

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 58

(By Senators Cookman, Miller, Plymale and Fitzsimmons)

[Originating in the Committee on the Judiciary;
reported January 21, 2014.]

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; 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; clarifying grounds for voiding marriages; and modifying and removing certain language related to voiding of marriages.

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~~ mentally
12 incompetent;

13 (B) Was afflicted with a ~~venereal~~ sexually transmitted
14 disease;

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

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

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

23 (4) Marriages solemnized when, at the time of the
24 marriage, the wife, without the knowledge of the husband,

25 (A) Was was with child by some person other than the
26 husband. ~~or~~

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

29 ~~(5) Marriages solemnized when, prior to the marriage, the~~
30 ~~husband, without the knowledge of the wife, had been~~
31 ~~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 ~~veneral~~ sexually
11 transmitted disease existing at the time of marriage, by the
12 party who was so afflicted if such party has subsequent to the
13 marriage become cured of such disease, nor by the person

14 who was not so afflicted if he or she after the curing of the
15 afflicted person has by acts or conduct confirmed the
16 marriage; or

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

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

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

30 ~~(g)~~ (f) Where the cause is that the wife was at the time of
31 marriage with child by some person other than the husband,
32 ~~or that prior to the marriage the wife had been notoriously a~~

33 ~~prostitute~~, by the husband, if after knowledge of the fact he
34 has cohabited with the wife. or

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