

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4141**

4
5 (By Delegates Hamilton, Miller, Storch, Ferro, A. Evans,
6 Azinger, Lynch, Ambler, Canterbury, Iaquina and Marshall)

7 (Originating in the House Judiciary Committee)

8 [February 21, 2014]

9
10 A BILL to repeal §47-19-2 of the Code of West Virginia, 1931, as
11 amended; and to amend and reenact §47-19-1, §47-19-3, §47-19-4
12 and §47-19-5 of said code; and to amend and reenact §60A-4-
13 403a of said code, all relating to licenses to sell
14 paraphernalia for use with controlled substances; terminating
15 the tax commissioner's authority to issue business licenses to
16 sell paraphernalia for use with controlled substances;
17 revoking licenses previously issued by the Tax Commissioner;
18 clarifying the definition of drug paraphernalia; requiring the
19 continued retention of transaction records after the
20 revocation of licensed authority; rule-making authority;
21 effective date; criminal offense elements; and criminal
22 penalties.

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

24 That §47-19-2 of the Code of West Virginia, 1931, as amended,
25 be repealed; and that §47-19-1, §47-19-3, §47-19-4 and §47-19-5 of
26 said code be amended and reenacted; and that §60A-4-403a, all to
27 read as follows:

28 **CHAPTER 47. REGULATION OF TRADE.**

1 **ARTICLE 19. DRUG PARAPHERNALIA.**

2 **§47-19-1. Items designed or marketed for use with controlled**
3 **substances; license required.**

4 On and after July 1, 2014, it ~~shall be~~ is unlawful for any
5 person or persons as principal, clerk, agent or servant to sell any
6 items, effect, paraphernalia, accessory or thing which is designed
7 or marketed for use with controlled substances, as defined in
8 chapter sixty-a of this code. ~~without obtaining a license therefor~~
9 ~~from the State Tax Commissioner. Such licenses shall be in~~
10 ~~addition to any or all other licenses held by applicant. The fee~~
11 ~~for such license shall be \$150.~~ Any license issued by the State
12 Tax Commissioner authorizing the sale of drug paraphernalia in this
13 state pursuant to the provisions of this article prior to July 1,
14 2014 is void and of no effect.

15 **§47-19-3. Drug paraphernalia defined.**

16 ~~(a) The following items, if marketed for use or designed for~~
17 ~~the use with controlled substances, are considered drug~~
18 ~~paraphernalia for the purpose stated in section one of this~~
19 ~~article:~~

20 ~~(1) Kits marketed for use, or designed for use in planting,~~
21 ~~propagating, cultivating, growing, or harvesting of any species of~~
22 ~~plant which is a controlled substance or from which a controlled~~
23 ~~substance can be derived;~~

24 ~~(2) Kits marketed for use, or designed for use in~~
25 ~~manufacturing, compounding, converting, producing, processing or~~
26 ~~preparing controlled substances;~~

27 ~~(3) Isomerization devices marketed for use, or designed for~~
28 ~~use in increasing the potency of any species of plant which is a~~

1 ~~controlled substance;~~

2 ~~(4) Testing equipment marketed for use, or designed for use in~~
3 ~~identifying, or in analyzing the strength, effectiveness or purity~~
4 ~~of controlled substances;~~

5 ~~(5) Scales and balances used, intended for use, or designed~~
6 ~~for use in weighing or measuring controlled substances;~~

7 ~~(6) Diluents and adulterants, such as quinine hydrochloride,~~
8 ~~mannitol, mannite, dextrose and lactose, marketed for use, or~~
9 ~~designed for use in cutting controlled substances;~~

10 ~~(7) Separation gins and sifters marketed for use, or designed~~
11 ~~for use in removing twigs and seeds from, or in otherwise cleaning~~
12 ~~or refining, marijuana;~~

13 ~~(8) Blenders, bowls, containers, spoons and mixing devices~~
14 ~~used, intended for use, or designed for use in compounding~~
15 ~~controlled substances;~~

