

H. B. 3011

(By Delegates Sobonya, Weld, Marcum, Hicks, R. Phillips,
Azinger, Shott, Miller, Fast, Butler and R. Smith)

[Introduced February 24, 2015; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-4-406a; and to amend and reenact §60A-4-409 of said code, all relating to the Uniform Controlled Substances Act; offenses and penalties; providing mandatory minimum sentences for trafficking drugs into the state and for other drug offenses; increasing period of ineligibility for parole for certain violations of possession or distribution of controlled substances and establishing applicable conditions; increasing period of ineligibility for parole for transporting certain controlled substances into the state and establishing applicable conditions; prohibiting application of alternative sentences; and increasing the penalties for transporting controlled substances into the state.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §60A-4-406a; and that §60A-4-409 of said code be amended and reenacted, all to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

1 **§60A-4-406a. Mandatory minimum sentences for violations.**

2 (a) Notwithstanding any other provision of law to the contrary, a person is ineligible for
3 parole for a period of ten years if he or she is sentenced to the custody of the Commissioner of
4 Corrections for service of a sentence of incarceration and is convicted of a felony violation under the
5 provisions of subdivision (i), subsection (a), section four hundred one of this article for distribution
6 of a controlled substance and:

7 (1) Is in possession at the time of arrest of controlled substances classified in Schedule I or
8 II, which is a narcotic drug, that has a street value of greater than \$1,000; and

9 (2) Has previously been convicted of a second or subsequent offense under this chapter or
10 under any statute of the United States or of any state relating to narcotic drugs.

11 (b) Notwithstanding any other provision of law to the contrary, a person is ineligible for
12 parole for a period of five years if he or she is sentenced to the custody of the Commissioner of
13 Corrections for service of a sentence of incarceration and is convicted of a felony violation under the
14 provisions of subdivision (ii), subsection (a), section four hundred one of this article for distribution
15 of a controlled substance and:

16 (1) Is in possession at time of arrest of controlled substances classified in Schedule I, II or
17 III, that has a street value of greater than \$1,000; and

18 (2) Has previously been convicted of a second or subsequent offense under this chapter or
19 under any statute of the United States or of any state relating to marihuana, depressant, stimulant,
20 or hallucinogenic drugs.

21 (c) Notwithstanding any other provision of law to the contrary, a person is ineligible for
22 parole for a period of fifteen years if he or she is sentenced to the custody of the Commissioner of

1 Corrections for service of a sentence of incarceration and is convicted of a felony violation under the
2 provisions of subdivision (1), subsection (b) section four hundred nine of this article for distribution
3 of a controlled substance and:

4 (1) Is in possession at time of arrest of controlled substances classified in Schedule I or II
5 which is a narcotic drug, that has a street value of greater than \$1,000; and

6 (2) Has previously been convicted of a second or subsequent offense under this chapter or
7 under any statute of the United States or of any state relating to narcotic drugs.

8 (d) Notwithstanding any other provision of law to the contrary, a person is ineligible for
9 parole for a period of ten years if he or she is sentenced to the custody of the Commissioner of

10 Corrections for service of a sentence of incarceration and is convicted of a felony violation under the
11 provisions of subdivision (2), subsection (b), section four hundred nine of this article for distribution
12 of a controlled substance and:

13 (1) Is in possession at time of arrest of controlled substances classified in Schedule I, II or
14 III, that has a street value of greater than \$1,000; and

15 (2) Has previously been convicted of a second or subsequent offense under this chapter or
16 under any statute of the United States or of any state relating to marihuana, depressant, stimulant,
17 or hallucinogenic drugs.

18 (e) Those individuals subject to this section are not eligible for sentencing alternatives made
19 available to circuit court judges under other provisions of this code.

20 **§60A-4-409. Prohibited acts -- Transportation of controlled substances into state; penalties.**

21 (a) Except as otherwise authorized by the provisions of this code, it ~~shall be~~ is unlawful for
22 any person to transport into this state a controlled substance with the intent to deliver the same or

1 with the intent to manufacture a controlled substance.

2 (b) Any person who violates this section with respect to:

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

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

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

12 (4) A substance classified in Schedule V shall be guilty of a misdemeanor and, upon
13 conviction, may be confined in jail for not less than six months nor more than one year, or fined not
14 more than \$5,000, or both: *Provided*, That for offenses relating to any substance classified as
15 Schedule V in article ten of this chapter, the penalties established in said article apply.

16 (c) The offense established by this section shall be in addition to and a separate and distinct
17 offense from any other offense set forth in this code.

NOTE: The purpose of this bill is to increase the penalties and mandatory minimum sentences for drug traffickers bringing drugs into the state and for distributing drugs. The enhanced penalties apply to those individuals previously been convicted of a drug offense and who are in possession of a certain threshold of drugs at the time of the arrest.

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

§60A-4-406a is new; therefore, it has been completely underscored.