

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 123

FISCAL
NOTE

BY SENATORS ROMANO AND STOLLINGS

[Introduced January 9, 2019; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §60A-4-401 of the Code of West Virginia, 1931, as amended,
 2 relating to providing that the penalty for possession of marijuana carries a fine of no more
 3 than \$1,000 without confinement.

Be it enacted by the Legislature of West Virginia:

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~~ confined in the state correctional facility for
 6 not less than one year nor more than 15 years, or fined not more than \$25,000, or both fined and
 7 confined;

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~~ confined in the state correctional facility for not less than one
 10 year nor more than five years, or fined not more than \$15,000, or both fined and confined;

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

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 \$5,000, or both fined and confined: *Provided*, That for offenses relating to any substance
 17 classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in ~~said~~ that
 18 article apply.

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

21 Any person who violates this subsection with respect to:

22 (i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, is guilty
23 of a felony and, upon conviction, may be ~~imprisoned~~ confined in the state correctional facility for
24 not less than one year nor more than 15 years, or fined not more than \$25,000, or both fined and
25 confined:

26 (ii) Any other counterfeit substance classified in Schedule I, II or III is guilty of a felony and,
27 upon conviction, may be ~~imprisoned~~ confined in the state correctional facility for not less than one
28 year nor more than five years, or fined not more than \$15,000, or both fined and confined:

29 (iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon
30 conviction, may be ~~imprisoned~~ confined in the state correctional facility for not less than one year
31 nor more than three years, or fined not more than \$10,000, or both fined and confined:

32 (iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon
33 conviction, may be confined in jail for not less than six months nor more than one year, or fined
34 not more than \$5,000, or both fined and confined: *Provided*, That for offenses relating to any
35 substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established
36 in said article apply.

37 (c) It is unlawful for any person knowingly or intentionally to possess a controlled
38 substance unless the substance was obtained directly from, or pursuant to, a valid prescription or
39 order of a practitioner while acting in the course of his professional practice, or except as
40 otherwise authorized by this act. Any person who violates this subsection is guilty of a
41 misdemeanor and, disposition may be made under §60A-4-407 of this code, subject to the
42 limitations specified in said section, or upon conviction, such person may be confined in jail not
43 less than 90 days nor more than six months, or fined not more than \$1,000, or both fined and
44 confined: *Provided*, That if the controlled substance is marijuana then, upon conviction, the person
45 may be fined not more than \$1,000, but may not be confined: *Provided, however*, That
46 notwithstanding any other provision of this act to the contrary, any first offense for possession of

47 Synthetic Cannabinoids as defined by §60A-1-101(d)(32) of this code; 3,4-
48 methylenedioxypropylvalerone (MPVD) and 3,4-methylenedioxypropylvalerone and/or mephedrone
49 as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall be disposed of
50 under said that section.

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

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

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

59 (3) Any person who violates this subsection is guilty of a misdemeanor and, upon
60 conviction, may be ~~imprisoned~~ confined in jail for not less than six months nor more than one
61 year, or fined not more than \$5,000, or both fined and confined. Any person being 18 years old
62 or more who violates subdivision (1) of this subsection and, in so doing, distributes or delivers an
63 imitation controlled substance to a minor child who is at least three years younger than such
64 person is guilty of a felony and, upon conviction, may be ~~imprisoned~~ confined in the state
65 correctional facility for not less than one year nor more than three years, or fined not more than
66 \$10,000, or both fined and confined.

67 (4) The provisions of subdivision (1) of this subsection ~~shall~~ may not apply to a practitioner
68 who administers or dispenses a placebo.

NOTE: The purpose of this bill is to provide that the penalty for possession of marijuana carries a fine of no more than \$1,000 without confinement.

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