

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-24-81

Time _____

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981

— ● —

ENROLLED

Com. Sub. for
HOUSE BILL No. 806

(By Mr. Hendricks)

— ● —

Passed April 7, 1981

In Effect Ninety Days From Passage



No: 806

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 806

(By MR. HENDRICKS)

[Passed April 7, 1981; in effect ninety days from passage.]

AN ACT to amend and reenact section four, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two by adding thereto a new section, designated section four-a, relating to grounds for divorce; providing for divorce on the ground of insanity; providing for divorce on ground of irreconcilable differences when defendant files verified answer that admits or avers the same; providing a form verified answer; and requiring circuit clerks to maintain and provide said form at no charge.

Be it enacted by the Legislature of West Virginia:

That section four, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article two be further amended by adding thereto a new section, designated section four-a, all 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 marriage
4 has, in or out of this state, been convicted for the com-
5 mission of a crime which is a felony, and such conviction
6 has been 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 by either party against
10 the other, which includes reasonable apprehension of bodily
11 harm, false accusation of adultery or homosexuality, conduct
12 or treatment which destroys or tends to destroy the mental
13 or physical well-being, happiness and welfare of the other
14 and render continued cohabitation unsafe or unendurable:
15 *Provided*, That under no circumstances shall it be necessary
16 to allege or prove acts of physical violence in order to estab-
17 lish cruel and inhuman treatment as a ground for divorce;
18 or

19 (5) For habitual drunkenness of either party subsequent
20 to the marriage; or

21 (6) For the addiction of either party, subsequent to the
22 marriage, to the habitual use of any narcotic or dangerous
23 drug defined in this Code; or

24 (7) Where the parties have lived separate and apart in
25 separate places of abode without any cohabitation and without
26 interruption for one year, whether such separation was the
27 voluntary act of one of the parties or by the mutual consent
28 of the parties: *Provided*, That a plea of res judicata or of
29 recrimination with respect to any other provision of this section
30 shall not be a bar to either party's obtaining a divorce on this
31 ground: *Provided, however*, That if alimony is sought under
32 the provision of section fifteen of this article, the court may
33 inquire into the question of who is the party at fault and may
34 award alimony according to the right of the matter: *Pro-*
35 *vided further*, That this determination shall not affect the
36 right of either party to obtain a divorce on this ground; or

37 (8) For permanent and incurable insanity, only if the
38 person is permanently and incurably insane and has been con-

39 fined in a mental hospital or other similar institution for a
40 period of not less than three consecutive years next preceding
41 the filing of the complaint and the court has heard competent
42 medical testimony that such insanity is permanently incur-
43 able: *Provided*, That a court granting a divorce on this grounds
44 may in its discretion order support and maintenance for the
45 permanently incurably insane party by other: *Provided, how-*
46 *ever*, That in an action for divorce or annulment, where the
47 plaintiff is permanently incurably insane the defendant shall
48 not enter a plea of recrimination based upon the insanity of
49 the plaintiff; or

50 (9) For abuse or neglect of a child of the parties or of
51 one of the parties, "abuse" meaning any physical or mental
52 injury inflicted on such child including, but not limited to,
53 sexual molestation; and "neglect" is willful failure to provide,
54 by a party who has legal responsibility for such child, the
55 necessary support, education as required by law, or medical,
56 surgical or other care necessary for the well-being of such
57 child: *Provided*, That a divorce shall not be granted on this
58 ground except upon clear and convincing evidence sufficient
59 to justify permanently depriving the offending party of his
60 parental rights to the custody and control of the abused or
61 neglected child; and

62 (10) If one party to a marriage shall file a verified com-
63 plaint, for divorce, against the other, alleging that irrecon-
64 cilable differences have arisen between the parties, and stat-
65 ing the names of the dependent children of the parties or of
66 either of them, and if the other party shall file a verified answer
67 to the complaint and admit or aver that irreconcilable differ-
68 ences exist between the parties, the court shall grant a divorce:
69 *Provided*, That the defendant may file and serve an answer
70 with or without an attorney, and said verified answer shall be
71 sufficient if it is of the form as set out in section four-a of this
72 article: *Provided, however*, That the circuit clerk of each
73 county shall maintain sufficient supplies of said form and
74 provide the same to any person at no charge. No corroboration
75 shall be required of the ground for the divorce or the issues of
76 jurisdiction or venue or any other proof for a divorce on the
77 ground of irreconcilable differences of the parties. The court

78 may make orders for or approve, modify or reject any agree-
79 ment between the parties pertaining to just and equitable, (i)
80 alimony, (ii) custody, support or maintenance of children, or
81 (iii) visitation rights.

82 (b) It shall not be necessary to allege the facts constituting
83 the ground or grounds relied upon, and a complaint or counter
84 complaint shall be sufficient if any one of the grounds is al-
85 leged in the language of such ground as set forth in subsection
86 (a) of this section.

§48-2-4a. Form of verified answer.

1 A verified answer to a divorce complaint alleging as one
2 of the grounds for divorce, the ground of irreconcilable dif-
3 ferences as contained in subsection (a) (10) of section four
4 of this article, may be in the form or effect as follows:

5 IN THE CIRCUIT COURT OF COUNTY,
6 WEST VIRGINIA

7
8 Plaintiff

9 vs. CIVIL ACTION NO.

10
11 Defendant

11 ANSWER

12 Now comes the defendant for answer to the complaint and
13 says as follows:

14 (1) The defendant admits all the allegations contained in
15 the complaint except the allegations contained in paragraph
16 number(s), which allegations the defen-
17 dant denies.

18 (2) That irreconcilable differences exist between the parties.

19
20 Defendant

21 VERIFICATION

22 STATE OF WEST VIRGINIA,

23 COUNTY OF _____,

24 _____, the defendant named in the
25 foregoing answer, being duly sworn, says that the facts and
26 allegations therein contained are true, except so far as they
27 are therein stated to be on information, and that, so far as
28 they are therein stated to be on information, the defendant
29 believes them to be true.

30 _____
31 Defendant

32 Taken, sworn to and subscribed before me this _____
33 day of _____, _____

34 My commission expires _____

35 _____
36 Notary Public

37 CERTIFICATE OF SERVICE

38 I have mailed a true copy of the foregoing answer to _____
39 _____, plaintiff's attorney, by first-class
40 mail, at his last known address at _____
41 on the _____ date of _____.

42 _____
43 Defendant.

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

R. P. Baylor
Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Irdd C. Wills
Clerk of the Senate

VA Blankenship
Clerk of the House of Delegates

Warren R. McLean
President of the Senate

Wayle H. Lee, Jr.
Speaker House of Delegates

The within is approved this the 24
day of April, 1981.

Paul R. Ryan
Governor

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OFFICE OF THE GOVERNOR

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