

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4852

BY DELEGATES SHOTT AND CAPITO

[Originating in the Committee on the Judiciary;

February 17, 2020.]

1 A BILL to amend and reenact §60A-4-401 of the Code of West Virginia, 1931, as amended,
2 relating to the penalties for the manufacture, delivery, possession, or possession with
3 intent to manufacture or deliver, a controlled substance; and, increasing the penalty for
4 methamphetamine.

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) (1) 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 15 years, or fined not more than \$25,000, or both;

7 (ii) (2) Any other controlled substance classified in Schedule I, II or III is guilty of a felony
8 and, upon conviction, may be imprisoned in the state correctional facility for not less than one
9 year nor more than five years, or fined not more than \$15,000, or both; but if the other controlled
10 substance is methamphetamine, upon conviction, may be imprisoned in the state correctional
11 facility for not less than two nor more than 10 years, or fined not more than \$25,000, or both.

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

15 (iv) (4) A substance classified in Schedule V is guilty of a misdemeanor and, upon
16 conviction, may be confined in jail for not less than six months nor more than one year, or fined
17 not more than \$5,000, or both: *Provided*, That for offenses relating to any substance classified
18 as Schedule V in article ten of this chapter, the penalties established in said 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) (1) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, is
23 guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not
24 less than one year nor more than 15 years, or fined not more than \$25,000, or both;

25 (ii) (2) Any other counterfeit substance classified in Schedule I, II or III is guilty of a felony
26 and, upon conviction, may be imprisoned in the state correctional facility for not less than one
27 year nor more than five years, or fined not more than \$15,000, or both;

28 (iii) (3) 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 \$10,000, or both;

31 (iv) (4) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and,
32 upon conviction, may be confined in jail for not less than six months nor more than one year, or
33 fined not more than \$5,000, or both: *Provided*, That for offenses relating to any substance
34 classified as Schedule V in article 10 of this chapter, the penalties established in said article apply.

35 (c) It is unlawful for any person knowingly or intentionally to possess a controlled
36 substance unless the substance was obtained directly from, or pursuant to, a valid prescription or
37 order of a practitioner while acting in the course of his professional practice, or except as
38 otherwise authorized by this act. Any person who violates this subsection is guilty of a
39 misdemeanor and, disposition may be made under §60A-4-407 of this code, subject to the
40 limitations specified in said section, or upon conviction, such person may be confined in jail not
41 less than 90 days nor more than six months, or fined not more than \$1,000, or both: *Provided*,
42 That notwithstanding any other provision of this act to the contrary, any first offense for possession
43 of Synthetic Cannabinoids equivalents or substitutes for tetrahydrocannabinols ~~subdivision (32)~~
44 ~~subsection, (d), section 101, article 1 of this chapter;~~ 3, 4-methylenedioxypropylone (MDPV)

45 ~~(MPVD)~~ and 3, 4-methylenedioxypropylone; and/or 4-methylmethcathinone (Mephedrone) as
46 identified in §60A-2-204(d); defined in subsection (f), section 101, article 1 of this chapter or less
47 than 15 grams of marijuana, shall be disposed of under said section.

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

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

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

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

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

NOTE: The purpose of this bill is to increase the penalty for the manufacture, delivery or possession of methamphetamine.

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