

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4712**

BY DELEGATE PUSHKIN

[Introduced February 23, 2016; Referred  
to the Committee on Health and Human Resources then  
the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated section §11-28-1; to amend and reenact §60-3A-6 of said code; to amend and  
 3 reenact §60A-2-204 of said code; to amend and reenact §60A-4-401 and §60A-4-402 and  
 4 §60A-4-407 of said code; to amend said code by adding thereto two new sections,  
 5 designated §60A-4-414 and §60A-4-415, all relating to permitted use and possession of  
 6 marihuana; decriminalizing and permitting personal use, growth and possession of certain  
 7 amounts of marihuana by residents over the age of twenty-one under certain  
 8 circumstances; removing marihuana from the list of schedule I drugs; decriminalizing first  
 9 offense distribution of under 30 grams of marihuana; continuing criminal penalties for sales  
 10 and manufacture of marihuana; establishing new criminal penalties associated with  
 11 possession of marihuana; providing that the tax department issue tax stamps for certain  
 12 residents to lawfully possess up to two ounces of marihuana; providing that the tax  
 13 commissioner promulgate rules; authorizing persons holding retail liquor licenses to sell  
 14 tax stamps; establishing cost of and allocation for tax stamp proceeds; allowing for tax  
 15 penalties for failure to pay for tax stamp; providing conditions for creation and distribution  
 16 of stamp; and providing for a medical exemption to criminal laws against marihuana use  
 17 or possession.

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

1 That of the Code of West Virginia, 1931, as amended, be amended by adding thereto a  
 2 new section, designated §11-28-1; that §60-3A-6 of said code be amended and reenacted; that  
 3 §60A-2-204 of said code be amended and reenacted, that §60A-4-401, §60A-4-402 and §60A-  
 4 4-407 of said code be amended and reenacted, and that said code be amended by adding thereto  
 5 two new sections, designated §60A-4-414 and §60A-4-415, all to read as follows:

## **CHAPTER 11. TAXATION.**

### **ARTICLE 28. MARIHUANA USE TAX ASSESSMENTS.**

**§11-28-1. Marihuana use tax.**

1           (a) Definitions-

2           (1) "Marihuana" means " all parts of the plant "Cannabis sativa L.", whether growing or  
3 not; the seeds thereof; the resin extracted from any part of the plant; and every compound,  
4 manufacture, salt, immediate derivative, mixture or preparation of the plant, its seeds or resin. It  
5 does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made  
6 from the seeds of the plant, any other compound, manufacture, salt, immediate derivative, mixture  
7 or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the  
8 sterilized seed of the plant which is incapable of germination.

9           (2) "Tax stamp" is a stamp created by the Department that indicates that the bearer of the  
10 stamp is a resident of the State has paid the tax stamp and is under state law legally allowed to  
11 possess up to two ounces of marihuana.

12           (b) Marihuana Use tax- The Tax Commissioner shall promulgate legislative rules,  
13 pursuant to article three, chapter twenty nine-a of this Code that provide for:

14           (1) The manufacture and distribution of tax stamps to be sold by retail liquor licenses as  
15 established in article three-a, chapter sixty of this code, a marihuana use tax stamp to be issued  
16 for a fee of \$100 to any state resident, who is twenty-one years or older. The Licensee shall  
17 require photo-identification and that the licensee verify that the person purchasing the stamp  
18 legibility writes his or her name in ink or other non-removable substance.

19           (2) Administrative penalties for failure of any person to pay the tax owed, including a  
20 special tax penalty on the person's state personal income tax of five hundred dollars for  
21 possession of two ounces or less of marihuana and an assessment of one thousand dollars for  
22 possession of more than two ounces of marihuana.

23           (3) Any other rules that the Tax Commissioner deems necessary to properly administer  
24 this article.

25           (c) Allocation of proceeds- The Tax commissioner shall reimburse each licensee a fee

26 not to exceed \$8.00 for the sale of each tax stamp. The Department of Tax shall retain \$5.00 for  
27 each tax stamp sold to reimburse the department's costs for administration of this article. The  
28 remainder of the proceeds of the sale shall be deposited in the general revenue fund.

**CHAPTER SIXTY. STATE CONTROL OF ALCOHOLIC LIQUORS**

**ARTICLE 3A. SALE OF RETAIL LIQUOR LICENSES.**

**§60-3A-6. General powers and duties of board and commissioner.**

1 (a) The board shall create, based on economic and demographic factors, market zones  
2 within the state for the issuance of Class A and Class B retail licenses.

3 (b) The commissioner shall:

4 (1) Prescribe application forms for persons desiring to acquire retail licenses and adopt an  
5 orderly procedure and timetable for investigating, processing and approving applications;

6 (2) Develop a form of retail license to be issued to each retail licensee under the provisions  
7 of this article;

8 (3) Disseminate to the public information relating to the issuance of retail licenses;

9 (4) Promulgate standards for advertising the sale, availability, price and selection of liquor;

10 (5) Set minimum standards for retail outlets regarding the amount and variety of liquor a  
11 licensee must offer for sale at each retail outlet; the size, space and design of each retail outlet;  
12 the amount of inventory and displayed inventory of liquor in each retail outlet; order quantities  
13 sufficient to qualify for delivery to each retail outlet; phone, computer and Internet requirements  
14 for each retail outlet; the verification of liquor orders; liquor delivery dates and routes for each  
15 retail outlet; and such other requirements the commissioner deems necessary;

16 (6) Set minimum standards for the display of inventory in retail outlets operating pursuant  
17 to a Class A retail license which shall include, without limitation, the requirement that a minimum  
18 square footage of displayed inventory available for retail purchase at the retail outlet be composed  
19 of liquor, beer and nonintoxicating beer products and that liquor, beer and nonintoxicating beer

20 products available for sale are placed for sale throughout the entire retail area of the retail outlet  
21 including the retail floor space and shelving;

22 (7) Set minimum standards for the display of inventory in retail outlets operating pursuant  
23 to a Class B retail license which shall include, without limitation, the requirements that a minimum  
24 square footage of the displayed inventory available for purchase at the retail outlet be composed  
25 of liquor products; that liquor available for sale in the retail outlet is placed only in an area of the  
26 retail outlet that prominently displays signage identifying the area as a restricted liquor area and  
27 stating that no one under the age of twenty-one may purchase liquor; and that the area is separate  
28 from and not highly visible to persons outside of the restricted liquor area.

