

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4765

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SPONAUGLE, LAVENDER-BOWE, DEAN AND PYLES

[Introduced February 10, 2020; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §60A-4-401 of the Code of West Virginia, 1931, as amended,
 2 relating to reducing the criminal penalty for possession of small amounts of marijuana or
 3 paraphernal designed for smoking or other use of marijuana.

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

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

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

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 in ~~the~~ a state correctional facility for not less
24 than one year nor more than 15 years, or fined not more than \$25,000, or both fined and
25 imprisoned:

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 in ~~the~~ a state correctional facility for not less than one year
28 nor more than five years, or fined not more than \$15,000, or both fined and imprisoned:

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

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 that 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-10-407 of this code, subject to the
42 limitations specified in said section, or upon conviction, ~~such~~ the person may be confined in jail
43 not less than 90 days nor more than six months, or fined not more than \$1,000, or both fined and
44 confined: *Provided*, That notwithstanding any other provision of this act to the contrary, any first
45 offense for possession of Synthetic Cannabinoids as defined by §60A-1-101(d)(32) of this code;
46 3,4-methylenedioxypropylvalerone (MPVD) and 3,4-methylenedioxypropylvalerone and/or

47 mephedrone as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall
48 be disposed of under ~~said~~ that section: Provided, however, That notwithstanding any other
49 provision of this act to the contrary, any person who possesses 15 grams of marijuana or less, or
50 paraphernalia that may be used for smoking or otherwise using marijuana, is guilty of a
51 misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed \$500 or shall
52 be confined in jail, or, in the case of a juvenile, a detention facility, for a period not to exceed 72
53 hours, or both fined and confined or, in lieu of fine and confinement, may, for the first offense, be
54 placed on probation for a period not to exceed one year. Any person convicted under this section
55 may be sentenced pursuant to §62-11A-1a of this code.

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

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

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

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

72 (4) The provisions of subdivision (1) of this subsection ~~shall~~ may not apply to a practitioner

73 who administers or dispenses a placebo.

NOTE: The purpose of this bill is to reduce the criminal penalty for possession of small amounts of marijuana or paraphernal designed for smoking or other use of marijuana.

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