

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1969

## ENROLLED

SENATE BILL NO. 4

(By Mr. Jackson, Mr. President, and  
Mr. Brubaker)

PASSED March 6, 1969

In Effect April 1, 1969 ~~Passage~~



FILED IN THE OFFICE  
JOHN D. ROCKEFELLER, IV  
SECRETARY OF STATE  
THIS DATE 3-17-69

#4

**ENROLLED**  
**Senate Bill No. 4**

(By MR. JACKSON, MR. PRESIDENT, and MR. BROTHERTON) .

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[Passed March 6, 1969; in effect April 1, 1969.]

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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, as amended, relating to divorce, annulment and separate maintenance.

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

That 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:

**ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.**

**§48-2-1. For what and when marriages void.**

1 All marriages which are prohibited by law on account of

2 either of the parties having a former wife or husband then

3 living; all marriages which are prohibited by law on ac-  
4 count of consanguinity or affinity between the parties; all  
5 marriages solemnized when either of the parties was an  
6 insane person, feeble-minded person, idiot, imbecile, or  
7 was afflicted with a venereal disease, or was incapable,  
8 because of natural or incurable impotency of body, of  
9 entering into the marriage state, or was under the age of  
10 consent; all marriages solemnized when either of the  
11 parties, prior to the marriage, without the knowledge of  
12 the other, had been convicted of an infamous offense,  
13 or when, at the time of marriage, the wife, without the  
14 knowledge of the husband, was with child by some person  
15 other than the husband, or prior to such marriage had  
16 been, without the knowledge of the husband, notoriously  
17 a prostitute, or when, prior to such marriage, the hus-  
18 band, without the knowledge of the wife, had been noto-  
19 riously a licentious person, are voidable and shall be  
20 void from the time they are so declared by a judgment  
21 order of nullity.

**§48-2-2. Affirmation or annulment of marriage.**

1 When a marriage is supposed to be void, or voidable, or  
2 any doubt exists as to its validity, for any of the causes

3 mentioned in section one of this article, or for any other  
4 cause recognized in law, either party may, except as  
5 provided in the next succeeding section, institute an  
6 action for annulling or affirming the same, and, upon hear-  
7 ing the proofs and allegations of the parties, the court  
8 shall enter a judgment order annulling or affirming the  
9 marriage, according to the right of the case. In every such  
10 case, and in every other case where the validity of a mar-  
11 riage is called in question, it shall be presumed that the  
12 marriage is valid, unless the contrary be clearly proven,  
13 and, if the marriage be adjudged to be valid it shall be  
14 conclusive upon all persons concerned.

**§48-2-3. What persons may not institute annulment action.**

1 An action for annulling a marriage may not be instituted:

2 (a) Where the cause is the natural or incurable im-  
3 potency of body of either of the parties to enter the mar-  
4 riage state, by the party who had knowledge of such in-  
5 capacity at the time of marriage; or

6 (b) Where the cause is fraud, force or coercion, by the  
7 party who was guilty of such fraud, force or coercion, nor

8 by the injured party if, after knowledge of the facts, he  
9 or she has by acts or conduct confirmed such marriage; or  
10 (c) Where the cause is affliction with a venereal disease  
11 existing at the time of marriage, by the party who was so  
12 afflicted if such party has subsequent to the marriage be-  
13 come cured of such disease, nor by the person who was not  
14 so afflicted if he or she after the curing of the afflicted  
15 person has by acts or conduct confirmed the marriage; or  
16 (d) Where the cause is the nonage of either of the  
17 parties, by the party who was capable of consenting, nor  
18 by the party not so capable if he or she has by acts or  
19 conduct confirmed the marriage after arriving at the age  
20 of consent; or  
21 (e) Where the cause is lack of consent on the part of  
22 either of the parties, by the party consenting or bringing  
23 about the marriage; or  
24 (f) Where the cause is that either of the parties has  
25 been convicted of an infamous offense prior to marriage,  
26 by the other party if, after knowledge of such fact, he or  
27 she has 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  
30 husband, or that prior to the marriage the wife had been  
31 notoriously a prostitute, by the husband, if after know-  
32 ledge of the fact, he has cohabited with the wife; or