29 (8) Enforce the provisions of this article;

30 (9) Impose civil penalties upon retail licensees;

31 (10) Enter the retail outlet of any retail licensee at reasonable times for the purpose of  
32 inspecting the same, and determining the compliance of such retail licensee with the provisions  
33 of this article and any rules promulgated by the board or the commissioner pursuant to the  
34 provisions of this article; ~~and~~

35 (11) Issue subpoenas and subpoenas duces tecum for the purpose of conducting hearings  
36 under the provisions of section twenty-six or section twenty-eight of this article, which subpoenas  
37 and subpoenas duces tecum shall be issued in the time, for the fees, and shall be enforced in the  
38 manner specified in section one, article five, chapter twenty-nine-a of this code with like effect as  
39 if such section was set forth in extenso herein; and

40 (12) Establish necessary requirements to assure that retail licensees comply with the  
41 requirements of section one, article twenty-eight, chapter eleven of this code, and any additional  
42 requirements established by this board to allow for lawful sale of marihuana use tax stamps.  
43 Nothing in the rules may require that a retail licensee is mandated to sell marihuana use tax  
44 stamps as a condition of his or her license.

45 (c) The board and the commissioner shall each:

46 (1) Engage accounting, legal and other necessary professional consultants to assist them  
47 in carrying out their respective duties under this article;

48 (2) Adopt, promulgate, amend or repeal such procedural, interpretive and legislative rules,  
49 consistent with the policy and objectives of this article, as they may deem necessary or desirable  
50 for the public interest in carrying out the provisions of this article. Such rules shall be adopted,  
51 amended and repealed in accordance with the provisions of chapter twenty-nine-a of this code;  
52 and

53 (3) Notwithstanding any other provision of this code to the contrary, proposed legislative  
54 rules for this article filed in the state Register by September 1, 2009, may be filed as emergency  
55 rules. Such emergency rules shall include the standards, criteria and formulae or methodology  
56 utilized by the board when establishing the minimum bid for each license pursuant to section ten-  
57 b of this article.

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

### **ARTICLE 2. STANDARDS AND SCHEDULES.**

#### **§60A-2-204. Schedule I.**

1 (a) Schedule I shall consist of the drugs and other substances, by whatever official name,  
2 common or usual name, chemical name, or brand name designated, listed in this section.

3 (b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the  
4 following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and  
5 ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the  
6 specific chemical designation (for purposes of subdivision (34) of this subsection only, the term  
7 isomer includes the optical and geometric isomers):

8 (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl) -4-piperidinyl]-  
9 phenylacetamide);

10 (2) Acetylmethadol;

- 11 (3) Allyprodine;
- 12 (4) Alphacetylmethadol (except levoalphacetylmethadol also known as levo-alpha-  
13 acetylmethadol, levomethadyl acetate, or LAAM);
- 14 (5) Alphameprodine;
- 15 (6) Alphamethadol;
- 16 (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl]  
17 propionanilide; 1-(1-methyl-2-phenylethyl)-4-(propanilido) piperidine);
- 18 (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl- 4-piperidinyl]-  
19 phenylpropanamide);
- 20 (9) Benzethidine;
- 21 (10) Betacetylmethadol;
- 22 (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl) -4- piperidinyl]-N-  
23 phenylpropanamide);
- 24 (12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2- hydroxy-2-phenethyl)-3-methyl-  
25 4-piperidinyl]-N-phenylpropanamide);
- 26 (13) Betameprodine;
- 27 (14) Betamethadol;
- 28 (15) Betaprodine;
- 29 (16) Clonitazene;
- 30 (17) Dextromoramide;
- 31 (18) Diampromide;
- 32 (19) Diethylthiambutene;
- 33 (20) Difenoxin;
- 34 (21) Dimenoxadol;
- 35 (22) Dimepheptanol;
- 36 (23) Dimethylthiambutene;

- 37 (24) Dioxaphetyl butyrate;
- 38 (25) Dipipanone;
- 39 (26) Ethylmethylthiambutene;
- 40 (27) Etonitazene;
- 41 (28) Etoxidine;
- 42 (29) Furethidine;
- 43 (30) Hydroxypethidine;
- 44 (31) Ketobemidone;
- 45 (32) Levomoramide;
- 46 (33) Levophenacymorphan;
- 47 (34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
- 48 (35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl) ethyl-4-piperidinyl]-
- 49 phenylpropanamide);
- 50 (36) Morpheridine;
- 51 (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- 52 (38) Noracymethadol;
- 53 (39) Norlevorphanol;
- 54 (40) Normethadone;
- 55 (41) Norpipanone;
- 56 (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]
- 57 propanamide);
- 58 (43) PEPAP(1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- 59 (44) Phenadoxone;
- 60 (45) Phenampromide;
- 61 (46) Phenomorphan;
- 62 (47) Phenoperidine;



- 63 (48) Piritramide;
- 64 (49) Proheptazine;
- 65 (50) Properidine;
- 66 (51) Propiram;
- 67 (52) Racemoramide;
- 68 (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4- piperidinyl]-propanamide);
- 69 (54) Tilidine;
- 70 (55) Trimeperidine.
- 71 (c) *Opium derivatives*. -- Unless specifically excepted or unless listed in another schedule,
- 72 any of the following opium immediate derivatives, its salts, isomers and salts of isomers whenever
- 73 the existence of such salts, isomers and salts of isomers is possible within the specific chemical
- 74 designation:
- 75 (1) Acetorphine;
- 76 (2) Acetyldihydrocodeine;
- 77 (3) Benzylmorphine;
- 78 (4) Codeine methylbromide;
- 79 (5) Codeine-N-Oxide;
- 80 (6) Cyprenorphine;
- 81 (7) Desomorphine;
- 82 (8) Dihydromorphine;
- 83 (9) Drotebanol;
- 84 (10) Etorphine (except HCl Salt);
- 85 (11) Heroin;
- 86 (12) Hydromorphinol;
- 87 (13) Methyldesorphine;
- 88 (14) Methyldihydromorphine;

89 (15) Morphine methylbromide;

90 (16) Morphine methylsulfonate;

91 (17) Morphine-N-Oxide;

92 (18) Myrophine;

93 (19) Nicocodeine;

94 (20) Nicomorphine;

95 (21) Normorphine;

96 (22) Pholcodine;

97 (23) Thebacon.

