

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2180

FISCAL
NOTE

2015 Carryover

(BY DELEGATES HAMILTON, FERRO, AMBLER, GUTHRIE,
LONGSTRETH, SOBONYA, WAGNER, A. EVANS AND
ROMINE)

[Introduced January 13, 2016; referred to the
Committee on Health and Human Resources then the
Judiciary.]

1 A BILL to repeal §47-19-2 of the Code of West Virginia, 1931, as amended; to amend and reenact
 2 §47-19-1, §47-19-3, §47-19-4 and §47-19-5 of said code; and to amend and reenact
 3 §60A-4-403a of said code, all relating to licenses to sell paraphernalia for use with
 4 controlled substances; terminating the Tax Commissioner's authority to issue business
 5 licenses to sell paraphernalia for use with controlled substances; revoking licenses
 6 previously issued by the Tax Commissioner; clarifying the definition of drug paraphernalia;
 7 requiring the continued retention of transaction records after the revocation of licensed
 8 authority; rule-making authority; effective date; criminal offense elements; and criminal
 9 penalties.

Be it enacted by the Legislature of West Virginia:

1 That §47-19-2 of the Code of West Virginia, 1931, as amended, be repealed; that
 2 §47-19-1, §47-19-3, §47-19-4 and §47-19-5 of said code be amended and reenacted; and that
 3 §60A-4-403a be amended and reenacted, all to read as follows:

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 19. DRUG PARAPHERNALIA.

§47-19-1. Items designed or marketed for use with controlled substances; license required.

1 ~~On and after July 1, 2015, it shall be~~ is unlawful for any person or persons as principal,
 2 clerk, agent or servant to sell any items, effect, paraphernalia, accessory or thing which is
 3 designed or marketed for use with controlled substances, as defined in chapter sixty-a of this
 4 code. ~~without obtaining a license therefor from the State Tax Commissioner. Such licenses shall~~
 5 ~~be in addition to any or all other licenses held by applicant. The fee for such license shall be~~
 6 ~~\$150.~~ Any license issued by the State Tax Commissioner authorizing the sale of drug

7 paraphernalia in this state pursuant to the provisions of this article prior to July 1, 2015 is void and
8 of no effect.

§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;~~

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

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

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

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

21 ~~(9) Capsules, balloons, envelopes and other containers marketed for use, or designed for~~

22 use in packaging small quantities of controlled substances;

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

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

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

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

33 ~~(14) Miniature cocaine spoons, and cocaine vials; or~~

34 ~~(15) Chillums or bongs.~~

35 ~~(b) In determining whether an object is marketed for use or designed for use as drug~~
36 ~~paraphernalia, the state tax commissioner or other authority should consider the following:~~

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

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

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

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

41 ~~(5) National and local advertising concerning its use;~~

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

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

45 ~~(8) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total~~

46 ~~sales of the business enterprise;~~

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

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

51 Any equipment, product, or material of any kind which is primarily intended or designed
52 for use in manufacturing, compounding, converting, concealing, producing, processing,
53 preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled
54 substance, possession of which is unlawful under this subchapter. It includes items primarily
55 intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine,
56 hashish, hashish oil, PCP, methamphetamine, or amphetamines into the human body, including
57 but not limited to the following items:

58 (1) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens,
59 permanent screens, hashish heads, or punctured metal bowls;

60 (2) Water pipes;

61 (3) Carburetion tubes and devices;

62 (4) Smoking and carburetion masks;

63 (5) Roach clips: meaning objects used to hold burning material, such as a marihuana
64 cigarette, that has become too small or too short to be held in the hand;

65 (6) Miniature spoons with level capacities of one-tenth cubic centimeter or less;

66 (7) Chamber pipes;

67 (8) Carburetor pipes;

68 (9) Electric pipes;

69 (10) Air-driven pipes;

70 (11) Chillums;

71 (12) Bongs;

72 (13) Ice pipes or chillers;

73 (14) Wired cigarette papers; or

74 (15) Cocaine freebase kits.

75 (b) In determining whether an item constitutes drug paraphernalia, in addition to all other
76 logically relevant factors, the following may be considered:

77 (1) Instructions, oral or written, provided with the item concerning its use;

78 (2) Descriptive materials accompanying the item which explain or depict its use;

79 (3) National and local advertising concerning its use;

80 (4) The manner in which the item is displayed for sale;

81 (5) Whether the owner, or anyone in control of the item, is a legitimate supplier of like or
82 related items to the community, such as a licensed distributor or dealer of tobacco products;

83 (6) Direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of
84 the business enterprise; and

85 (7) The existence and scope of legitimate uses of the item in the community.

86 (c) The following items are not items sold or marketed as drug paraphernalia:

87 (1) Any item that, in the normal lawful course of business, is imported, exported,
88 transported, or sold through the mail or by any other means, and traditionally intended for use
89 with tobacco products, including any pipe, paper, or accessory; and

90 (2) Any item which is sold in the normal lawful course of business and intended for use
91 pursuant to a valid prescription issued by a doctor, physician or licensed medical practitioner.

§47-19-4. Records.

1 Every licensee ~~must keep~~ entity which was issued a license by the State Tax

2 Commissioner to sell drug paraphernalia prior to July 1, 2015 shall continue to keep and retain a
 3 record of every item, effect, paraphernalia, accessory or thing which is designed or marketed for
 4 use with controlled substances which ~~is~~ it sold, and this record shall be open to the inspection of
 5 any police officer at any time during the hours of business. ~~Such~~ The record shall contain the
 6 name and address of the purchaser, the name and quantity of the product, the date and time of
 7 the sale, and the licensee or agent of the licensee's signature. ~~Such~~ The records shall be
 8 retained for not less than two years.