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

**§48-2-4. Grounds for divorce.**

1 (a) A divorce may be ordered:

2 (1) For adultery; or

3 (2) When either of the parties subsequent to the mar-  
4 riage has, in or out of this state, been convicted for the  
5 commission of a crime which is a felony, and such con-  
6 viction has become final; or

7 (3) To the party abandoned, when either party wilfully  
8 abandons or deserts the other for one year; or

9 (4) For cruel or inhuman treatment, or reasonable ap-  
10 prehension of bodily hurt, and false accusation of adultery  
11 or homosexuality by either party against the other shall

12 be deemed cruel treatment within the meaning of this  
13 paragraph; cruel and inhuman treatment shall also be  
14 deemed to exist when the treatment by one spouse of  
15 another, or the conduct thereof, is such as to destroy  
16 or tend to destroy the mental or physical well-being,  
17 happiness and welfare of the other and render continued  
18 cohabitation unsafe or unendurable and under no cir-  
19 cumstances whatever shall it be necessary to allege or  
20 prove acts of physical violence in order to establish cruel  
21 and inhuman treatment as a ground for divorce; or

22 (5) For habitual drunkenness of either party subse-  
23 quent to the marriage; or

24 (6) For the addiction of either party, subsequent to the  
25 marriage, to the habitual use of any narcotic drug or drugs  
26 or dangerous drug or drugs as those terms are defined in  
27 this code; or

28 (7) Where the parties have lived separate and apart  
29 in separate places of abode without any cohabitation  
30 and without interruption for two years, whether such  
31 separation was the voluntary act of one of the parties  
32 or by the mutual consent of the parties; and a plea

33 of res adjudicata or of recrimination with respect to any  
34 other provision of this section shall not be a bar to either  
35 party's obtaining a divorce on this ground. If alimony  
36 is sought under the provisions of section fifteen of  
37 this article, the court may inquire into the question of  
38 who is the party at fault and may award such ali-  
39 mony according to the right of the matter and such  
40 determination shall not affect the right of either party  
41 to obtain a divorce on this ground; or

42 (8) For permanent and incurable insanity. No divorce  
43 shall be granted on the ground of insanity unless such  
44 permanently incurable insane person shall have been  
45 confined in a mental hospital or other similar institu-  
46 tion for a period of not less than three consecutive  
47 years next preceding the filing of the complaint; nor shall  
48 a divorce be granted on these grounds unless the court  
49 shall have heard competent medical testimony that such  
50 insanity is permanently incurable. The court granting a  
51 divorce under this subdivision may in its discretion order  
52 support and maintenance for such permanently incurable  
53 insane party by the other. Where an insane person,



54 within the meaning of this section, is a plaintiff in an  
55 action for divorce or annulment, the defendant shall not  
56 enter a plea of recrimination which is based upon the  
57 insanity of the plaintiff.

58 (b) It shall not be necessary to allege the facts constitut-  
59 ing the ground or grounds relied upon, and a complaint  
60 or counter complaint shall be sufficient if any one of  
61 the grounds is alleged in the language of such ground  
62 as set forth in subsection (a) of this section.

**§48-2-5. Courts having jurisdiction.**

1 The circuit court and courts of record vested with  
2 jurisdiction over domestic relations by act of the Leg-  
3 islature shall have jurisdiction of actions for annulling  
4 or affirming marriages, or for divorces.

**§48-2-6. Right to sue to annul or affirm a marriage.**

1 No action to annul or affirm a marriage shall be main-  
2 tainable unless at the commencement of the action one  
3 of the parties is a bona fide resident of this state, except  
4 that in the case of an action to annul a marriage that  
5 was performed in this state it shall not be necessary,  
6 if a matrimonial domicile has not been established else-  
7 where, that one of the parties be such a resident.

**§48-2-7. Right to sue for divorce.**

1     No action for divorce shall be maintainable:

2     (a) If the cause for divorce is adultery, whether the  
3     cause of action arose in or out of this state, unless one  
4     of the parties, at the commencement of the action, is  
5     a bona fide resident of this state. In such case if the  
6     defendant is a nonresident of this state and cannot be per-  
7     sonally served with process within this state, such action  
8     shall not be maintainable unless the plaintiff has been an  
9     actual bona fide resident of this state for at least one year  
10    next preceding the commencement of the action; or

11    (b) If the cause for divorce is other than adultery,  
12    unless one of the parties was, at the time the cause of  
13    action arose, or has since that time become, an actual  
14    bona fide resident of this state and has continued so  
15    to be for at least one year next preceding the com-  
16    mencement of the action.