98 (d) *Hallucinogenic substances*. -- Unless specifically excepted or unless listed in another  
99 schedule, any material, compound, mixture or preparation, which contains any quantity of the  
100 following hallucinogenic substances, or which contains any of its salts, isomers and salts of  
101 isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within  
102 the specific chemical designation (for purposes of this subsection only, the term "isomer" includes  
103 the optical, position and geometric isomers):

104 (1) Alpha-ethyltryptamine; some trade or other names: etryptamine; Monase; alpha-ethy-  
105 1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; alpha-ET; and AET;

106 (2) 4-bromo-2, 5-dimethoxy-amphetamine; some trade or other names: 4-bromo-2,5-  
107 dimethoxy-alpha-methylphenethylamine; 4-bromo- 2,5-DMA;

108 (3) 4-Bromo-2,5-dimethoxyphenethylamine; some trade or other names: 2-(4-bromo-2,5-  
109 dimethoxyphenyl)-1-aminoethane; alpha- desmethyl DOB; 2C-B, Nexus;

110 (4)(A) N-(2-Methoxybenzyl)-4-bromo-2, 5-dimethoxyphenethylamine. The substance has  
111 the acronym 25B-NBOMe.

112 (B) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe).

113 (C) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe)

114 (5) 2,5-dimethoxyamphetamine; some trade or other names: 2,5-dimethoxy-alpha-

- 115 methylphenethylamine; 2,5-DMA;
- 116 (6) 2,5-dimethoxy-4-ethylamphet-amine; some trade or other names: DOET;
- 117 (7) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7);
- 118 (8) 4-methoxyamphetamine; some trade or other names: 4-methoxy-alpha-
- 119 methylphenethylamine; paramethoxyamphetamine; PMA;
- 120 (9) 5-methoxy-3, 4-methylenedioxy-amphetamine;
- 121 (10) 4-methyl-2,5-dimethoxy-amphetamine; some trade and other names: 4-methyl-2,5-
- 122 dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP";
- 123 (11) 3,4-methylenedioxy amphetamine;
- 124 (12) 3,4-methylenedioxymethamphetamine (MDMA);
- 125 (13) 3,4-methylenedioxy-N-ethylamphetamine (also known as - ethyl-alpha-methyl-3,4
- 126 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);
- 127 (14) N-hydroxy-3,4-methylenedioxyamphetamine (also known as - hydroxy-alpha-methyl-
- 128 3,4 (methylenedioxy) phenethylamine, and - hydroxy MDA);
- 129 (15) 3,4,5-trimethoxy amphetamine;
- 130 (16) 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT);
- 131 (17) Alpha-methyltryptamine (other name: AMT);
- 132 (18) Bufotenine; some trade and other names: 3-(beta-Dimethylaminoethyl)-5-
- 133 hydroxyindole;3-(2-dimethylaminoethyl) -5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-
- 134 dimethyltryptamine; mappine;
- 135 (19) Diethyltryptamine; some trade and other names: N, N-Diethyltryptamine; DET;
- 136 (20) Dimethyltryptamine; some trade or other names: DMT;
- 137 (21) 5-Methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT);
- 138 (22) Ibogaine; some trade and other names: 7-Ethyl-6, 6 Beta, 7, 8, 9, 10, 12, 13-
- 139 octahydro-2-methoxy-6, 9-methano-5H- pyrido [1', 2': 1, 2] azepino [5,4-b] indole; Tabernanthe
- 140 iboga;

- 141 (23) Lysergic acid diethylamide;
- 142 ~~(24) Marihuana;~~
- 143 ~~(25)~~ (24) Mescaline;
- 144 ~~(26)~~ (25) Parahexyl-7374; some trade or other names: 3-Hexyl -1-hydroxy-7, 8, 9, 10-
- 145 tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl;
- 146 ~~(27)~~ (26) Peyote; meaning all parts of the plant presently classified botanically as
- 147 Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any
- 148 part of such plant, and every compound, manufacture, salts, immediate derivative, mixture or
- 149 preparation of such plant, its seeds or extracts;
- 150 ~~(28)~~ (27) N-ethyl-3-piperidyl benzilate;
- 151 ~~(29)~~ (28) N-methyl-3-piperidyl benzilate;
- 152 ~~(30)~~ (29) Psilocybin;
- 153 ~~(31)~~ (30) Psilocyn;
- 154 ~~(32) Tetrahydrocannabinols; synthetic equivalents of the substances contained in the~~
- 155 ~~plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, immediate~~
- 156 ~~derivatives and their isomers with similar chemical structure and pharmacological activity such as~~
- 157 ~~the following:~~
- 158 ~~delta-1 Cis or trans tetrahydrocannabinol, and their optical isomers;~~
- 159 ~~delta-6 Cis or trans tetrahydrocannabinol, and their optical isomers;~~
- 160 ~~delta-3,4 Cis or trans tetrahydrocannabinol, and its optical isomers;~~
- 161 ~~(Since nomenclature of these substances is not internationally standardized, compounds~~
- 162 ~~of these structures, regardless of numerical designation of atomic positions covered.)~~
- 163 ~~(33)~~ (31) Ethylamine analog of phencyclidine; some trade or other names: N-ethyl-1-
- 164 phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine,
- 165 cyclohexamine, PCE;
- 166 ~~(34)~~ (32) Pyrrolidine analog of phencyclidine; some trade or other names: 1-(1-

