

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1977

— ● —

ENROLLED

Committee Substitute for

HOUSE BILL No. 806

(By Mr. Samson & Mr. O'Neal)

— ● —

PASSED April 9, 1977

In Effect ninety days from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 806

(By MR. DAMRON and MR. O'NEAL)

[Passed April 9, 1977; in effect ninety days from passage.]

AN ACT to amend and reenact sections four, thirteen and fourteen, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to divorce; adding additional grounds for divorce; shortening times for abandonment and living separate and apart as grounds for divorce; maintenance of spouse and children during pendency of action and clarifying instances when a divorce shall not be granted.

Be it enacted by the Legislature of West Virginia:

That sections four, thirteen and fourteen, 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.

§48-2-4. 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 conviction
6 has become final; or

7 (3) To the party abandoned, when either party willfully
8 abandons or deserts the other for six months; or

9 (4) For cruel or inhuman treatment, or reasonable appre-
10 hension of bodily hurt, and false accusation of adultery or
11 homosexuality by either party against the other shall be
12 deemed cruel treatment within the meaning of this subdivision;
13 cruel and inhuman treatment shall also be deemed to exist
14 when the treatment by one spouse of another, or the conduct
15 thereof, is such as to destroy or tend to destroy the mental
16 or physical well-being, happiness and welfare of the other
17 and render continued cohabitation unsafe or unendurable
18 and under no circumstances whatever shall it be necessary to
19 allege or prove acts of physical violence in order to establish
20 cruel and inhuman treatment as a ground for divorce; or

21 (5) For habitual drunkenness of either party subsequent
22 to the marriage; or

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

27 (7) Where the parties have lived separate and apart in
28 separate places of abode without any cohabitation and with-
29 out interruption for one year, whether such separation was
30 the voluntary act of one of the parties or by the mutual con-
31 sent of the parties; and a plea of res adjudicata or of recrimi-
32 nation with respect to any other provision of this section shall
33 not be a bar to either party's obtaining a divorce on this
34 ground. If alimony is sought under the provisions of section
35 fifteen of this article, the court may inquire into the question
36 of who is the party at fault and may award such alimony ac-
37 cording to the right of the matter and such determination shall
38 not affect the right of either party to obtain a divorce on this
39 ground; or

40 (8) For permanent and incurable insanity. No divorce shall
41 be granted on the ground of insanity unless such permanently

42 incurable insane person shall have been confined in a mental
43 hospital or other similar institution for a period of not less
44 than three consecutive years next preceding the filing of the
45 complaint; nor shall a divorce be granted on these grounds
46 unless the court shall have heard competent medical testi-
47 mony that such insanity is permanently incurable. The court
48 granting a divorce under this subdivision may in its discretion
49 order support and maintenance for such permanently incur-
50 able insane party by the other. Where an insane person, within
51 the meaning of this section, is a plaintiff in an action for
52 divorce or annulment, the defendant shall not enter a plea of
53 recrimination which is based upon the insanity of the plaintiff;
54 or

55 (9) For abuse of a child of the parties or of one of the
56 parties or for neglect of a child for which the neglecting party
57 has the legal responsibility. For purposes of this subsection,
58 "abuse" means any physical injury including, but not limited
59 to, sexual molestation, or mental injury inflicted on such child;
60 and "neglect" means willfull failure to provide, by one of the
61 parties who is legally responsible for the care and maintenance
62 of a child, the proper or necessary support, education as
63 required by law, or medical, surgical or other care necessary
64 for the well-being of a child. No divorce shall be granted
65 upon this ground except upon clear and convincing evidence
66 sufficient to justify permanently depriving the offending
67 party of his or her parental rights to the custody and control
68 of said abused or neglected child; or

69 (10) If one party to a marriage shall file a verified com-
70 plaint, for divorce, against the other, alleging that irreconcil-
71 able differences have arisen between the parties, and stating
72 the names of the dependent children of the parties or of either
73 of them, and if the defendant shall file a verified answer to
74 the complaint and admit or aver that irreconcilable differences
75 exist between the parties, the court may grant a divorce, but
76 no order of divorce entered pursuant to the provisions of this
77 subsection (a) (10) shall be entered unless sixty days shall
78 have elapsed after the filing of the complaint. In such case no
79 corroboration of the grounds for divorce shall be required.
80 The court may make such order for alimony, for the custody,