**§48-2-8. Venue of actions for annulment, affirmation or divorce.**

1     The action for annulling or affirming a marriage, or  
2     for divorce, shall, if the defendant be a resident of this  
3     state be brought in the county in which the parties last

4 cohabited, or, at the option of the plaintiff, in the county  
5 in which the defendant resides; but if the defendant  
6 be not a resident of this state, the action shall be brought  
7 either in the county in which the plaintiff resides,  
8 or in the county in which the parties last cohabited.  
9 In the case of an action to annul a marriage performed  
10 in this state, where neither party is a resident of the  
11 state, the action shall be brought in the county where  
12 the marriage was performed.

**§48-2-9. Service of process.**

1 A judgment order may be entered upon service of pro-  
2 cess in the manner specified in the rules of civil procedure  
3 for trial courts of record for the service of process upon  
4 individuals.

**§48-2-10. Procedure; verification of pleadings; necessary proof;  
costs.**

1 Such action shall be instituted and conducted as other  
2 actions, except as provided in this article. Process shall  
3 not issue until the complaint shall have been filed, which  
4 may be done at any time, notwithstanding a term of  
5 court is not then being held. All pleadings shall be

6 verified by the party in whose name they are filed;  
7 but the complaint shall not be taken for confessed, and  
8 whether the defendant answers or not, the case shall  
9 be tried and heard independently of the admissions of  
10 either party in the pleadings or otherwise; and no judg-  
11 ment order shall be granted on the uncorroborated testi-  
12 mony of the parties or either of them. Costs may be award-  
13 ed to either party as justice require, and in all cases the  
14 court, in its discretion, may require payment of costs at  
15 any time, and may suspend or withhold any order until  
16 the costs are paid.

**§48-2-11. Infant, incompetent and insane parties.**

1 In an action for divorce or annulment, an infant party  
2 shall sue, answer and plead by a next friend, and an  
3 incompetent or insane party shall sue, answer and plead  
4 by his committee, and no guardian ad litem shall be re-  
5 quired unless specifically ordered by the court or judge  
6 hearing said action.

**§48-2-12. Particeps criminis may become a party.**

1 Any one charged as a particeps criminis shall be made  
2 a party to a divorce action, upon his or her application

3 to the court, subject to such terms and conditions as the  
4 court may prescribe.

**§48-2-13. Maintenance of spouse and children pendente lite;  
control of property.**

1 The court may, at any time after commencement of the  
2 action and reasonable notice to the other party, make any  
3 order that may be proper to compel either party to pay  
4 any sum necessary for the maintenance of the other party  
5 and to enable him or her to carry on or defend the action  
6 in the trial court and on appeal should one be taken, or  
7 to prevent either party from imposing any restraint on  
8 the personal liberty of the other, or to provide for the  
9 custody and maintenance of the minor children of the  
10 parties, during the pendency of the action, or to preserve  
11 the estate of either party, so that it be forthcoming to  
12 meet any order which may be made in the action, or to  
13 compel either party to give security to abide such order,  
14 or to compel either party to deliver to the other any of  
15 his or her separate estate which may be in the possession  
16 or control of the other, or to prevent either from interfer-  
17 ing with the separate estate of the other.

**§48-2-14. When a divorce not to be granted.**

1 No divorce for adultery shall be granted on the un-  
2 corroborated testimony of a prostitute, or a particeps  
3 criminis, or when it appears that the parties voluntarily  
4 cohabited after the knowledge of the adultery, or that it  
5 occurred more than three years before the institution of  
6 the action; nor shall a divorce be granted for any cause  
7 when it appears that the action has been brought by  
8 collusion, or that the offense charged has been condoned,  
9 or was committed by the procurement or connivance of  
10 the plaintiff, or that the plaintiff has, within three years  
11 before the institution of action, been guilty of adultery  
12 not condoned: *Provided*, That the defense of collusion  
13 shall not be pleaded as a bar to a divorce being granted  
14 upon the ground that the parties have lived separate and  
15 apart in separate places of abode without any cohabita-  
16 tion and without interruption for two years, whether such  
17 separation was a voluntary act of one of the parties or by  
18 the mutual consent of the parties.