- 167 phenylcyclohexyl)-pyrrolidine, PCPy, PHP;
- 168 ~~(35)~~ (33) Thiophene analog of phencyclidine; some trade or other names: 1-[1-(2-thienyl)-
- 169 cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine; TPCP, TCP;
- 170 ~~(36)~~ (34) 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other names: TCPy.
- 171 ~~(37)~~ (35) 4-methylmethcathinone (Mephedrone);
- 172 ~~(38)~~ (36) 3,4-methylenedioxypropylamphetamine (MDPV);
- 173 ~~(39)~~ (37) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);
- 174 ~~(40)~~ (38) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)
- 175 ~~(41)~~ (39) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)
- 176 ~~(42)~~ (40) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)
- 177 ~~(43)~~ (41) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2)
- 178 ~~(44)~~ (42) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4)
- 179 ~~(45)~~ (43) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)
- 180 ~~(46)~~ (44) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N)
- 181 ~~(47)~~ (45) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P)
- 182 ~~(48)~~ (46) 3,4-Methylenedioxy-N-methylcathinone (Methylone)
- 183 ~~(49)~~ (47) (2,5-dimethoxy-4-(n)-propyl)thiophenethylamine (2C-T-7, its optical isomers,
- 184 salts and salts of isomers
- 185 ~~(50)~~ (48) 5-methoxy-N,N-dimethyltryptamine some trade or other names: 5-methoxy-3-[2-
- 186 (dimethylamino)ethyl]indole; 5-MeO-DMT(5-MeO-DMT)
- 187 ~~(51)~~ (49) Alpha-methyltryptamine (other name: AMT)
- 188 ~~(52)~~ (50) 5-methoxy-N,N-diisopropyltryptamine (other name: 5-MeO-DIPT)
- 189 ~~(53)~~ (51) Synthetic Cannabinoids as follows:
- 190 (A) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol {also known as CP
- 191 47,497 and homologues};
- 192 (B) rel-2-[(1S,3R)-3-hydroxycyclohexyl]-5-(2-methylnonan-2-yl)phenol {also known as CP

- 193 47,497-C8 homolog};
- 194 (C) [(6a*R*)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7,10,10a-
- 195 tetrahydrobenzo[*c*]chromen-1-ol] {also known as HU-210};
- 196 (D) (dexanabinol);
- 197 (6a*S*,10a*S*)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-
- 198 tetrahydrobenzo
- 199 [*c*]chromen-1-ol) {also known as HU-211};
- 200 (E) 1-Pentyl-3-(1-naphthoyl)indole {also known as JWH-018};
- 201 (F) 1-Butyl-3-(1-naphthoyl)indole {also known as JWH-073};
- 202 (G) (2-methyl-1-propyl-1*H*-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-
- 203 015};
- 204 (H) (1-hexyl-1*H*-indol-3-yl)-1-naphthalenyl-methanone {also known as JWH-019};
- 205 (I) [1-[2-(4-morpholinyl) ethyl] -1*H*-indol-3-yl]-1-naphthalenyl-methanone {also known as
- 206 JWH-200};
- 207 (J) 1-(1-pentyl-1*H*-indol-3-yl)-2-(3-hydroxyphenyl)-ethanone {also known as JWH-250};
- 208 (K) 2-((1*S*,2*S*,5*S*)-5-hydroxy-2- (3-hydroxypropyl)cyclohexyl) -5-(2-methyloctan-2-
- 209 yl)phenol {also known as CP 55,940};
- 210 (L) (4-methyl-1-naphthalenyl) (1-pentyl-1*H*-indol-3-yl) -methanone {also known as JWH-
- 211 122};
- 212 (M) (4-methyl-1-naphthalenyl) (1-pentyl-1*H*-indol-3-yl) -methanone {also known as JWH-
- 213 398};
- 214 (N) (4-methoxyphenyl)(1-pentyl-1*H*-indol-3-yl)methanone {also known as RCS-4};
- 215 (O) 1-(1-(2-cyclohexylethyl) -1*H*-indol-3-yl) -2-(2-methoxyphenyl) ethanone {also known
- 216 as RCS-8};
- 217 (P) 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081);
- 218 (Q) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201); and

219 (R) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694).

220 ~~(54)~~ (52) Synthetic cannabinoids or any material, compound, mixture or preparation which  
221 contains any quantity of the following substances, including their analogues, congeners,  
222 homologues, isomers, salts and salts of analogues, congeners, homologues and isomers, as  
223 follows:

224 (A) CP 47,497 AND homologues, 2-[(1R,3S)-3-Hydroxycyclohexyl]-5-(2-methyloctan-2-  
225 YL)phenol);

226 (B) HU-210, [(6AR,10AR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-Methyloctan-2-YL)-  
227 6A,7,10, 10A-tetrahydrobenzo[C] chromen-1-OL)];

228 (C) HU-211, (dexanabinol, (6AS,10AS)-9-(hydroxymethyl)-6,6-Dimethyl-3-(2-  
229 methyloctan-2-YL)-6A,7,10,10atetrahydrobenzo[ C]chromen-1-OL);

230 (D) JWH-018, 1-pentyl-3-(1-naphthoyl)indole;

231 (E) JWH-019, 1-hexyl-3-(1-naphthoyl)indole;

232 (F) JWH-073, 1-butyl-3-(1-naphthoyl)indole;

233 (G) JWH-200, (1-(2-morpholin-4-ylethyl)indol-3-yl)- Naphthalen-1-ylmethanone;

234 (H) JWH-250, 1-pentyl-3-(2-methoxyphenylacetyl)indole.]

235 ~~(55)~~ (53) Synthetic cannabinoids including any material, compound, mixture or preparation  
236 that is not listed as a controlled substance in Schedule I through V, is not a federal Food and Drug  
237 Administration approved drug or used within legitimate and approved medical research and which  
238 contains any quantity of the following substances, their salts, isomers, whether optical positional  
239 or geometric, analogues, homologues and salts of isomers, analogues and homologues, unless  
240 specifically exempted, whenever the existence of these salts, isomers, analogues, homologues  
241 and salts of isomers, analogues and homologues if possible within the specific chemical  
242 designation:

243 (A) Tetrahydrocannabinols meaning tetrahydrocannabinols which are naturally contained  
244 in a plant of the genus cannabis as well as synthetic equivalents of the substances contained in

245 the plant or in the resinous extractives of cannabis or synthetic substances, derivatives and their  
246 isomers with analogous chemical structure and or pharmacological activity such as the following:

247 (i) DELTA-1 CIS OR trans tetrahydrocannabinol and their Optical isomers.