16 ~~(9) Capsules, balloons, envelopes and other containers~~
17 ~~marketed for use, or designed for use in packaging small quantities~~
18 ~~of controlled substances;~~

19 ~~(10) Hypodermic syringes, needles and other objects marketed~~
20 ~~for use, or designed for use in parenterally injecting controlled~~
21 ~~substances into the human body;~~

22 ~~(11) Paper of colorful design, with names oriented for use~~
23 ~~with controlled dangerous substances and displayed: **Provided,** That~~
24 ~~white paper or tobacco oriented paper not necessarily designed for~~
25 ~~use with controlled substances is not covered;~~

26 ~~(12) Pipes displayed in the proximity of roach clips, or~~
27 ~~literature encouraging illegal use of controlled substances, are~~

1 covered by this article: **Provided,** That pipes otherwise displayed
2 are not covered by this article;

3 ~~(13) Roach clips: meaning objects used to hold burning~~
4 ~~material, such as a marijuana cigarette, that has become too small~~
5 ~~or too short to be held in the hand;~~

6 ~~(14) Miniature cocaine spoons, and cocaine vials; or~~

7 ~~(15) Chillums or bongos.~~

8 ~~(b) In determining whether an object is marketed for use or~~
9 ~~designed for use as drug paraphernalia, the state tax commissioner~~
10 ~~or other authority should consider the following:~~

11 ~~(1) The proximity of the object, in time and space, to a~~
12 ~~controlled substance;~~

13 ~~(2) The existence of any residue of controlled substances on~~
14 ~~the object;~~

15 ~~(3) Instructions, oral or written, provided with the object~~
16 ~~concerning its use;~~

17 ~~(4) Descriptive materials accompanying the object which~~
18 ~~explain or depict its use;~~

19 ~~(5) National and local advertising concerning its use;~~

20 ~~(6) The manner in which the object is displayed for sale;~~

21 ~~(7) Whether the owner, or anyone in control of the object, is~~
22 ~~a legitimate supplier of like or related items to the community,~~
23 ~~such as a licensed distributor or dealer of tobacco products;~~

24 ~~(8) Direct or circumstantial evidence of the ratio of sales of~~
25 ~~the object or objects to the total sales of the business~~
26 ~~enterprise;~~

27 ~~(9) The existence and scope of legitimate uses for the object~~

1 ~~in the community.~~

2 (a) The following items, if marketed for use or designed for
3 the use with controlled substances, are considered drug
4 paraphernalia for the purpose stated in section one of this
5 article:

6 Any equipment, product, or material of any kind which is
7 primarily intended or designed for use in manufacturing,
8 compounding, converting, concealing, producing, processing,
9 preparing, injecting, ingesting, inhaling, or otherwise introducing
10 into the human body a controlled substance, possession of which is
11 unlawful under this subchapter. It includes items primarily
12 intended or designed for use in ingesting, inhaling, or otherwise
13 introducing marijuana, cocaine, hashish, hashish oil, PCP,
14 methamphetamine, or amphetamines into the human body, including but
15 not limited to the following items:

16 (1) Metal, wooden, acrylic, glass, stone, plastic, or ceramic
17 pipes with or without screens, permanent screens, hashish heads, or
18 punctured metal bowls;

19 (2) Water pipes;

20 (3) Carburetion tubes and devices;

21 (4) Smoking and carburetion masks;

22 (5) Roach clips: meaning objects used to hold burning
23 material, such as a marihuana cigarette, that has become too small
24 or too short to be held in the hand;

25 (6) Miniature spoons with level capacities of one-tenth cubic
26 centimeter or less;

27 (7) Chamber pipes;

28 (8) Carburetor pipes;

- 1 (9) Electric pipes;
- 2 (10) Air-driven pipes;
- 3 (11) Chillums;
- 4 (12) Bongs;
- 5 (13) Ice pipes or chillers;
- 6 (14) Wired cigarette papers; or
- 7 (15) Cocaine freebase kits.