**§48-2-15. Alimony; custody and maintenance of children.**

1 Upon ordering a divorce, the court may make such  
2 further order as it shall deem expedient, concerning the

3 maintenance of the parties, or either of them; and upon  
4 ordering the annulment of a marriage, or a divorce, the  
5 court may make such further order as it shall deem  
6 expedient, concerning the care, custody, education and  
7 maintenance of the minor children, and may determine  
8 with which of the parents or other proper person or per-  
9 sons the children or any of them, may remain; and the  
10 court may, from time to time afterward, on the verified  
11 petition of either of the parties, revise or alter such  
12 order concerning the maintenance of the parties, or  
13 either of them, and make a new order concerning  
14 the same, as the altered circumstances or needs of  
15 the parties may render necessary to meet the ends  
16 of justice; and the court may also from time to time  
17 afterward, on the verified petition of either of the parties  
18 or other proper person having actual or legal custody  
19 of such child or children, revise or alter such order  
20 concerning the care, custody, education and mainte-  
21 nance of the children, and make a new order concern-  
22 ing the same, as the circumstances of the parents or  
23 other proper person or persons and the benefit of the

24 children may require. In any case where the divorce or  
25 the annulment is denied, if the parties are living separate  
26 and apart from each other, the court shall retain jurisdic-  
27 tion of the case for the purpose of determining with which  
28 of the parents or other proper person or persons the  
29 children or any of them may remain and of making such  
30 order concerning the care, custody, education and mainte-  
31 nance of the minor children, or any of them, as to the  
32 court may seem proper and the benefit of the child or  
33 children may require; and such order may, from time to  
34 time afterward, on verified petition of either of the parties  
35 or other proper person having actual or legal custody of  
36 such child or children, be revised or altered, and a new  
37 order made, as the circumstances of the parties or the  
38 needs of the children may require. For the purpose of  
39 making effectual any order provided for in this section the  
40 court may make any order concerning the estate of the  
41 parties, or either of them, as it shall deem expedient.

42 In any case where a divorce is granted in this state  
43 upon constructive service of process, and personal juris-  
44 diction is thereafter obtained of the defendant in such



45 case, the court may make such further order as it shall  
46 deem expedient, concerning the maintenance of the  
47 parties, or either of them, or concerning the care, custody,  
48 education and maintenance of the minor children, and  
49 in any case where an annulment is granted in this state  
50 upon constructive service of process, and personal juris-  
51 diction is thereafter obtained of the defendant in such  
52 case, the court may make such further order as it shall  
53 deem expedient concerning the care, custody, education  
54 and maintenance of the minor children.

§48-2-16. What considered in awarding alimony.

1 All judges and courts of this state, called upon to fix,  
2 ascertain and determine an amount as alimony, support  
3 or maintenance to be paid by a spouse or to modify  
4 any order pertaining thereto, shall take into considera-  
5 tion, among other things, the financial needs of the  
6 parties, the earnings and earning ability of the husband  
7 and wife, the estate, real and personal, and the extent  
8 thereof as well as the income derived therefrom of both  
9 the husband and wife and shall allow, or deny, alimony  
10 or maintenance or modify any former order with rela-  
11 tion thereto, in accordance with the principles of justice.

**§48-2-17. Recordation of order for support, maintenance or alimony.**

1     An order for support, maintenance or alimony shall  
2     not give rise to a lien on any real estate of the person  
3     against whom the order is entered until such order is  
4     entered of record in the office of the clerk of the county  
5     court where any such real estate is situate. On and after  
6     the effective date of this section, any such order shall be  
7     recorded in the same manner as other judgments are  
8     recorded.