248 (ii) DELTA-6 CIS OR trans tetrahydrocannabinol and their optical isomers.

249 (iii) DELTA-3,4 CIS or their trans tetrahydrocannabinol and their optical isomers.

250 (B) Naphthoylindoles or any compound containing a 3-(1-Naphthoyl) indole structure with  
251 substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole  
252 ring to any extent and whether or not substituted in the naphthyl ring to any extent. This shall  
253 include the following:

254 (i) JWH 015;

255 (ii) JWH 018;

256 (iii) JWH 019;

257 (iv) JWH 073;

258 (v) JWH 081;

259 (vi) JWH 122;

260 (vii) JWH 200;

261 (viii) JWH 210;

262 (ix) JWH 398;

263 (x) AM 2201;

264 (xi) WIN 55,212.

265 ~~(56)~~ (54) Naphylmethylindoles or any compound containing a 1indol-3-yl-(1-naphthyl)  
266 methane structure with a substition at the nitrogen atom of the indole ring whether or not further  
267 substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to  
268 any extent. This shall include, but not be limited to, JWH 175 and JWH 184.

269 ~~(57)~~ (55) Naphthoylpyrroles or any compound containing a 3-(1-Naphthoyl) pyrrole  
270 structure with substitution at the nitrogen atom of the pyrrole ring whether or not further substituted



271 in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent.

272 This shall include, but not be limited to, JWH 147 and JWH 307.

273 ~~(58)~~ (56) Naphthylmethylenes or any compound containing a Naphthylideneindene  
274 structure with substitution at the 3- Position of the indene ring whether or not further substituted  
275 in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent.

276 This shall include, but not be limited to, JWH 176.

277 ~~(59)~~ (57) Phenylacetylindoles or any compound containing a 3- Phenylacetylindole  
278 structure with substitution at the nitrogen atom of the indole ring whether or not further substituted  
279 in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.

280 This shall include the following:

281 (A) RCS-8, SR-18 OR BTM-8;

282 (B) JWH 250;

283 (C) JWH 203;

284 (D) JWH 251;

285 (E) JWH 302.

286 ~~(60)~~ (58) Cyclohexylphenols or any compound containing a 2-(3- hydroxycyclohexyl)  
287 phenol structure with a substitution at the 5-position of the phenolic ring whether or not substituted  
288 in the cyclohexyl ring to any extent. This shall include the following:

289 (A) CP 47,497 and its homologues and analogs;

290 (B) Cannabicyclohexanol;

291 (C) CP 55,940.

292 ~~(64)~~ (59) Benzoylindoles or any compound containing a 3-(benzoyl) indole structure with  
293 substitution at the nitrogen atom of the indole ring whether or not further substituted in the indole  
294 ring to any extent and whether or not substituted in the phenyl ring to any extent. This shall include  
295 the following:

296 (A) AM 694;

297 (B) Pravadoline WIN 48,098;

298 (C) RCS 4;

299 (D) AM 679.

300 ~~(62)~~ (60) [2,3-dihydro-5 methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-DE]-1, 4-  
301 benzoxazin-6-YL]-1-napthalenymethanone. This shall include WIN 55,212-2.

302 ~~(63)~~ (61) Dibenzopyrans or any compound containing a 11-hydroxydelta 8-  
303 tetrahydrocannabinol structure with substitution on the 3-pentyl group. This shall include HU-210,  
304 HU-211, JWH 051 and JWH 133.

305 ~~(64)~~ (62) Adamantoylindoles or any compound containing a 3-(-1- Adamantoyl) indole  
306 structure with substitution at the nitrogen atom of the indole ring whether or not further substituted  
307 in the adamantoyl ring system to any extent. This shall include AM1248.

308 ~~(65)~~ (63) Tetramethylcyclopropylindoles or any compound containing A 3-  
309 tetramethylcyclopropylindole structure with substitution at the nitrogen atom of the indole ring  
310 whether or not further substituted in the indole ring to any extent and whether or not substituted  
311 in the tetramethylcyclopropyl ring to any extent. This shall include UR-144 and XLR-11.

312 ~~(66)~~ (64) N-(1-Adamantyl)-1-pentyl-1h-indazole-3-carboxamide. This shall include AKB48.

313 ~~(67)~~ (65) Any other synthetic chemical compound that is a Cannabinoid receptor type 1  
314 agonist as demonstrated by binding studies and functional assays that is not listed in Schedules  
315 II, III, IV and V, not federal Food and Drug Administration approved drug or used within legitimate,  
316 approved medical research. Since nomenclature of these substances is not internationally  
317 standardized, any immediate precursor or immediate derivative of these substances shall be  
318 covered.

319 ~~(68)~~ (66) Tryptamines:

320 (A) 5- methoxy- N- methyl-N-isopropyltryptamine (5-MeO-MiPT)

321 (B) 4-hydroxy-N,N-diisopropyltryptamine (4-HO-DiPT)

322 (C) 4-hydroxy-N-methyl-N-isopropyltryptamine (4-HO-MiPT)

323 (D) 4-hydroxy-N-methyl-N-ethyltryptamine (4-HO-MET)

324 (E) 4-acetoxy-N,N-diisopropyltryptamine (4-AcO-DiPT)

325 (F) 5-methoxy- $\alpha$ -methyltryptamine (5-MeO-AMT)

326 (G) 4-methoxy-N,N-Dimethyltryptamine (4-MeO-DMT)

327 (H) 4-hydroxy Diethyltryptamine (4-HO-DET)

328 (I) 5- methoxy- N,N- diallyltryptamine (5-MeO-DALT)

329 (J) 4-acetoxy-N,N-Dimethyltryptamine (4-AcO DMT)

330 (K) 4-hydroxy Diethyltryptamine (4-HO-DET)

331 (e) *Depressants*. -- Unless specifically excepted or unless listed in another schedule, any  
332 material, compound, mixture, or preparation which contains any quantity of the following  
333 substances having a depressant effect on the central nervous system, including its salts, isomers  
334 and salts of isomers whenever the existence of such salts, isomers and salts of isomers is  
335 possible within the specific chemical designation:

336 (1) Mecloqualone;

337 (2) Methaqualone.

