

1 **H. B. 2483**

2
3 (By Delegates Sobonya and Border)

4 [Introduced February 15, 2013; referred to the
5 Committee on the Judiciary then Finance.]

6 **FISCAL**
7 **NOTE**

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9
10 A BILL to amend and reenact §60A-4-401 of the Code of West
11 Virginia, 1931, as amended, relating to the Uniform Controlled
12 Substances Act; creating the felony offense of unlawful
13 possession of cocaine and providing criminal penalties upon
14 conviction.

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

16 That §60A-4-401 of the Code of West Virginia, 1931, as
17 amended, be amended and reenacted to read as follows:

18 **ARTICLE 4. OFFENSES AND PENALTIES.**

19 **§60A-4-401. Prohibited acts A; penalties.**

20 (a) Except as authorized by this act, it is unlawful for any
21 person to manufacture, deliver, or possess with intent to
22 manufacture or deliver, a controlled substance.

23 Any person who violates this subsection with respect to:

1 (i) A controlled substance classified in Schedule I or II,
2 which is a narcotic drug, is guilty of a felony and, upon
3 conviction, may be imprisoned in the state correctional facility
4 for not less than one year nor more than fifteen years, or fined
5 not more than \$25,000, or both fined and imprisoned;

6 (ii) Any other controlled substance classified in Schedule I,
7 II or III is guilty of a felony and, upon conviction, may be
8 imprisoned in the state correctional facility for not less than one
9 year nor more than five years, or fined not more than \$15,000, or
10 both fined and imprisoned;

11 (iii) A substance classified in Schedule IV is guilty of a
12 felony and, upon conviction, may be imprisoned in the state
13 correctional facility for not less than one year nor more than
14 three years, or fined not more than \$10,000, or both fined and
15 imprisoned;

16 (iv) A substance classified in Schedule V is guilty of a
17 misdemeanor and, upon conviction, may be confined in jail for not
18 less than six months nor more than one year, or fined not more than
19 \$5,000, or both fined and confined: ~~Provided, That~~ In addition,
20 for offenses relating to any substance classified as Schedule V in
21 article ten of this chapter, the penalties established in said
22 article apply.

23 (b) Except as authorized by this act, it is unlawful for any
24 person to create, deliver, or possess with intent to deliver, a

1 counterfeit substance.

2 Any person who violates this subsection with respect to:

3 (i) A counterfeit substance classified in Schedule I or II,
4 which is a narcotic drug, is guilty of a felony and, upon
5 conviction, may be imprisoned in the state correctional facility
6 for not less than one year nor more than fifteen years, or fined
7 not more than \$25,000, or both fined and imprisoned;

8 (ii) Any other counterfeit substance classified in Schedule I,
9 II or III is guilty of a felony and, upon conviction, may be
10 imprisoned in the state correctional facility for not less than one
11 year nor more than five years, or fined not more than \$15,000, or
12 both;

13 (iii) A counterfeit substance classified in Schedule IV is
14 guilty of a felony and, upon conviction, may be imprisoned in the
15 state correctional facility for not less than one year nor more
16 than three years, or fined not more than \$10,000, or both fined and
17 imprisoned;

18 (iv) A counterfeit substance classified in Schedule V is
19 guilty of a misdemeanor and, upon conviction, may be confined in
20 jail for not less than six months nor more than one year, or fined
21 not more than \$5,000, or both fined and confined: ~~Provided, That~~
22 In addition, for offenses relating to any substance classified as
23 Schedule V in article ten of this chapter, the penalties
24 established in said article apply.

1 (c) It is unlawful for any person knowingly or intentionally
2 to possess a controlled substance unless the substance was obtained
3 directly from, or pursuant to, a valid prescription or order of a
4 practitioner while acting in the course of his professional
5 practice, or except as otherwise authorized by this act. Any
6 person who violates this subsection is guilty of a misdemeanor and,
7 disposition may be made under section four hundred seven of this
8 article, subject to the limitations specified in said section, or
9 upon conviction, such person may be confined in jail not less than
10 ninety days nor more than six months, or fined not more than
11 \$1,000, or both fined and confined: ~~Provided, That~~ However,
12 notwithstanding any other provision of this act to the contrary,
13 any first offense for possession of Synthetic Cannabinoids as
14 defined by subdivision (32) subsection, (d), section 101, article
15 1 of this chapter; 3,4-methylenedioxyprovalerone (MPVD) and 3,4-
16 methylenedioxyprovalerone and/or mephedrone as defined in
17 subsection (f), section 101, article 1 of this chapter; or less
18 than 15 grams of marijuana, shall be disposed of under said
19 section. Any person who violates this subsection for possession of
20 one gram or more of cocaine is guilty of a felony and, upon
21 conviction, may be imprisoned in a state correctional facility for
22 not less than one year nor more than three years, or fined not more
23 than \$10,000, or both fined and imprisoned.

24 (d) It is unlawful for any person knowingly or intentionally:

1 (1) To create, distribute or deliver, or possess with intent
2 to distribute or deliver, an imitation controlled substance; or

3 (2) To create, possess or sell or otherwise transfer any
4 equipment with the intent that such equipment shall be used to
5 apply a trademark, trade name, or other identifying mark, imprint,
6 number or device, or any likeness thereof, upon a counterfeit
7 substance, an imitation controlled substance, or the container or
8 label of a counterfeit substance or an imitation controlled
9 substance.

10 (3) Any person who violates this subsection is guilty of a
11 misdemeanor and, upon conviction, may be ~~imprisoned~~ confined in
12 jail for not less than six months nor more than one year, or fined
13 not more than \$5,000, or both fined and confined. Any person being
14 eighteen years old or more who violates subdivision (1) of this
15 subsection and, in so doing, distributes or delivers an imitation
16 controlled substance to a minor child who is at least three years
17 younger than such person is guilty of a felony and, upon
18 conviction, may be imprisoned in the state correctional facility
19 for not less than one year nor more than three years, or fined not
20 more than \$10,000, or both fined and imprisoned.

21 (4) The provisions of subdivision (1) of this subsection shall
22 not apply to a practitioner who administers or dispenses a placebo.

NOTE: The purpose of this bill is to create the felony offense

of possession of one gram or more of cocaine.

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