**§48-2-18. Court may release certain liens created for support, maintenance or alimony.**

1     If any person deem that his or her interest, or that of  
2     any person for whom he or she may act in a fiduciary  
3     or representative capacity, will be promoted by a re-  
4     lease, in full or in part, of a lien created upon his or  
5     her real or personal property for the support or main-  
6     tenance of another person or persons, or for alimony,  
7     he or she may apply by petition, in a summary way,  
8     to the court that entered the order or decree creating  
9     such lien for relief from said order; the petition shall

10 be verified and shall describe said lien, the circumstances  
11 of the petitioner or the person for whom he is acting,  
12 the name or names of the person or persons holding  
13 such lien, and the circumstances calculated to show the  
14 propriety of the release requested; all persons interested  
15 shall be made defendants and shall be given ten days'  
16 notice before hearing upon the petition. If authorized  
17 by the court, the release may be so conditioned as to  
18 promote substantial justice, but the release shall be  
19 prospective in effect, only, and shall not operate to  
20 deprive the person secured by the lien of the right to  
21 receive alimony or support payments accrued to the  
22 date of the hearing.

**§48-2-19. Annulment bars dower.**

1 When any marriage shall be annulled all rights of  
2 either husband or wife to dower shall be thereby barred.

**§48-2-20. Divorce bars dower; compensation to innocent party.**

1 When a divorce shall be granted, all rights of either  
2 husband or wife to dower shall be thereby barred; but  
3 the court when granting any divorce shall, in every  
4 proper case, compel the guilty party to compensate the

5 innocent party for any inchoate right of dower, in any  
6 then existing property, that may be barred by the  
7 divorce; and to secure the payment of such compensation  
8 the court may make such compensation a lien upon the  
9 real estate of the party liable therefor.

**§48-2-21. Court may restore to either party his or her property.**

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

**§48-2-22. Provisions concerning prior divorces from bed and  
board; pending suits withdrawn or converted into  
actions for divorce.**

1 Any decree of divorce from bed and board entered be-  
2 fore the passage of this article, may be revoked at any  
3 time by the same court by which it was pronounced, under  
4 such regulations and restrictions as the court may impose,  
5 upon the joint application of the parties, and upon their

6 producing satisfactory evidence of their reconciliation.

7 Either party to a suit in which a divorce from bed and

8 board has been granted prior to the passage of this article

9 may proceed to have the same made final in the manner

10 prescribed by this code.

**§48-2-23. Former name of wife; restoration.**

1 The court upon granting an annulment or divorce to the

2 husband or wife may if there are no living children of such

3 marriage allow the wife to resume her maiden name. The

4 court may also allow the wife to resume the name of a

5 former husband if she has any living child or children by

6 her marriage to such former husband.

**§48-2-24. Maturing of actions for divorce, annulment and**

**separate maintenance; hearing; testimony and**

**depositions; reference of action to commissioner.**

1 Actions for divorce, annulment and separate mainte-

2 nance shall mature in the same manner as other actions

3 provided for in the rules of civil procedure of the state

4 of West Virginia, and when ready for hearing under said

5 rules shall be tried before the court, in chambers, and all

6 witnesses shall appear and testify at the hearing the same

7 as witnesses in other civil actions. Such actions may be  
8 heard, when matured, and a judgment order entered, at  
9 any time irrespective of whether or not there is a term of  
10 court in session. The law governing the taking and read-  
11 ing of depositions, as provided for in the rules of civil  
12 procedure, shall apply to depositions in the hearing of a  
13 divorce case. The court may, instead of proceeding with  
14 the action under this section, refer the same to a com-  
15 missioner, or a special commissioner, of said court as pro-  
16 vided for in section twenty-five of this article.

**§48-2-25. Reference to commissioner; taking of depositions;  
oral testimony before court.**

1 Instead of proceeding with the action under the pro-  
2 visions of section twenty-four of this article, the court  
3 may, in its discretion, refer it to one of the commissioners  
4 of such court, or to a special commissioner, who shall  
5 take and return the testimony in such action, with a  
6 report of all such facts as the commissioner may be able  
7 to obtain as to property rights of the parties, their income,  
8 their character, conduct, health, habits, their children,  
9 their respective places of residence from the time of their

10 marriage up to the time of such report, and any other  
11 matter deemed necessary by the court, together with his  
12 recommendation concerning whether a divorce, annul-  
13 ment or affirmation, as the case may be, should be grant-  
14 ed, and concerning any other matter on which the court  
15 may request his recommendation. All such facts so re-  
16 ported and the recommendation of the commissioner shall  
17 be considered by the court in passing on the merits of the  
18 case, whether the same be referred to in the pleadings or  
19 evidence, or not. Except as otherwise expressly provided  
20 herein, the procedure in respect to the reference of such  
21 a case to a commissioner shall be governed in all respects  
22 by the rules applicable to references to commissioners  
23 generally.