81 support and maintenance of children, and for visitation rights
82 as may be just and equitable, or may approve, modify, or
83 reject any agreement between the parties pertaining to alimony,
84 the custody, maintenance and support of children, or visitation
85 rights; such provision shall not affect the right to obtain a
86 divorce upon the ground of irreconcilable differences between
87 the parties to a marriage.

88 (b) It shall not be necessary to allege the facts constituting
89 the ground or grounds relied upon, and a complaint or counter
90 complaint shall be sufficient if any one of the grounds is
91 alleged in the language of such ground as set forth in subsec-
92 tion (a) of this section.

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

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

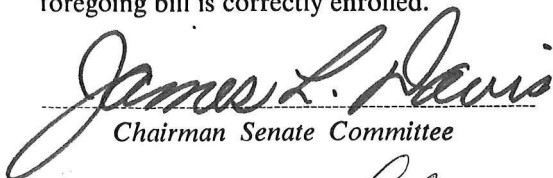
19 At any time after a party is abandoned or deserted or after
20 the parties to a marriage have lived separate and apart in
21 separate places of abode without any cohabitation, the party
22 abandoned or either party living separate and apart may apply
23 for relief pursuant to this section by instituting an action for
24 divorce as provided in section ten of this article, alleging that

25 the plaintiff reasonably believes that the period of abandonment
26 or of living separate and apart will continue for the period
27 prescribed by the applicable provision of section four of this
28 article. If the period of abandonment or living separate and
29 apart continues for the period prescribed by the applicable
30 provision of section four of this article, the divorce action may
31 proceed to a hearing as provided in sections twenty-four and
32 twenty-five of this article without a new complaint being filed:
33 *Provided, That, the party desiring to proceed to a hearing*
34 *shall give the opposing party at least twenty days' notice of the*
35 *time, place and purpose of the hearing, such notice to be*
36 *served in the same manner as a complaint, regardless of*
37 *whether the opposing party has appeared or answered.*

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

1 No divorce for adultery shall be granted on the uncorrobor-
2 ated testimony of a prostitute, or a particeps criminis, or when
3 it appears that the parties voluntarily cohabited after the
4 knowledge of the adultery, or that it occurred more than three
5 years before the institution of the action; nor shall a divorce
6 be granted for any cause when it appears that the offense
7 charged has been condoned, or was committed by the pro-
8 curement or connivance of the plaintiff, or that the plaintiff
9 has, within three years before the institution of action, been
10 guilty of adultery not condoned, but such exception shall not
11 be applicable to causes of action brought pursuant to sub-
12 divisions (7) and (10), subsection (a), section four of this
13 article. The defense of collusion shall not be pleaded as a bar
14 to a divorce.

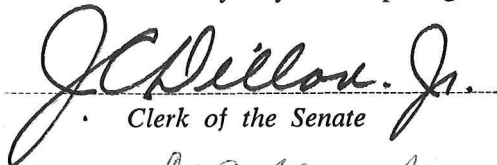
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

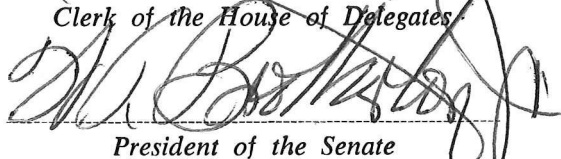

Chairman House Committee

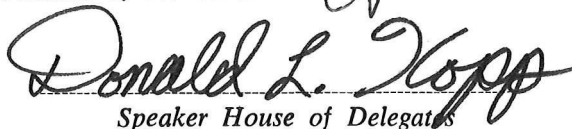
Originated in the House.

Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 24
day of April, 1977.


Governor



RECEIVED

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OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date April 24, 1977

Time 4:40 p.m.

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OFFICE
SECY. OF STATE