

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 58**

4 (By Senators Cookman, Miller, Plymale and Fitzsimmons)

5 \_\_\_\_\_  
6 [Originating in the Committee on the Judiciary;

7 reported January 21, 2014.]  
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10  
11 A BILL to amend and reenact §48-3-103 and §48-3-105 of the Code of  
12 West Virginia, 1931, as amended, all relating to domestic  
13 relations law generally; clarifying that conviction of an  
14 offense punishable by incarceration for more than one year  
15 prior to the marriage and without the knowledge of the other  
16 party constitutes a basis for voiding a marriage; clarifying  
17 that a party to a marriage who was unaware at the time of the  
18 marriage that his or her spouse had previously been convicted  
19 of an offense punishable by incarceration for more than one  
20 year may not institute an annulment action if he or she  
21 cohabited with that spouse after becoming aware of the  
22 conviction; clarifying grounds for voiding marriages; and  
23 modifying and removing certain language related to voiding of  
24 marriages.

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

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

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

6 **§48-3-103. Voidable marriages.**

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

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

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

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

16 (A) Was ~~an insane person, idiot or imbecile~~ mentally  
17 incompetent;

18 (B) Was afflicted with a ~~venereal~~ sexually transmitted  
19 disease;

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

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

23 (E) Had been, prior to the marriage and without the knowledge  
24 of the other party, convicted of ~~an infamous offense~~ a crime

1 punishable by imprisonment in excess of one year under the  
2 applicable law of this state, another state or the United States;

3 (4) Marriages solemnized when, at the time of the marriage,  
4 the wife, without the knowledge of the husband, ~~(A) Was~~ was with  
5 child by some person other than the husband. ~~or~~

6 ~~(B) Had been, prior to the marriage, notoriously a prostitute;~~  
7 ~~or~~

8 ~~(5) Marriages solemnized when, prior to the marriage, the~~  
9 ~~husband, without the knowledge of the wife, had been notoriously a~~  
10 ~~licentious person.~~

11 **§48-3-105. What persons may not institute annulment action.**

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

13 (a) Where the cause is the natural or incurable impotency of  
14 body of either of the parties to enter the marriage state, by the  
15 party who had knowledge of such incapacity at the time of marriage;  
16 ~~or~~

17 (b) Where the cause is fraud, force or coercion, by the party  
18 who was guilty of such fraud, force or coercion, nor by the injured  
19 party if, after knowledge of the facts, he or she has by acts or  
20 conduct confirmed such marriage; ~~or~~

21 (c) Where the cause is affliction with a ~~venereal~~ sexually  
22 transmitted disease existing at the time of marriage, by the party  
23 who was so afflicted if such party has subsequent to the marriage  
24 become cured of such disease, nor by the person who was not so

1 afflicted if he or she after the curing of the afflicted person has  
2 by acts or conduct confirmed the marriage; ~~or~~

3 ~~(d) Where the cause is the nonage of either of the parties, by~~  
4 ~~the party who was capable of consenting, nor by the party not so~~  
5 ~~capable if he or she has by acts or conduct confirmed the marriage~~  
6 ~~after arriving at the age of consent; or~~

7 ~~(e)~~ (d) Where the cause is lack of consent on the part of  
8 either of the parties, by the party consenting or bringing about  
9 the marriage; ~~or~~

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

16 ~~(g)~~ (f) Where the cause is that the wife was at the time of  
17 marriage with child by some person other than the husband, ~~or that~~  
18 ~~prior to the marriage the wife had been notoriously a prostitute,~~  
19 by the husband, if after knowledge of the fact he has cohabited  
20 with the wife. ~~or~~

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