24 If testimony is to be taken in a county other than that  
25 in which the action is pending, or of witnesses residing out  
26 of the state of West Virginia, the same shall be taken be-  
27 fore some person duly authorized to take depositions in  
28 the county or state where taken. If such depositions are  
29 taken out of the county in which the action is pending, or  
30 without the state, the same shall be, by the person taking

31 the same, filed with or forwarded to the clerk of the court  
32 wherein such action is pending, and on receipt of such  
33 depositions such clerk shall lay the same before the com-  
34 missioner to whom such action has been referred, who  
35 shall consider the same in connection with his report  
36 hereinbefore mentioned. The person before whom deposi-  
37 tions are taken hereunder shall be personally present  
38 at the time and place of taking depositions, and no deposi-  
39 tion shall be taken or read in the action unless it appears  
40 therefrom that such person was personally present during  
41 the taking of the same. It is hereby made the duty of the  
42 person before whom such depositions are taken, to see  
43 that all witnesses are so examined as to elicit all facts  
44 within their knowledge pertaining to the action. If any  
45 person before whom any such depositions are taken certi-  
46 fied falsely as to his presence at the taking of such deposi-  
47 tions, he shall be guilty of a misdemeanor, and on con-  
48 viction thereof, shall be fined not less than fifty nor more  
49 than five hundred dollars.

50 The court in which such action is pending may so refer  
51 the same as often as, in its judgment, justice requires,



52 and may, if it so elect, summon any one to appear before  
53 such court, and give evidence with reference thereto, and  
54 base its findings on such oral evidence solely. The com-  
55 missioner shall be allowed for his services the same com-  
56 pensation as is allowed in other court actions, and all  
57 costs, including stenographer's fees, shall be taxed as in  
58 other court actions.

**§48-2-26. Notice of hearing by commissioner.**

1 The commissioner to whom any case is referred under  
2 the provisions of the preceding section shall, before pro-  
3 ceeding to execute the requirements of the order of  
4 reference, cause the party desiring to take depositions  
5 and evidence, to give to the opposing party, or the  
6 attorney of record for said opposing party, at least ten  
7 days' notice of the time and place when and where he  
8 will commence proceedings, but if said opposing party  
9 is not then represented by an attorney, and personal  
10 service of such notice cannot be had on that party by  
11 reason of absence from the state, or nonresidence, then  
12 it shall be sufficient to publish such notice in a news-  
13 paper of general circulation in the county wherein the

14 action is pending, upon entry of order setting forth the  
15 basis therefor and for the number of insertions as the  
16 order may direct: *Provided, however,* That no notice  
17 of such proceedings shall be required to be given in any  
18 action wherein the defendant has not appeared in person  
19 in any hearing or proceeding before the court, or has not  
20 appeared by a pleading or written motion, duly filed  
21 in the action, unless specifically required and ordered  
22 by the court.

23 The opposing party, or his attorney may waive such  
24 ten-day notice requirement by written waiver thereof.

§48-2-27. Sealing by clerk of evidence and pleadings.

1 When a judgment order is entered in any action for  
2 annulment of marriage or for divorce the clerk shall  
3 immediately seal in a package all pleadings, except the  
4 orders of the court, all the written testimony, exhibits  
5 to the testimony, the stenographic notes or other record-  
6 ings of the testimony, if any were taken, the commis-  
7 sioner's report, and all other evidence, and the same shall  
8 not be again opened except upon written permission of  
9 the court.

