

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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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.