§47-19-5. Regulations Rules.

1 The ~~applicant shall comply with all~~ definition of drug paraphernalia, as contained in the
 2 applicable rules of the State Tax Commissioner, ~~promulgated~~ continue to be in effect, until
 3 revised. The State Tax Commissioner is granted authority to promulgate emergency rules and
 4 propose rules for legislative approval to effectuate the revisions to this article, pursuant to the
 5 provisions of article three, chapter twenty-nine-a of this code.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 4. OFFENSES AND PENALTIES.

**§60A-4-403a. Prohibition of illegal drug paraphernalia businesses; definitions; places
 deemed common and public nuisances; abatement; suit to abate nuisances;
 injunction; search warrants; forfeiture of property; penalties.**

1 (a) Any person who knowingly and willfully conducts, finances, manages, supervises,
 2 directs or owns all or part of an illegal drug paraphernalia business is guilty of a misdemeanor,
 3 and, upon conviction thereof, shall be fined not more than five thousand dollars, or confined in jail
 4 not less than six months nor more than one year, or both.

5 (b) A person violates subsection (a) of this section when:

6 (1) The person knowingly and willfully conducts, finances, manages, supervises, directs,

7 or owns all or part of a business which for profit, in the regular course of business or as a
8 continuing course of conduct, manufactures, sells, stores, possesses, gives away or furnishes
9 objects designed to be primarily useful as drug devices.

10 (2) The person knows or has reason to know that the design of such objects renders them
11 primarily useful as drug devices.

12 (c) As used in this section, "drug device" means an object usable for smoking marijuana,
13 for smoking controlled substances defined as tetrahydrocannabinols, or for ingesting or inhaling
14 cocaine, and includes, but is not limited to:

15 (i) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens,
16 permanent screens, hashish heads, or punctured metal bowls;

17 (ii) Water pipes;

18 (iii) Carburetion tubes and devices;

19 (iv) Smoking and carburetion masks;

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

22 (vi) Chamber pipes;

23 (vii) Carburetor pipes;

24 (viii) Electric pipes;

25 (ix) Air-driven pipes;

26 (x) Chillums;

27 (xi) Bongs;

28 (xii) Ice pipes or chillers; and

29 (xiii) Miniature cocaine spoons, and cocaine vials.

30 In any prosecution under this section, the question whether an object is a drug device shall

31 be a question of fact.

32 (d) A place where drug devices are manufactured, sold, stored, possessed, given away
33 or furnished in violation of this section shall be deemed a common or public nuisance.
34 Conveyances or vehicles of any kind shall be deemed places within the meaning of this section
35 and may be proceeded against under the provisions of subsection (e) of this section. A person
36 who shall maintain knowingly and willfully maintains, or shall aid or abet aids or abets or knowingly
37 be associated with others in maintaining such common or public nuisance shall be guilty of a
38 misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one
39 thousand dollars, or by confinement in jail not more than six months for each offense, and
40 judgment shall be given that ~~such~~ the nuisance be abated or closed as a place for the
41 manufacture, sale, storage, possession, giving away or furnishing of drug devices.

42 (e) The prosecuting attorney or a citizen of the county or municipality where a nuisance
43 as defined in subsection (d) is located, may maintain a suit in the name of the state to abate and
44 perpetually enjoin the same. Circuit courts shall have jurisdiction thereof. The injunction may
45 be granted at the commencement of the suit and no bond shall be required if such action for
46 injunction be brought by the prosecuting attorney. If such suit for injunction be brought or
47 maintained by a citizen of the county or municipality where such nuisance is alleged to be located,
48 then the court may require a bond as in other cases of injunction. On the finding that the material
49 allegations of the complaint are true, the court or judge thereof in vacation shall order the
50 injunction for such period of time as it or he or she may think proper, with the right to dissolve the
51 injunction upon the application of the owner of the place, if a proper case is shown for such
52 dissolution.

53 The continuance of the injunction as provided in this section may be ordered, although the
54 place complained of may not at the time of hearing be unlawfully used.

55 (f) If there be complaint on oath or affirmation supported by affidavit or affidavits setting
56 forth the facts for such belief that drug devices are being manufactured, sold, kept, stored or in
57 any manner held, used or concealed in a particular house or other place with intent to engage in
58 illegal drug paraphernalia business in violation of law, a magistrate or a circuit court, or the judge
59 thereof in vacation to whom such complaint is made, if satisfied that there is probable cause for
60 such belief, shall issue a warrant to search such house or other place for such devices. Such
61 warrants, except as herein otherwise provided, shall be issued, directed and executed in
62 accordance with the laws of West Virginia pertaining to search warrants. Warrants issued under
63 this section for the search of any automobile, boat, conveyance or vehicle, or for the search of
64 any trunk, grip or other article of baggage, for such devices, may be executed in any part of the
65 state where the same are overtaken, and shall be made returnable before any magistrate or circuit
66 court, or the judge thereof in vacation, within whose jurisdiction such automobile, boat,
67 conveyance, vehicle, trunk, grip or other article of baggage, or any of them, were transported or
68 attempted to be transported.

69 An officer charged with the execution of a warrant issued under this section, may,
70 whenever it is necessary, break open and enter a house, or other place herein described.

71 (g) Any property, including money, used in violation of the provisions of this section may
72 be seized and forfeited to the state.

NOTE: The purpose of this bill is to repeal the statutory provision which authorizes the State Tax Commissioner to issue business licenses for the purpose of selling drug paraphernalia, to void licenses already issued and to prohibit the sales on and after July 1, 2015.

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