the same is taken. If  
30 testimony is taken of witnesses residing out of the state  
31 of West Virginia, the same shall be taken before some  
32 person duly authorized to take depositions in divorce  
33 cases in the state where taken. If such depositions are  
34 taken out of the county in which the cause is pending,  
35 or without the state, the same shall be, by the person  
36 taking the same, filed with or forwarded to the clerk of  
37 the court wherein such cause is pending, and on receipt  
38 of such depositions such clerk shall lay the same before  
39 the commissioner to whom such cause has been referred,  
40 who shall consider the same in connection with his report  
41 hereinbefore mentioned. The person before whom depo-  
42 sitions are taken hereunder shall be personally present

43 at the time and place of taking depositions, and no depo-  
44 sition shall be taken or read in the cause unless it appears  
45 therefrom that such person was personally present during  
46 the taking of the same. It is hereby made the duty of the  
47 person before whom such depositions are taken, to see that  
48 all witnesses are so examined as to elicit all facts within  
49 their knowledge pertaining to the cause. If any person  
50 before whom any such depositions are taken certifies false-  
51 ly as to his presence at the taking of such depositions, he  
52 shall be guilty of a misdemeanor, and on conviction  
53 thereof, shall be fined not less than fifty nor more than  
54 five hundred dollars.

55 The court in which such cause is pending may so refer  
56 the same as often as, in its judgment, justice requires, and  
57 may, if it so elect, summon any one to appear before  
58 such court, and give evidence with reference thereto, and  
59 base its findings on such oral evidence solely. The com-  
60 missioner shall be allowed for his services the same com-  
61 pensation as is allowed in other chancery causes, and all  
62 costs, including stenographer's fees, shall be taxed as in  
63 other chancery causes.

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

*Charles C. Morris*

Chairman Senate Committee

*John C. Gandy*

Chairman House Committee

Originated in the

*Senate*

Takes effect

*90-days from*

passage

*Howard Hughes*

Clerk of the Senate

*Philip*

Clerk of the House of Delegates

*Donald M. Vickers*

President of the Senate

*John E. Amos*

Speaker House of Delegates

The within

*Approved*

this the

*8<sup>th</sup>*

day of

*March*

, 1945.

*Boozer Meadows*

Governor.

Filed in the office of the Secretary of State  
of West Virginia.

**MAR 8 1945**

Wm. S. O'BRIEN,

Secretary of State