8 (b) In determining whether an item constitutes drug
9 paraphernalia, in addition to all other logically relevant factors,
10 the following may be considered:

11 (1) Instructions, oral or written, provided with the item
12 concerning its use;

13 (2) Descriptive materials accompanying the item which explain
14 or depict its use;

15 (3) National and local advertising concerning its use;

16 (4) The manner in which the item is displayed for sale;

17 (5) Whether the owner, or anyone in control of the item, is a
18 legitimate supplier of like or related items to the community, such
19 as a licensed distributor or dealer of tobacco products;

20 (6) Direct or circumstantial evidence of the ratio of sales of
21 the item(s) to the total sales of the business enterprise; and

22 (7) The existence and scope of legitimate uses of the item in
23 the community.

24 (c) The following items are not items sold or marketed as drug
25 paraphernalia:

26 (1) Any item that, in the normal lawful course of business,
27 is imported, exported, transported, or sold through the mail or by
28 any other means, and traditionally intended for use with tobacco

1 products, including any pipe, paper, or accessory; and

2 (2) Any item which is sold in the normal lawful course of
3 business and intended for use pursuant to a valid prescription
4 issued by a doctor, physician or licensed medical practitioner.

5 **§47-19-4. Records.**

6 Every ~~licensee must keep~~ entity which was issued a license by
7 the State Tax Commissioner to sell drug paraphernalia prior to July
8 1, 2014 shall continue to keep and retain a record of every item,
9 effect, paraphernalia, accessory or thing which is designed or
10 marketed for use with controlled substances which ~~is~~ it sold, and
11 this record shall be open to the inspection of any police officer
12 at any time during the hours of business. ~~Such~~ The record shall
13 contain the name and address of the purchaser, the name and
14 quantity of the product, the date and time of the sale, and the
15 licensee or agent of the licensee's signature. ~~Such~~ The records
16 shall be retained for not less than two years.

17 **§47-19-5. Regulations Rules.**

18 The ~~applicant shall comply with all~~ definition of drug
19 paraphernalia, as contained in the applicable rules of the State
20 Tax Commissioner, ~~promulgated~~ continue to be in effect, until
21 revised. The State Tax Commissioner is granted authority to
22 promulgate emergency rules and propose rules for legislative
23 approval to effectuate the revisions to this article, pursuant to
24 the provisions of article three, chapter twenty-nine-a of this
25 code.

26 **CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.**

27 **ARTICLE 4. OFFENSES AND PENALTIES.**

28 **§60A-4-403a. Prohibition of illegal drug paraphernalia**

1 **businesses; definitions; places deemed common**
2 **and public nuisances; abatement; suit to**
3 **abate nuisances; injunction; search warrants;**
4 **forfeiture of property; penalties.**

5 (a) Any person who knowingly and willfully conducts, finances,
6 manages, supervises, directs or owns all or part of an illegal drug
7 paraphernalia business is guilty of a misdemeanor, and, upon
8 conviction thereof, shall be fined not more than five thousand
9 dollars, or confined in jail not less than six months nor more than
10 one year, or both.

11 (b) A person violates subsection (a) of this section when:

12 (1) The person knowingly and willfully conducts, finances,
13 manages, supervises, directs, or owns all or part of a business
14 which for profit, in the regular course of business or as a
15 continuing course of conduct, manufactures, sells, stores,
16 possesses, gives away or furnishes objects designed to be primarily
17 useful as drug devices.

18 (2) The person knows or has reason to know that the design of
19 such objects renders them primarily useful as drug devices.

