

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2404**

BY DELEGATES ROWAN, MOYE, OVERINGTON, PHILLIPS,

HAMILTON, R. ROMINE, ROHRBACH, KELLY, PETHTEL,

LYNCH AND FERRO

[Passed April 6, 2017; in effect ninety days from passage.]



1 AN ACT 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; barring a person who has been convicted of an offense  
5 causing the death of an incapacitated adult as a principal, aider and abettor, or accessory  
6 before the fact from taking or acquiring real or personal property by survivorship when the  
7 joint tenant is a victim of the criminal offense; barring a person who has been convicted of  
8 an offense of abuse or neglect of an incapacitated adult, or a felony offense of financial  
9 exploitation of an elderly person, protected person or an incapacitated adult from taking  
10 or acquiring real or personal property by survivorship when the victim of the criminal  
11 offense if the joint holder of the title to the property and providing exceptions therefor;  
12 barring a person who has been convicted of an offense causing the death of an  
13 incapacitated adult taking or acquiring money, property, or any interest therein by descent  
14 and distribution, will, or any policy or certificate of insurance; and barring a person who  
15 has been convicted of an offense of abuse or neglect of an incapacitated adult, or a felony  
16 offense of financial exploitation of an elderly person, protected person or an incapacitated  
17 adult from taking or acquiring money, property, or any interest therein by descent and  
18 distribution, will, or any policy or certificate of insurance and providing exceptions therefor.

*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) Section nineteen of this article does not apply to any estate which joint tenants have  
2 as executors or trustees, nor to an estate conveyed or devised to persons in their own right, when  
3 it 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) A 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 adult 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 not take or acquire any real or personal property by survivorship pursuant to this section  
17 when the victim of the criminal offense was a joint holder of title to the property. The property to  
18 which the convicted person would otherwise have been entitled shall go to the person or persons  
19 who would have taken the property if the convicted person 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 convicted person  
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 (a) A person who has been convicted of feloniously killing another, or of conspiracy in the  
2 killing of another, may not take or acquire any money or property, real or personal, or interest in  
3 the money or property, from the one killed or conspired against, either by descent and distribution,  
4 or by will, or by any policy or certificate of insurance, or otherwise; but the money or the property  
5 to which the convicted person would otherwise have been entitled shall go to the person or  
6 persons who would have taken the money or property if the convicted person had been dead at  
7 the date of the death of the one killed or conspired against, unless by some rule of law or equity  
8 the money 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 adult set forth in section twenty-nine-a, article two, chapter sixty-one of this code, or convicted of  
11 a similar provision of law of another state or the United States, may not take or acquire any money  
12 or property, real or personal, or interest in the money or property, from the victim decedent, either  
13 by descent and distribution, or by will, or by any policy or certificate of insurance, or otherwise;  
14 but the money or the property to which the convicted person would otherwise have been entitled  
15 shall go to the person or persons who would have taken the money or property if the convicted

16 person had been dead at the date of the death of the decedent, unless by law the money or the  
17 property would pass to 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 in the money or property, from the victim of the offense,  
24 either by descent and distribution, or by will, or by any policy or certificate of insurance, or  
25 otherwise. The money or the property to which the convicted person would otherwise have been  
26 entitled shall go to the person or persons who would have taken the money or property if the  
27 convicted person had been dead at the date of the death of the victim, unless by law the money  
28 or the property would pass to some other person or persons. This subsection does not apply if,  
29 after the conviction, the victim of the offense, if competent, executes a recordable instrument,  
30 sworn to, notarized and witnessed by two persons that would be competent witnesses to a will of  
31 the victim, expresses a specific intent to allow the convicted person to inherit or otherwise receive  
32 the money, estate or other property of the victim of the offense.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2017.

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*Governor*