

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4373

BY DELEGATES ROHRBACH, REED, WORRELL, BATES,

TULLY, G. WARD, MILLER, CRISS, AND MANDT

[Introduced on January 25, 2022;

Referred to the Committee on Health and Human

Resources then the Judiciary]

1 A BILL to amend and reenact §47-19-3 of the Code of West Virginia, 1931, as amended, relating
2 to excluding fentanyl test strips from the definition of drug paraphernalia.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. OFFENSES AND PENALTIES.

§47-19-3. Drug paraphernalia defined.

1 (a) The following items, if marketed for use or designed for the use with controlled
2 substances, are considered drug paraphernalia for the purpose stated in section one of this
3 article:

4 (1) Kits marketed for use, or designed for use in planting, propagating, cultivating, growing,
5 or harvesting of any species of plant which is a controlled substance or from which a controlled
6 substance can be derived;

7 (2) Kits marketed for use, or designed for use in manufacturing, compounding, converting,
8 producing, processing or preparing controlled substances;

9 (3) Isomerization devices marketed for use, or designed for use in increasing the potency
10 of any species of plant which is a controlled substance;

11 (4) Testing equipment marketed for use, or designed for use in identifying, or in analyzing
12 the strength, effectiveness or purity of controlled substances; This does not include fentanyl test
13 strips;

14 (5) Scales and balances used, intended for use, or designed for use in weighing or
15 measuring controlled substances;

16 (6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose
17 and lactose, marketed for use, or designed for use in cutting controlled substances;

18 (7) Separation gins and sifters marketed for use, or designed for use in removing twigs
19 and seeds from, or in otherwise cleaning or refining, marijuana;

20 (8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or
21 designed for use in compounding controlled substances;

22 (9) Capsules, balloons, envelopes and other containers marketed for use, or designed for
23 use in packaging small quantities of controlled substances;

24 (10) Hypodermic syringes, needles and other objects marketed for use, or designed for
25 use in parenterally injecting controlled substances into the human body;

26 (11) Paper of colorful design, with names oriented for use with controlled dangerous
27 substances and displayed: Provided, That white paper or tobacco oriented paper not necessarily
28 designed for use with controlled substances is not covered;

29 (12) Pipes displayed in the proximity of roach clips, or literature encouraging illegal use of
30 controlled substances, are covered by this article: Provided, That pipes otherwise displayed are
31 not covered by this article;

32 (13) Roach clips: meaning objects used to hold burning material, such as a marijuana
33 cigarette, that has become too small or too short to be held in the hand;

34 (14) Miniature cocaine spoons, and cocaine vials; or

35 (15) Chillums or bongs.

36 (b) In determining whether an object is marketed for use or designed for use as drug
37 paraphernalia, the State Tax Commissioner or other authority should consider the following:

38 (1) The proximity of the object, in time and space, to a controlled substance;

39 (2) The existence of any residue of controlled substances on the object;

40 (3) Instructions, oral or written, provided with the object concerning its use;

41 (4) Descriptive materials accompanying the object which explain or depict its use;

42 (5) National and local advertising concerning its use;

43 (6) The manner in which the object is displayed for sale;

44 (7) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or
45 related items to the community, such as a licensed distributor or dealer of tobacco products;

46 (8) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total
47 sales of the business enterprise;

- 48 (9) The existence and scope of legitimate uses for the object in the community.

NOTE: The purpose of this bill is to exclude fentanyl test strips from the definition of drug paraphernalia.

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