338 (f) *Stimulants*. -- Unless specifically excepted or unless listed in another schedule, any  
339 material, compound, mixture, or preparation which contains any quantity of the following  
340 substances having a stimulant effect on the central nervous system, including its salts, isomers  
341 and salts of isomers:

342 (1) Aminorex; some other names: aminoxaphen; 2-amino-5- phenyl-2-oxazoline; or 4,5-  
343 dihydro-5-phenyl-2-oxazolamine;

344 (2) Cathinone; some trade or other names: 2-amino-1-phenyl-1- propanone, alpha-  
345 aminopropiophenone, 2-aminopropiophenone and norephedrone;

346 (3) Fenethylamine;

347 (4) Methcathinone, its immediate precursors and immediate derivatives, its salts, optical  
348 isomers and salts of optical isomers; some other names: (2-(methylamino)-propiophenone; alpha-

349 (methylamino)propiofenone; 2-(methylamino)-1-phenylpropan-1- one; alpha---  
350 methylaminopropiofenone; monomethylpropion; 3,4-methylenedioxypropiofenone and/or  
351 mephedrone;3,4-methylenedioxypropiofenone (MPVD); ephedrone; N-methylcathinone;  
352 methylcathinone; AL-464; AL-422; AL- 463 and UR1432;

353 (5) (+-) cis-4-methylaminorex; ((+)-cis-4,5-dihydro-4-methyl- 5-phenyl-2-oxazolamine);

354 (6) N-ethylamphetamine;

355 (7) N,N-dimethylamphetamine; also known as N,N-alpha- trimethyl-benzeneethanamine;  
356 N,N-alpha-trimethylphenethylamine.

357 (8) Alpha-pyrrolidinopentiophenone, also known as alpha-PVP, optical isomers, salts and  
358 salts of isomers.

359 (9) Substituted amphetamines:

360 (A) 2-Fluoroamphetamine

361 (B) 3-Fluoroamphetamine

362 (C) 4-Fluoroamphetamine

363 (D) 2-chloroamphetamine

364 (E) 3-chloroamphetamine

365 (F) 4-chloroamphetamine

366 (G) 2-Fluoromethamphetamine

367 (H) 3-Fluoromethamphetamine

368 (I) 4-Fluoromethamphetamine

369 (J) 4-chloromethamphetamine

370 (g) Temporary listing of substances subject to emergency scheduling. Any material,  
371 compound, mixture or preparation which contains any quantity of the following substances:

372 (1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers,  
373 salts, and salts of isomers.

374 (2)N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thienylfentanyl), its optical

375 isomers, salts and salts of isomers.

376 (3) N-benzylpiperazine, also known as BZP.

377 (h) The following controlled substances are included in Schedule I:

378 (1) Synthetic Cathinones or any compound, except bupropion or compounds listed under  
379 a different schedule, or compounds used within legitimate and approved medical research,  
380 structurally derived from 2- Aminopropan-1-one by substitution at the 1-position with Monocyclic  
381 or fused polycyclic ring systems, whether or not the compound is further modified in any of the  
382 following ways:

383 (A) By substitution in the ring system to any extent with Alkyl, alkylendioxy, alkoxy,  
384 haloalkyl, hydroxyl or halide Substituents whether or not further substituted in the ring system by  
385 one or more other univalent substituents.

386 (B) By substitution at the 3-position with an acyclic alkyl substituent.

387 (C) By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or  
388 methoxybenzyl groups.

389 (D) By inclusion of the 2-amino nitrogen atom in a cyclic structure.

390 (2) Any other synthetic chemical compound that is a Cannabinoid receptor type 1 agonist  
391 as demonstrated by binding studies and functional assays that is not listed in Schedules II, III, IV  
392 and V, not federal Food and Drug Administration approved drug or used within legitimate,  
393 approved medical research.

#### **ARTICLE 4. OFFENSES AND PENALTIES.**

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

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

3 Any person who violates this subsection with respect to:

4 (i) A controlled substance classified in Schedule I or II, which is a narcotic drug, is guilty  
5 of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less

6 than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or  
7 both;

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

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

14 (iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction,  
15 may be confined in jail for not less than six months nor more than one year, or fined not more  
16 than five thousand dollars, or both: *Provided*, That for offenses relating to any substance classified  
17 as Schedule V in article ten of this chapter, the penalties established in said article apply.

18 (b) Except as authorized by this act, it is unlawful for any person to create, deliver, or  
19 possess with intent to deliver, a counterfeit substance.

20 Any person who violates this subsection with respect to:

21 (i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, is guilty  
22 of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less  
23 than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or  
24 both;

25 (ii) Any other counterfeit substance classified in Schedule I, II or III is guilty of a felony and,  
26 upon conviction, may be imprisoned in the state correctional facility for not less than one year nor  
27 more than five years, or fined not more than fifteen thousand dollars, or both;

28 (iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon  
29 conviction, may be imprisoned in the state correctional facility for not less than one year nor more  
30 than three years, or fined not more than ten thousand dollars, or both;

31 (iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon

32 conviction, may be confined in jail for not less than six months nor more than one year, or fined  
33 not more than five thousand dollars, or both: *Provided*, That for offenses relating to any substance  
34 classified as Schedule V in article ten of this chapter, the penalties established in said article  
35 apply.

36 (c) It is unlawful for any person knowingly or intentionally to possess a controlled  
37 substance unless the substance was obtained directly from, or pursuant to, a valid prescription or  
38 order of a practitioner while acting in the course of his professional practice, or except as  
39 otherwise authorized by this act. Any person who violates this subsection is guilty of a  
40 misdemeanor and, disposition may be made under section four hundred seven of this article,  
41 subject to the limitations specified in said section, or upon conviction, such person may be  
42 confined in jail not less than ninety days nor more than six months, or fined not more than one  
43 thousand dollars, or both: *Provided*, That notwithstanding any other provision of this act to the  
44 contrary, any first offense for possession of Synthetic Cannabinoids as defined by subdivision  
45 (32) subsection, (d), section 101, article 1 of this chapter; 3,4-methylenedioxypropylone  
46 (MPVD) and 3,4-methylenedioxypropylone and/or mephedrone as defined in subsection (f),  
47 section 101, article 1 of this chapter; ~~or less than 15 grams of marijuana~~, shall be disposed of  
48 under said section.