**§48-2-28. Action for separate maintenance.**

1     Whenever a husband shall, without good and sufficient  
2     cause, have failed to provide suitable support for his  
3     wife, or have abandoned or deserted her, or if the wife  
4     shall have grounds for divorce, the court of any county  
5     that would have jurisdiction of an action for divorce  
6     between the parties, shall, at the action of the wife,  
7     whether or not a divorce be prayed for, order to the  
8     wife as alimony and separate maintenance such sum  
9     out of the husband's earnings or income as the court  
10    may determine, considering the circumstances of the  
11    parties and their stations in life, and may prohibit the  
12    husband from imposing any restraint on her personal  
13    liberty, and may free her real and personal property  
14    from possession, control or any interest of the husband;  
15    and during the pendency of the action the court shall  
16    have the same powers to make such orders as are pro-  
17    vided for actions for divorce by section thirteen of this  
18    article insofar as the same are applicable on behalf of  
19    the wife. Any order entered in the case shall be effective  
20    during such time as the court shall by its order direct,

21 or until the further order of the court thereon, and  
22 upon the petition of either party, the court may, from  
23 time to time afterwards, revise or alter such order, or  
24 make further orders, concerning the maintenance of  
25 the wife and the interest of the husband in the property  
26 of the wife, and the care, custody, education and main-  
27 tenance of the minor children of the parties, and may  
28 determine with which of their parents the children or  
29 any of them shall remain.

**§48-2-29. Advertising of any offer to obtain divorces prohibited.**

1 Whosoever prints, publishes, distributes, or circulates,  
2 or causes to be printed, published, distributed, or circu-  
3 lated, any circular, pamphlet, card, handbill, advertise-  
4 ment, printed paper, book, newspaper, or notice of any  
5 kind, offering to procure, or aid in procuring, any divorce,  
6 or the severance, dissolution, or annulment of any mar-  
7 riage, or, by such publication as above mentioned, offers  
8 to engage, appear or act as attorney or counsel in any ac-  
9 tion for alimony, divorce, or the severance, dissolution, or  
10 annulment of marriage, either in this state or elsewhere,  
11 shall be deemed guilty of a misdemeanor, and, upon

12 conviction thereof, shall be fined not less than one hun-  
13 dred nor more than three hundred dollars, and if the per-  
14 son so convicted be an attorney at law he shall, in addi-  
15 tion to the above penalty, be disbarred from practicing  
16 as such attorney at law in the courts of this state. This  
17 section shall not apply to the printing or publishing of  
18 any notice or advertisement required or authorized by  
19 any law of this state or orders of any court.

**§48-2-30. Validation of certain divorce decrees; limitation on  
suits contesting such decrees.**

1 All decrees of divorce heretofore entered by courts of  
2 this state, having jurisdiction of suits for divorce, wherein  
3 maturity of the cause at rules has been waived, consent  
4 given for hearing, the cause placed upon the docket and  
5 set for hearing and a final decree and judgment entered  
6 by the court therein, shall be recognized as having full  
7 force and effect from the date of their rendition and entry  
8 as though said divorce causes had been regularly matured  
9 at rules, placed upon the docket and regularly set for  
10 hearing.

**§48-2-31. Validation of certain divorce orders; limitations on actions contesting such orders.**

1 All orders of divorce and annulment of marriage here-  
2 tofore entered on and after March twenty-six, one thou-  
3 sand nine hundred sixty-three, and before January first,  
4 one thousand nine hundred sixty-five, wherein the action  
5 was tried or heard less than the maximum period of time  
6 within which the defendant was required to answer, shall  
7 be recognized as having full force and effect from the  
8 date of the entry of such order as though the action had  
9 been tried or heard after the maximum period of time  
10 within which the defendant was required to answer,  
11 unless an interested party shall institute proceedings or  
12 an action to set aside any such order of divorce or annul-  
13 ment, upon such ground, before the first day of January,  
14 one thousand nine hundred sixty-nine.

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

William Tompkins  
Chairman Senate Committee

Clayton C. Davidson  
Chairman House Committee

Originated in the Senate.

To take effect April 1, 1969.

William Thomas  
Clerk of the Senate

C. G. Blankenship  
Clerk of the House of Delegates

Frank B. Jackson  
President of the Senate

Ivor F. Bransby  
Speaker House of Delegates

The within approved this the 17<sup>th</sup>  
day of March, 1969.

Wm. A. Shreve Jr.  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/12/69

Time 2:45 p.m.