

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 4308**

(BY DELEGATES ROWAN, BORDER, FAST, STANSBURY,  
MOYE, CAMPBELL, OVERINGTON, ROMINE, DUKE,  
R. PHILLIPS AND FERRO)

[Introduced January 27, 2016; Referred to the  
Committee on Senior Citizen Issues then the  
Judiciary.]

1 A BILL to amend and reenact §36-1-20 of the Code of West Virginia, 1931, as amended; and to  
2 amend and reenact §42-4-2 of said code, all relating generally to barring persons who are  
3 convicted of certain criminal offenses from acquiring property from their victims through  
4 joint tenancy or inheritance; and creating exceptions.

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

1 That §36-1-20 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted; and that §42-4-2 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 36. ESTATES AND PROPERTY.**

### **ARTICLE 1. CREATION OF ESTATES GENERALLY.**

#### **§36-1-20. When survivorship preserved.**

1 (a) The preceding section shall not apply to any estate which joint tenants have as  
2 executors or trustees, nor to an estate conveyed or devised to persons in their own right, when it  
3 manifestly appears from the tenor of the instrument that it was intended that the part of the one  
4 dying should then belong to the others. Neither shall it affect the mode of proceeding on any joint  
5 judgment or decree in favor of, or on any contract with, two or more, one of whom dies.

6 (b) When the instrument of conveyance or ownership in any estate, whether real estate or  
7 tangible or intangible personal property, links multiple owners together with the disjunctive “or,”  
8 such ownership shall be held as joint tenants with the right of survivorship, unless expressly stated  
9 otherwise.

10 (c) No person convicted of violating the provisions of section one or three, article two,  
11 chapter sixty-one of this code as a principal, aider and abettor or accessory before the fact, or  
12 convicted of a similar provision of law of another state or the United States, or who has been  
13 convicted of an offense causing the death of an incapacitated person set forth in section twenty-  
14 nine-a, article two, chapter sixty-one of this code, as a principal, aider and abettor or accessory  
15 before the fact, or convicted of a similar provision of law of another state or the United States,

16 may take or acquire any real or personal property by survivorship pursuant to this section when  
17 the victim of the criminal offense was a joint holder of title to the property. The property to which  
18 the person so convicted would otherwise have been entitled shall go to the person or persons  
19 who would have taken the same if the person so convicted had predeceased the victim.

20 (d) A person who has been convicted of an offense of abuse or neglect of an incapacitated  
21 adult pursuant to section twenty-nine, article two, chapter sixty-one of this code, a felony offense  
22 of financial exploitation of an elderly person, protected person or an incapacitated adult pursuant  
23 to section twenty-nine-b of that article, or convicted of a similar provision of law of another state  
24 or the United States, may not take or acquire any real or personal property by survivorship  
25 pursuant to this section, when the victim of the criminal offense is a joint holder of the title to the  
26 property. The money or property which the person would have otherwise have received shall go  
27 to the person or persons who would have taken the money or property if the person so convicted  
28 had predeceased the victim. This subsection does not apply if, after the conviction, the victim of  
29 the offense, if competent, executes a recordable instrument, sworn to, notarized and witnessed  
30 by two persons that would be competent as witnesses to a will of the victim, expresses a specific  
31 intent to allow the person so convicted to retain his or her tenancy in the property with rights of  
32 survivorship.

## CHAPTER 42. DESCENT AND DISTRIBUTION.

### ARTICLE 4. GENERAL PROVISIONS.

#### §42-4-2. Homicide bars acquisition of estate or insurance money.

1 ~~No~~ (a) A person who has been convicted of feloniously killing another, or of conspiracy in  
2 the killing of another, ~~shall~~ may not take or acquire any money or property, real or personal, or  
3 interest therein, from the one killed or conspired against, either by descent and distribution, or by  
4 will, or by any policy or certificate of insurance, or otherwise; but the money or the property to  
5 which the person so convicted would otherwise have been entitled shall go to the person or  
6 persons who would have taken the same if the person so convicted had been dead at the date of

7 the death of the one killed or conspired against, unless by some rule of law or equity the money  
8 or the property would pass to some other person or persons.

9 (b) A person who has been convicted of an offense causing the death of an incapacitated  
10 person set forth in section twenty-nine-a, article two, chapter sixty-one of this code, or convicted  
11 of a similar provision of law of another state or the United States, may not take or acquire any  
12 money or property, real or personal, or interest therein, from the victim decedent, either by descent  
13 and distribution, or by will, or by any policy or certificate of insurance, or otherwise; but the money  
14 or the property to which the person so convicted would otherwise have been entitled shall go to  
15 the person or persons who would have taken the same if the person so convicted had been dead  
16 at the date of the death of the decedent, unless by law the money or the property would pass to  
17 some other person or persons.

18 (c) A person who has been convicted of an offense of abuse or neglect of an incapacitated  
19 adult pursuant to section twenty-nine, article two, chapter sixty-one of this code, a felony offense  
20 of financial exploitation of an elderly person, protected person or incapacitated adult pursuant to  
21 section twenty-nine-b, article two, chapter sixty-one of this code, or convicted of a similar  
22 provision of law of another state or the United States, may not take or acquire any money or  
23 property, real or personal, or any interest therein, from the victim of the offense, either by descent  
24 and distribution, or by will, or by any policy or certificate of insurance, or otherwise. The money or  
25 the property to which the person so convicted would otherwise have been entitled shall go to the  
26 person or persons who would have taken the same if the person so convicted had been dead at  
27 the date of the death of the victim, unless by law the money or the property would pass to some  
28 other person or persons. This subsection does not apply if, after the conviction, the victim of the  
29 offense, if competent, executes a recordable instrument, sworn to, notarized and witnessed by  
30 two persons that would be competent witnesses to a will of the victim, expresses a specific intent  
31 to allow the person so convicted to inherit or otherwise receive the money, estate or other property  
32 of the victim of the offense.

NOTE: The purpose of this bill is to bar persons who are convicted of certain criminal offenses from acquiring property from their victims through joint tenancy or inheritance. The bill also creates exceptions.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.