

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 536

FISCAL
NOTE

BY SENATORS BLAIR (MR. PRESIDENT) AND BALDWIN

(BY REQUEST OF THE EXECUTIVE)

[Introduced February 01, 2022; referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend and reenact §60A-4-401, §60A-4-409, and §60A-4-415 of the Code of West
2 Virginia, 1931, as amended, relating to knowingly possessing or manufacturing, or
3 possessing with the intent to deliver fentanyl, and importing and transporting fentanyl
4 through the state of West Virginia; clarifying the statutes to reference mandatory
5 sentencing provisions for felony fentanyl crimes promulgated through the amendment and
6 reenactment of §60A-4-415 of this code; increasing the minimum term of imprisonment
7 for felony fentanyl related offenses; noting that any person convicted of manufacturing,
8 delivering, or transporting into the state or possessing fentanyl, or conspiring to
9 manufacture, deliver, or transport into the state or possessing fentanyl either alone or in
10 combination with another substance, is not eligible for probation; noting that any person
11 convicted of manufacturing, delivering, or transporting into the state or possessing
12 fentanyl, either alone or in combination with another substance, is not eligible for parole;
13 enhancing penalties for transportation of fentanyl into the state and for the possession,
14 manufacture, and delivery of fentanyl within the state when certain aggravating factors
15 exist at the time of the offense; to-wit, the person has one or more prior convictions for an
16 offense relating to possessing, manufacturing, or delivering controlled substances; the
17 person possesses a firearm or any other dangerous weapon; the person utilizes, enlists,
18 or solicits the aid of, or conspires with a juvenile to illegally import fentanyl; noting that any
19 person who violates the aggravating provisions in this section shall be imprisoned for a
20 definite term not less than 15 nor more than 20 years, and fined an amount twice that
21 otherwise authorized; increasing the fines to which a person convicted of transporting
22 fentanyl into the state may be subject.

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 or which
5 is methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a
6 state correctional facility for not less than one year nor more than 15 years, or fined not more than
7 \$25,000, or both fined and imprisoned: Provided, That, when the predicate drug is fentanyl,
8 sentencing shall be in accordance with §60A-4-415 of this code;

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

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

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

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

22 Any person who violates this subsection with respect to:

23 (i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, or
24 methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state
25 correctional facility for not less than one year nor more than 15 years, or fined not more than
26 \$25,000, or both fined and imprisoned;

27 (ii) Any other counterfeit substance classified in Schedule I, II, or III is guilty of a felony

28 and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than
29 one year nor more than five years, or fined not more than \$15,000, or both fined and imprisoned;

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

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

38 (c) It is unlawful for any person knowingly or intentionally to possess a controlled
39 substance unless the substance was obtained directly from, or pursuant to, a valid prescription or
40 order of a practitioner while acting in the course of his or her professional practice, or except as
41 otherwise authorized by this act. Any person who violates this subsection is guilty of a
42 misdemeanor, and disposition may be made under §60A-4-407 of this code, subject to the
43 limitations specified in said section, or upon conviction thereof, the person may be confined in jail
44 not less than 90 days nor more than six months, or fined not more than \$1,000, or both fined and
45 confined: *Provided*, That notwithstanding any other provision of this act to the contrary, any first
46 offense for possession of synthetic cannabinoids as defined by §60A-1-101(d)(32) of this code;
47 3,4-methylenedioxypropylvalerone (MPVD) and 3,4-methylenedioxypropylvalerone and/or
48 mephedrone as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall
49 be disposed of under §60A-4-407 of this code.

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

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

53 (2) To create, possess, sell, or otherwise transfer any equipment with the intent that the

54 equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint,
55 number, or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled
56 substance, or the container or label of a counterfeit substance or an imitation controlled
57 substance.

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

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

**§60A-4-409. Prohibited acts – Transportation of controlled substances into state;
penalties.**

1 (a) Except as otherwise authorized by the provisions of this code, it is unlawful for any
2 person to transport or cause to be transported into this state a controlled substance with the intent
3 to deliver the same or with the intent to manufacture a controlled substance.

4 (b) Any person who violates this section with respect to:

5 (1) A controlled substance classified in Schedule I or II, which is a narcotic drug, shall be
6 guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not
7 less than one year nor more than 15 years, or fined not more than \$25,000, or both: Provided,
8 That when the predicate drug is fentanyl, sentencing shall be in accordance with §60A-4-415 of
9 this code;

10 (2) Any other controlled substance classified in Schedule I, II or III shall be guilty of a
11 felony and, upon conviction, may be imprisoned in the state correctional facility for not less than

12 one year nor more than 10 years, or fined not more than \$15,000, or both: *Provided*, That for the
13 substance marihuana, as scheduled in §60A-2-204(d)(24) of this code, the penalty, upon
14 conviction of a violation of this subsection, shall be that set forth in subdivision (3) of this
15 subsection.

16 (3) A substance classified in Schedule IV shall be guilty of a felony and, upon conviction,
17 may be imprisoned in the state correctional facility for not less than one year nor more than five
18 years, or fined not more than \$10,000, or both;

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

23 (c) Notwithstanding the provisions of subsection (b) of this section, any person violating
24 or causing a violation of subsection (a) of this section involving one kilogram or more of heroin,
25 five kilograms or more of cocaine or cocaine base, 100 grams or more of phencyclidine, 10 grams
26 or more of lysergic acid diethylamide, or 50 grams or more of methamphetamine or 500 grams of
27 a substance or material containing a measurable amount of methamphetamine, is guilty of a
28 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a
29 determinate sentence of not less than two nor more than 30 years.

