

1 **H. B. 4490**

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3 (By Delegate Manypenny)

4 [Introduced February 9, 2012; referred to the
5 Committee on Health and Human Resources then the Judiciary.]

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10 A BILL to amend and reenact §60A-2-201 of the Code of West
11 Virginia, 1931, as amended, relating to providing that a plant
12 based substance or biological organism which has been
13 scientifically studied and determined to provide any potential
14 medical benefit may not be designated or rescheduled as a
15 Class I or II controlled substance.

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

17 That §60A-2-201 of the Code of West Virginia, 1931, as
18 amended, be amended and reenacted to read as follows:

19 **ARTICLE 2. STANDARDS AND SCHEDULES.**

20 **§60A-2-201. Authority of State Board of Pharmacy; recommendations**
21 **to Legislature.**

22 (a) The State Board of Pharmacy shall administer the
23 provisions of this chapter. It shall also, on the first day of

1 each regular legislative session, recommend to the Legislature
2 which substances should be added to or deleted from the schedules
3 of controlled substances contained in this article or reschedule
4 therein. The State Board of Pharmacy shall also have the authority
5 between regular legislative sessions, on an emergency basis, to add
6 to or delete from the schedules of controlled substances contained
7 in this article or reschedule such substances based upon the
8 recommendations and approval of the federal food, drug and cosmetic
9 agency, and shall report such actions on the first day of the
10 regular legislative session immediately following said actions.

11 In making any such recommendation regarding a substance, the
12 State Board of Pharmacy shall consider the following factors:

13 (1) The actual or relative potential for abuse;

14 (2) The scientific evidence of its pharmacological effect, if
15 known;

16 (3) The state of current scientific knowledge regarding the
17 substance;

18 (4) The history and current pattern of abuse;

19 (5) The scope, duration and significance of abuse;

20 (6) The potential of the substance to produce psychic or
21 physiological dependence liability; and

22 (7) Whether the substance is an immediate precursor of a
23 substance already controlled under this article.

24 (b) After considering the factors enumerated in subsection

1 (a), the State Board of Pharmacy shall make findings with respect
2 to the substance under consideration. If it finds that any
3 substance not already controlled under any schedule has a potential
4 for abuse, it shall recommend to the Legislature that the substance
5 be added to the appropriate schedule. If it finds that any
6 substance already controlled under any schedule should be
7 rescheduled or deleted, it shall so recommend to the Legislature:
8 Provided, That notwithstanding any provision in this chapter, a
9 plant based substance or biological organism which has been
10 scientifically studied and determined to provide any potential
11 medical benefit may not be designated or rescheduled as a Class I
12 or II controlled substance.

13 (c) If the State Board of Pharmacy designates a substance as
14 an immediate precursor, substances which are precursors of the
15 controlled precursor shall not be subject to control solely because
16 they are precursors of the controlled precursor.

17 (d) If any substance is designated, rescheduled or deleted as
18 a controlled substance under federal laws and notice thereof is
19 given to the State Board of Pharmacy, the board shall recommend
20 similar control of such substance to the Legislature, specifically
21 stating that such recommendation is based on federal action and the
22 reasons why the federal government deemed such action necessary and
23 proper.

24 (e) The authority vested in the board by subsection (a) of

1 this section shall not extend to distilled spirits, wine, malt
2 beverages or tobacco as those terms are defined or used in other
3 chapters of this code nor to any nonnarcotic substance if such
4 substance may under the "Federal Food, Drug and Cosmetic Act" and
5 the law of this state lawfully be sold over the counter without a
6 prescription.

NOTE: The purpose of this bill is to provide that a plant based substance or biological organism which has been scientifically studied and determined to provide any potential medical benefit may not be designated or rescheduled as a Class I or II controlled substance.

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