

H. B. 3265

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(By Delegates Pethtel and Miley)
[Introduced February 21, 2011; referred to the
Committee on the Judiciary.]

10 A BILL to amend and reenact §60A-4-401 of the Code of West
11 Virginia, 1931, as amended, relating to making the possession
12 of heroin, without a valid prescription, by a person, acting
13 in the course of his or her professional practice, a felony;
14 and providing penalties.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §60A-4-401 of the Code of West Virginia, 1931, as
17 amended, be amended and reenacted to read as follows:

18 **ARTICLE 4. OFFENSES AND PENALTIES.**

19 **§60A-4-401. Prohibited acts A; penalties.**

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

23 Any person who violates this subsection with respect to:

24 (i) A controlled substance classified in Schedule I or II,
25 which is a narcotic drug, is guilty of a felony and, upon
26 conviction, may be imprisoned in the state correctional facility
27 for not less than one year nor more than fifteen years, or fined

1 not more than \$25,000, or both;

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

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

11 (iv) A substance classified in Schedule V is guilty of a
12 misdemeanor and, upon conviction, may be confined in jail for not
13 less than six months nor more than one year, or fined not more than
14 \$5,000, or both: *Provided*, That for offenses relating to any
15 substance classified as Schedule V in article ten of this chapter,
16 the penalties established in said article apply.

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

20 Any person who violates this subsection with respect to:

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

26 (ii) Any other counterfeit substance classified in Schedule I,
27 II or III is guilty of a felony and, upon conviction, may be

1 imprisoned in the state correctional facility for not less than one
2 year nor more than five years, or fined not more than \$15,000, or
3 both;

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

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

14 (c) It is unlawful for any person knowingly or intentionally
15 to possess a controlled substance unless the substance was obtained
16 directly from, or pursuant to, a valid prescription or order of a
17 practitioner while acting in the course of his or her professional
18 practice, or except as otherwise authorized by this act. With the
19 exception of the possession of heroin in violation of this
20 subsection, which shall be considered a felony, any person who
21 violates this subsection is guilty of a misdemeanor and,
22 disposition may be made under section four hundred seven of this
23 article, subject to the limitations specified in said section, or
24 upon conviction, such person may be confined in jail not less than
25 ninety days nor more than six months, or fined not more than
26 \$1,000, or both: *Provided*, That notwithstanding any other
27 provision of this act to the contrary, any first offense for

1 possession of less than fifteen grams of marijuana shall be
2 disposed of under said section. Notwithstanding any provision in
3 this section to the contrary, any person who possesses heroin in
4 violation of this subsection is guilty of a felony and, upon
5 conviction, may be confined in a regional correctional facility for
6 not less than one year nor more than three years, or fined not more
7 than \$2,500, or both confined and fined.

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

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

11 (2) To create, possess or sell or otherwise transfer any
12 equipment with the intent that such equipment shall be used to
13 apply a trademark, trade name, or other identifying mark, imprint,
14 number or device, or any likeness thereof, upon a counterfeit
15 substance, an imitation controlled substance, or the container or
16 label of a counterfeit substance or an imitation controlled
17 substance.

18 (3) Any person who violates this subsection is guilty of a
19 misdemeanor and, upon conviction, may be imprisoned in jail for not
20 less than six months nor more than one year, or fined not more than
21 \$5,000, or both. Any person being eighteen years old or more who
22 violates subdivision (1) of this subsection and, in so doing,
23 distributes or delivers an imitation controlled substance to a
24 minor child who is at least three years younger than such person is
25 guilty of a felony and, upon conviction, may be imprisoned in the
26 state correctional facility for not less than one year nor more
27 than three years, or fined not more than \$10,000, or both.

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

NOTE: The purpose of this bill is to make the possession of heroin, without a valid prescription, by a person, acting in the course of his or her professional practice, a felony. The bill also establishes a penalty.

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