

# **Senate Bill No. 368**

(By Senators Cookman and Plymale)

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[Introduced February 25, 2013;  
referred to the Committee on the Judiciary.]

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A BILL to amend and reenact §48-3-103 and §48-3-105 of the Code of West Virginia, 1931, as amended, all relating to domestic relations law generally; clarifying that conviction of an offense punishable by incarceration for more than one year prior to the marriage and without the knowledge of the other party constitutes a basis for voiding a marriage; and clarifying that a party to a marriage who was unaware at the time of the marriage that his or her spouse had previously been convicted of an offense punishable by incarceration for more than one year may not institute an annulment action if he or she cohabited with that spouse after becoming aware of the conviction.

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

That §48-3-103 and §48-3-105 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 3. PROPERTY, RIGHTS AND LIABILITIES OF  
MARRIED WOMEN; HUSBAND AND WIFE.**

**§48-3-103. Voidable marriages.**

1       ~~(a)~~ The following marriages are voidable and are void  
2 from the time they are so declared by a judgment order of  
3 nullity:

4       (1) Marriages that are prohibited by law on account of  
5 either of the parties having a wife or husband of a prior  
6 marriage, when the prior marriage has not been terminated by  
7 divorce, annulment or death;

8       (2) Marriages that are prohibited by law on account of  
9 consanguinity or affinity between the parties;

10       (3) Marriages solemnized when either of the parties:

11       (A) Was an insane person, idiot or imbecile;

12       (B) Was afflicted with a venereal disease;

13 (C) Was incapable, because of natural or incurable  
14 impotency of the body, of entering into the marriage state;

15 (D) Was under the age of consent; or

16 (E) Had been, prior to the marriage and without the  
17 knowledge of the other party, convicted of ~~an infamous~~  
18 ~~offense~~ a crime punishable by imprisonment in excess of one  
19 year under the applicable law of this state, another state or  
20 the United States;

21 (4) Marriages solemnized when, at the time of the  
22 marriage, the wife, without the knowledge of the husband:

23 (A) Was with child by some person other than the  
24 husband; or

25 (B) Had been, prior to the marriage, notoriously a  
26 prostitute; or

27 (5) Marriages solemnized when, prior to the marriage, the  
28 husband, without the knowledge of the wife, had been  
29 notoriously a licentious person.

**§48-3-105. 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 impotency  
3 of body of either of the parties to enter the marriage state, by  
4 the party who had knowledge of such incapacity at the time  
5 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 by  
8 the injured party if, after knowledge of the facts, he or she  
9 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 become  
13 cured of such disease, nor by the person who was not so  
14 afflicted if he or she after the curing of the afflicted person  
15 has by acts or conduct confirmed the marriage; or

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

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

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

23 (f) Where the cause is that either of the parties has been  
24 convicted of ~~an infamous offense~~ a crime punishable by  
25 imprisonment in excess of one year under the applicable law  
26 of this state, another state or the United States prior to  
27 marriage, by the other party if, after knowledge of such fact,  
28 he or she has cohabited with the party so convicted; or

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

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

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(NOTE: The purpose of this bill is to clarify that conviction of an offense punishable by incarceration for more than one year prior to the marriage and without the knowledge of the other party constitutes a basis for voiding a marriage. The bill clarifies that a party to a marriage who was unaware at the time of the marriage that his or her spouse had previously been convicted of an offense punishable by incarceration for more than one year may not institute an annulment action if he or she cohabited with that spouse after becoming aware of the conviction.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)