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

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

52 (2) To create, possess or sell or otherwise transfer any equipment with the intent that such  
53 equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint,  
54 number or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled  
55 substance, or the container or label of a counterfeit substance or an imitation controlled  
56 substance.

57 (3) Any person who violates this subsection is guilty of a misdemeanor and, upon

58 conviction, may be imprisoned in jail for not less than six months nor more than one year, or fined  
59 not more than five thousand dollars, or both. Any person being eighteen years old or more who  
60 violates subdivision (1) of this subsection and, in so doing, distributes or delivers an imitation  
61 controlled substance to a minor child who is at least three years younger than such person is  
62 guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not  
63 less than one year nor more than three years, or fined not more than ten thousand dollars, or  
64 both.

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

**§60A-4-402. Prohibited acts B; penalties.**

1 (a) It is unlawful for any person:

2 (1) Who is subject to article 3 to distribute or dispense a controlled substance in violation  
3 of section 308;

4 (2) Who is a registrant, to manufacture a controlled substance not authorized by his or her  
5 registration, or to distribute or dispense a controlled substance not authorized by his or her  
6 registration to another registrant or other authorized person;

7 (3) To refuse or fail to make, keep, or furnish any record, notification, order form,  
8 statement, invoice, or information required under this act;

9 (4) To refuse any entry into any premises for any inspection authorized by this act; or

10 (5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle,  
11 boat, aircraft, or other structure or place, which is resorted to by persons using controlled  
12 substances in violation of this act for the purpose of using these substances, or which is used for  
13 keeping or selling them in violation of this act.

14 (b) Any person who violates this section is guilty of a misdemeanor, and, upon conviction,  
15 may be confined in the county jail for not less than six months nor more than one year, or fined  
16 not more than \$25,000, or both.



17 (c) Notwithstanding any other provision of this act to the contrary, any first offense for  
18 distributing less than ~~45~~ 30 grams of marihuana without any remuneration shall be disposed of  
19 under section 407.

**§60A-4-407. Conditional discharge for first offense of possession.**

1 (a) Whenever any person who has not previously been convicted of any offense under  
2 this chapter or under any statute of the United States or of any state relating to narcotic drugs,  
3 ~~marihuana~~ or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of  
4 possession of a controlled substance under section 401(c), the court, without entering a judgment  
5 of guilt and with the consent of the accused, may defer further proceedings and place him or her  
6 on probation upon terms and conditions. Upon violation of a term or condition, the court may enter  
7 an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and  
8 conditions, the court shall discharge the person and dismiss the proceedings against him or her.  
9 Discharge and dismissal under this section shall be without adjudication of guilt and is not a  
10 conviction for purposes of this section or for purposes of disqualifications or disabilities imposed  
11 by law upon conviction of a crime, including the additional penalties imposed for second or  
12 subsequent convictions under section 408. The effect of the dismissal and discharge shall be to  
13 restore the person in contemplation of law to the status he or she occupied prior to arrest and  
14 trial. No person as to whom a dismissal and discharge have been effected shall be thereafter held  
15 to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his or  
16 her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of  
17 him or her for any purpose. There may be only one discharge and dismissal under this section  
18 with respect to any person.

19 (b) After a period of not less than six months which shall begin to run immediately upon  
20 the expiration of a term of probation imposed upon any person under this chapter, the person  
21 may apply to the court for an order to expunge from all official records all recordations of his or  
22 her arrest, trial, and conviction, pursuant to this section. If the court determines after a hearing

23 that the person during the period of his or her probation and during the period of time prior to his  
 24 or her application to the court under this section has not been guilty of any serious or repeated  
 25 violation of the conditions of his or her probation, it shall order the expungement.

26 (c) Notwithstanding any provision of this code to the contrary, any person prosecuted  
 27 pursuant to the provisions of this article whose case is disposed of pursuant to the provisions of  
 28 this section shall be liable for any court costs assessable against a person convicted of a violation  
 29 of section 401(c) of this article. Payment of such costs may be made a condition of probation.

30 The costs assessed pursuant to this section, whether as a term of probation or not, shall  
 31 be distributed as other court costs in accordance with section two, article three, chapter fifty,  
 32 section four, article two-a, chapter fourteen, section four, article twenty-nine, chapter thirty and  
 33 sections two, seven and ten, article five, chapter sixty-two of this code.

**§60A-4-414. Personal use and possession of marihuana; Protections for medical use of marihuana.**

1 (a) Notwithstanding any provision of this code to the contrary, it shall be lawful, and shall  
 2 not be an offense under West Virginia law, for any person twenty-one years of age or older to:

3 (1) Possess, use, purchase or transport marihuana weighing two ounces or less;

4 (2) Transfer to another person twenty-one years of age or older, without remuneration,  
 5 marihuana weighing one ounce or less;

6 (3) Possess, grow, harvest or process, upon property that constitutes such person's  
 7 principal residence, no more than six marihuana plants, with three or fewer being mature,  
 8 flowering plants: *Provided*, That each adult person residing within a single house or single rental  
 9 unit may possess, grow, harvest or process, in the aggregate, more than six marihuana plants,  
 10 with six or fewer being mature, flowering plants;

11 (4) Possess, upon property that constitutes such person's principal residence, the  
 12 marihuana produced by marihuana plants: *Provided*, That nothing in this subsection shall make  
 13 it lawful to sell, offer for sale or make available for sale any marihuana plants.

14           (b) The terms “controlled substance” and “controlled substances,” as used in this code, do  
15 not include:

16           (1) Marihuana that is or was in the personal possession of a person twenty-one years of  
17 age or older at any specific time if the total amount of marihuana that is or was in the possession  
18 of that person at that time weighs or weighed two ounces or less;

19           (2) Marihuana plants that are or were grown, possessed, harvested, or processed by a  
20 person twenty-one years of age or older upon property that constitutes or at the time constituted,  
21 such person’s principal residence, if such person at that time was growing no more than six plants  
22 with three or fewer being mature flowering plants and if all persons residing within a single house  
23 or single rental unit upon such property at that time did not possess, grow, harvest or process, in  
24 the aggregate, more than six marihuana plants, with three or fewer being mature, flowering plants;  
25 or

26           (3) The marihuana produced by the plants which were grown, possessed, harvested or  
27 processed by a person who is permitted to grow, possess, harvest and process such plants  
28 pursuant to this section, if such marihuana is or was in the personal possession of that person  
29 who is growing or grew such plants, upon the property on which the plants are or were grown.