20 (c) As used in this section, "drug device" means an object
21 usable for smoking marijuana, for smoking controlled substances
22 defined as tetrahydrocannabinols, or for ingesting or inhaling
23 cocaine, and includes, but is not limited to:

24 (i) Metal, wooden, acrylic, glass, stone, plastic or ceramic
25 pipes with or without screens, permanent screens, hashish heads, or
26 punctured metal bowls;

27 (ii) Water pipes;

28 (iii) Carburetion tubes and devices;

- 1 (iv) Smoking and carburetion masks;
- 2 (v) Roach clips; meaning objects used to hold burning
- 3 material, such as a marijuana cigarette, that has become too small
- 4 or too short to be held in the hand;
- 5 (vi) Chamber pipes;
- 6 (vii) Carburetor pipes;
- 7 (viii) Electric pipes;
- 8 (ix) Air-driven pipes;
- 9 (x) Chillums;
- 10 (xi) Bongs;
- 11 (xii) Ice pipes or chillers; and
- 12 (xiii) Miniature cocaine spoons, and cocaine vials.

13 In any prosecution under this section, the question whether an
14 object is a drug device shall be a question of fact.

15 (d) A place where drug devices are manufactured, sold, stored,
16 possessed, given away or furnished in violation of this section
17 shall be deemed a common or public nuisance. Conveyances or
18 vehicles of any kind shall be deemed places within the meaning of
19 this section and may be proceeded against under the provisions of
20 subsection (e) of this section. A person who ~~shall maintain~~
21 knowingly and willfully maintains, or ~~shall aid or abet~~ aids or
22 abets or knowingly be associated with others in maintaining such
23 common or public nuisance shall be guilty of a misdemeanor, and,
24 upon conviction thereof, shall be punished by a fine of not more
25 than one thousand dollars, or by confinement in jail not more than
26 six months for each offense, and judgment shall be given that such
27 nuisance be abated or closed as a place for the manufacture, sale,
28 storage, possession, giving away or furnishing of drug devices.

1 (e) The prosecuting attorney or a citizen of the county or
2 municipality where a nuisance as defined in subsection (d) is
3 located, may maintain a suit in the name of the state to abate and
4 perpetually enjoin the same. Circuit courts shall have
5 jurisdiction thereof. The injunction may be granted at the
6 commencement of the suit and no bond shall be required if such
7 action for injunction be brought by the prosecuting attorney. If
8 such suit for injunction be brought or maintained by a citizen of
9 the county or municipality where such nuisance is alleged to be
10 located, then the court may require a bond as in other cases of
11 injunction. On the finding that the material allegations of the
12 complaint are true, the court or judge thereof in vacation shall
13 order the injunction for such period of time as it or he or she may
14 think proper, with the right to dissolve the injunction upon the
15 application of the owner of the place, if a proper case is shown
16 for such dissolution.

17 The continuance of the injunction as provided in this section
18 may be ordered, although the place complained of may not at the
19 time of hearing be unlawfully used.

20 (f) If there be complaint on oath or affirmation supported by
21 affidavit or affidavits setting forth the facts for such belief
22 that drug devices are being manufactured, sold, kept, stored or in
23 any manner held, used or concealed in a particular house or other
24 place with intent to engage in illegal drug paraphernalia business
25 in violation of law, a magistrate or a circuit court, or the judge
26 thereof in vacation to whom such complaint is made, if satisfied
27 that there is probable cause for such belief, shall issue a warrant
28 to search such house or other place for such devices. Such

1 warrants, except as herein otherwise provided, shall be issued,
2 directed and executed in accordance with the laws of West Virginia
3 pertaining to search warrants. Warrants issued under this section
4 for the search of any automobile, boat, conveyance or vehicle, or
5 for the search of any trunk, grip or other article of baggage, for
6 such devices, may be executed in any part of the state where the
7 same are overtaken, and shall be made returnable before any
8 magistrate or circuit court, or the judge thereof in vacation,
9 within whose jurisdiction such automobile, boat, conveyance,
10 vehicle, trunk, grip or other article of baggage, or any of them,
11 were transported or attempted to be transported.

12 An officer charged with the execution of a warrant issued
13 under this section, may, whenever it is necessary, break open and
14 enter a house, or other place herein described.

15 (g) Any property, including money, used in violation of the
16 provisions of this section may be seized and forfeited to the
17 state.