30 (d) Notwithstanding the provisions of subsection (b) of this section, any person violating
31 or causing a violation of subsection (a) of this section involving 100 but fewer than 1000 grams of
32 heroin, not less than 500 but fewer than 5,000 grams of cocaine or cocaine base, not less than
33 10 but fewer than 99 grams of phencyclidine, not less than one but fewer than 10 grams of lysergic
34 acid diethylamide, or not less than five but fewer than 50 grams of methamphetamine or not less
35 than 50 grams but fewer than 500 grams of a substance or material containing a measurable
36 amount of methamphetamine, is guilty of a felony and, upon conviction thereof, shall be
37 imprisoned in a state correctional facility for a determinate sentence of not less than two nor more

38 than 20 years.

39 (e) Notwithstanding the provisions of subsection (b) of this section, any person violating
40 or attempting to violate the provisions of subsection (a) of this section involving not less than 10
41 grams nor more than 100 grams of heroin, not less than 50 grams nor more than 500 grams of
42 cocaine or cocaine base, not less than two grams nor more than ten grams of phencyclidine, not
43 less than 200 micrograms nor more than one gram of lysergic acid diethylamide, or not less than
44 499 milligrams nor more than five grams of methamphetamine or not less than 20 grams nor more
45 than 50 grams of a substance or material containing a measurable amount of methamphetamine
46 is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility
47 for a determinate sentence of not less than two nor more than 15 years.

48 (f) The offense established by this section shall be in addition to and a separate and
49 distinct offense from any other offense set forth in this code.

**§60A-4-415. Unlawful manufacture, delivery, transport into state, or possession of
fentanyl; aggravated transportation of fentanyl into state; penalties.**

1 (a) For purposes of this section,

2 (1) "Controlled substance" shall have the same meaning as provided in §60A-1-101(e) of
3 this code.

4 (2) "Fentanyl" refers to the substance identified in §60A-2-206(c)(9) of this code ~~and any~~
5 ~~analog or derivative thereof, and §60A-1-101(n) of this code.~~

6 (b) ~~Any A person who violates~~ convicted of an offense under the provisions of §60A-4-401
7 of this code or §60A-4-409 of this code, or a conspiracy to commit such an offense, where fentanyl
8 is the predicate drug, in which fentanyl is a controlled substance involved in the offense, either
9 ~~alone or in combination with another controlled substance, shall be guilty of a felony, and upon~~
10 ~~conviction thereof shall be punished in accordance with the following:~~

11 (1) If the net weight of fentanyl involved in the offense is less than one gram, such person
12 shall be imprisoned in a correctional facility not less than ~~two~~ four nor more than 10 years.

13 (2) If the net weight of fentanyl involved in the offense is one gram or more but less than
14 five grams, such person shall be imprisoned in a correctional facility not less than ~~three~~ six nor
15 more than 15 years.

16 (3) If the net weight of fentanyl involved in the offense is five grams or more, such person
17 shall be imprisoned in a correctional facility not less than ~~four~~ eight nor more than 20 years.

18 (c) A person convicted under §60A-4-401 of this code or §60A-4-409 of this code, where
19 fentanyl is the predicate drug, shall be subject to enhanced penalties when the finder of fact
20 determines that one or more of the following aggravating circumstances existed at the time of the
21 offense:

22 (1) The convicted person utilized, enlisted, solicited, or conspired with a juvenile to illegally
23 import fentanyl, or cause fentanyl to be imported, into the state; or

24 (2) The convicted person possessed a firearm or any other dangerous weapon; or

25 (3) The convicted person had one or more prior convictions for a felony offense under this
26 chapter or under any statute in the United States for any offense involving possession with intent
27 to distribute, manufacture, deliver, or transport a controlled substance, or for a felony crime of
28 violence to the person of another.

29 (d) Any person who violates the provisions of subsections (c)(1) through (c)(3) of this
30 section shall be punished by confinement in a correctional facility for a definite term of not less
31 than 15 nor more than 20 years.

32 (e) Notwithstanding any provision of this code to the contrary, any person sentenced under
33 the provisions of this section shall be subject to a fine not more than \$50,000.

34 (f) Notwithstanding any provision of this code to the contrary, any person sentenced under
35 the provisions of this section is not eligible for probation or alternative sentencing.

36 (g) Notwithstanding any provision of this code to the contrary, any person sentenced under
37 the provisions of this section shall not be eligible for release on parole.

NOTE: The purpose of this bill relating to knowingly importing and transporting fentanyl

through the State of West Virginia is to clarify the statutes to reference the sentencing provisions promulgated through the amendment and reenactment of section four hundred fifteen, article four of this chapter, which provides mandatory sentences for felony fentanyl related offenses; to increase the minimum term of imprisonment upon conviction for fentanyl related drug offenses; to enhance penalties for transportation of fentanyl into the state and for the manufacture and delivery of fentanyl within the state when certain aggravating factors exist at the time of the offense; noting that the presence of an aggravating factor is subject to the increased penalty of not less than fifteen years nor more than 20 years, and subject to a fine in an amount twice that otherwise authorized; noting that any person convicted of transportation of fentanyl into the state is not eligible for probation; and, noting that any person convicted of transportation of fentanyl into the state is not eligible for parole.

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