

1 **Senate Bill No. 58**

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

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4 [Introduced January 8, 2014; referred to the Committee on the
5 Judiciary.]
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10 A BILL to amend and reenact §48-3-103 and §48-3-105 of the Code of
11 West Virginia, 1931, as amended, all relating to domestic
12 relations law generally; clarifying that conviction of an
13 offense punishable by incarceration for more than one year
14 prior to the marriage and without the knowledge of the other
15 party constitutes a basis for voiding a marriage; and
16 clarifying that a party to a marriage who was unaware at the
17 time of the marriage that his or her spouse had previously
18 been convicted of an offense punishable by incarceration for
19 more than one year may not institute an annulment action if he
20 or she cohabited with that spouse after becoming aware of the
21 conviction.

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

23 That §48-3-103 and §48-3-105 of the Code of West Virginia,

1 1931, as amended, be amended and reenacted, all to read as follows:

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

4 **§48-3-103. Voidable marriages.**

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

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

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

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

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

15 (B) Was afflicted with a venereal disease;

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

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

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

23 (4) Marriages solemnized when, at the time of the marriage,

1 the wife, without the knowledge of the husband:

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

3 (B) Had been, prior to the marriage, notoriously a prostitute;

4 or

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

8 **§48-3-105. What persons may not institute annulment action.**

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

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

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

18 (c) Where the cause is affliction with a venereal disease
19 existing at the time of marriage, by the party who was so afflicted
20 if such party has subsequent to the marriage become cured of such
21 disease, nor by the person who was not so afflicted if he or she
22 after the curing of the afflicted person has by acts or conduct
23 confirmed the marriage; ~~or~~

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

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

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

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

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

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.