

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2404

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HAMILTON, ROMINE, R., ROHRBACH, KELLY, PETHTEL,
LYNCH AND FERRO

[Introduced February 13, 2017; 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; 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) 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 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 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 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 therein, from the victim decedent, either by descent and
 13 distribution, or by will, or by any policy or certificate of insurance, or otherwise; but the money or
 14 the property to which the person so convicted would otherwise have been entitled shall go to the
 15 person or persons who would have taken the same if the person so convicted had been dead at
 16 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.