30           (c) Notwithstanding any other provision of this code, no district government agency or  
31 office shall limit or refuse to provide any facility service, program or benefit to any person based  
32 upon or by reason of conduct that is made lawful by this subsection.

33           (d) Nothing in this subsection shall be construed to require any district government agency  
34 or office, or any employer, to permit or accommodate the use, consumption, possession, transfer,  
35 display, transportation, sale or growing of marihuana in the workplace or to affect the ability of  
36 any such agency, office or employer to establish and enforce policies restricting the use of  
37 marihuana by employees.

38           (e) Nothing in this subsection shall be construed to permit driving under the influence of  
39 marihuana or driving while impaired by use or ingestion of marihuana or to modify or affect the

40 construction or application of any provision of this code related to driving under the influence of  
41 marihuana or driving while impaired by marihuana.

42 (f) Nothing in this subsection shall be construed to prohibit any person, business,  
43 corporation, organization or other entity, or district government agency or office, who or which  
44 occupies, owns or controls any real property, from prohibiting or regulating the possession,  
45 consumption, use, display, transfer, distribution, sale, transportation or growing of marihuana in  
46 or on that property.

47 (g) Notwithstanding any provision of this chapter to the contrary, it shall be lawful for any  
48 person twenty-one years of age or older to use, or possess with intent to use, drug paraphernalia  
49 to possess or use marihuana if such possession or use is lawful under this section, or to use, or  
50 possess with intent to use, drug paraphernalia to grow, possess, harvest or process marihuana  
51 plants, the growth, possession, harvesting or processing of which is lawful under this section.

52 (h) Notwithstanding any provision of this chapter to the contrary, it shall be lawful for any  
53 person to deliver or sell, possess with intent to deliver or sell, or manufacture with intent to deliver  
54 or sell, drug paraphernalia under circumstances in which one knows or has reason to know that  
55 such drug paraphernalia will be used solely for use of marihuana that is lawful under this section,  
56 or that such drug paraphernalia will be used solely for growing, possession, harvesting, or  
57 processing of marihuana plants that is lawful under this section.

58 (i) *Protections for the medical use of marihuana* .--

59 (1) A qualifying patient may not be subject to arrest, prosecution or denial of any right or  
60 privilege, including, but not limited to, civil penalty or disciplinary action by a court or occupational  
61 or professional licensing board or bureau,, for the medical use of marihuana pursuant to this  
62 article, if the qualifying patient does not possess more than:

63 (A) Six ounces of usable marihuana; and

64 (B) Twelve mature marihuana plants and six seedlings, if the qualifying patient has not  
65 specified that a designated care giver will be allowed under state law to cultivate marihuana for

66 the qualifying patient.

67 (2) For the purposes of West Virginia state law, the medical use of marihuana by a  
68 qualifying patient, as designated by their primary care giver, shall be considered lawful.

69 (3) "Medical use" includes the acquisition, administration, cultivation, delivery, possession,  
70 transfer, transportation or use of marihuana or paraphernalia relating to the administration of  
71 marihuana to treat or alleviate a qualifying patient's medical condition or symptoms associated  
72 with the patient's medical condition.

73 (4) A medical practitioner may not be subject to arrest, prosecution, or penalty in any  
74 manner or denied any right or privilege, including, but not limited to, civil penalty or disciplinary  
75 action by any occupational or professional licensing board or bureau, solely for providing written  
76 certifications or for otherwise stating that, in the practitioner's professional opinion, a patient is  
77 likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or  
78 alleviate the patient's serious or debilitating medical condition or symptoms associated with the  
79 serious or debilitating medical condition.

**§60A-4-415. Criminal penalties for unlawful possession or sale of marihuana.**

1 Notwithstanding any law or criminal penalty to the contrary, the penalties for possession  
2 of marihuana as otherwise may exist at the time of enactment of this section, are superseded by  
3 the provisions of this section.

4 (a) An adult resident that fails to obtain a marihuana use tax stamp when the resident is  
5 otherwise eligible for the tax stamp and is in possession of two or less ounces of marihuana shall  
6 be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of one thousand to two  
7 thousand dollars, and upon second or subsequent offense, may be confined in jail up to ninety  
8 days, or both fined and confined.

9 (b) Any person that possesses more than two ounces but less than eight ounces of  
10 marihuana not otherwise authorized by law, upon conviction, shall be guilty of a misdemeanor,  
11 and upon conviction, may be confined in jail up to ninety days, and fined up to five thousand

12 dollars, or both fined and confined. For a subsequent offense, the person shall be guilty of a  
13 misdemeanor, and upon conviction, shall be confined from thirty days to one year in jail, or be  
14 fined up to ten thousand dollars, or both fined and confined. Any person that possesses in excess  
15 of eight ounces of marihuana, shall be guilty of a felony and, upon conviction, may be confined in  
16 prison not less than one year nor more than five years, or fined not more than five thousand  
17 dollars, or both fined and confined.

18 (c) All other violations of this provisions of this article relating to the manufacture, sale,  
19 and distribution of schedule I controlled substances are applicable to the manufacture, import,  
20 sales of marihuana not authorized by either section four hundred fourteen or four hundred  
21 fifteen of this article.

NOTE: The purpose of this bill is to decriminalize and permit personal use, growth and possession of certain amounts of marihuana by persons over the age of twenty-one under certain circumstances; to remove marihuana from the list of schedule I drugs; to create a tax stamp for eligible persons to purchase to allow for possession of up to two ounces or marihuana; to provide method for distribution of stamps; to decriminalize first offense distribution of under 30 grams of marihuana; to establish new criminal penalties for marihuana possession and sale; and to provide for a medical exemption to criminal laws against marihuana use or possession.

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