

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4441

**FISCAL
NOTE**

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EVANS, BATES, KURCABA AND HAMILTON

[Introduced February 8, 2016; Referred
to the Committee on Select Committee on Prevention
and Treatment of Substance Abuse then the
Judiciary.]

1 A BILL to repeal §47-19-2, §47-19-4, §47-19-5, §47-19-6 and §47-19-8 of the Code of West
 2 Virginia, 1931, as amended; to amend and reenact §47-19-1; §47-19-3 and §47-19-7 of
 3 said code; and to amend said code by adding thereto a new section, designated §47-19-
 4 9, all relating to drug paraphernalia; prohibiting possession, production or marketing-for-
 5 sale things designed or marketed for use with controlled substances; and providing
 6 criminal penalties.

Be it enacted by the Legislature of West Virginia:

1 That §47-19 -2, §47-19-4, §47-19-5, §47-19-6 and §47-19-8 of the Code of West Virginia,
 2 1931, as amended, be repealed; that §47-19-1; §47-19-3 and §47-19-7 of said code, be amended
 3 and reenacted; and that said code be amended by adding thereto a new section, designated §47-
 4 19-9, all to read as follows:

ARTICLE 19. DRUG PARAPHERNALIA.

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

1 It shall be unlawful for any person to possess, produce or market for sale any items, effect,
 2 paraphernalia, accessory or thing which is designed or marketed for use with controlled
 3 substances as they are defined in chapter sixty-a of this code.

§47-19-3. Drug paraphernalia defined.

1 (a) As used in this section, “paraphernalia” is defined as any legitimate equipment,
 2 product, or material that is modified for making, using, or concealing illegal drugs such as cocaine,
 3 cocaine-based derivative, heroin, marijuana, and methamphetamine and includes certain pipes,
 4 smoking masks, bong, cocaine freebase kits, marijuana grow kits, roach clips and items such as
 5 hollowed out cosmetic cases or fake pagers used to conceal illegal drugs and dealer-specific
 6 products used for preparing illegal drugs for distribution at the street level, such as scales, vials
 7 and baggies, but is not limited to, the following:

8 (1) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens,
 9 permanent screens, hashish heads, any container with drug residue (such as dinner plates,

- 10 spoons), or punctured metal bowls;
- 11 (2) Water pipes;
- 12 (3) Carburetor tubes and devices;
- 13 (4) Smoking and carburetion masks;
- 14 (5) Roach clips, meaning objects used to hold burning material, such as a marijuana
- 15 cigarette, that has become too small or too short to be held in the hand;
- 16 (6) Chambers pipes;
- 17 (7) Carburetor pipes;
- 18 (8) Electric pipes;
- 19 (9) Air-driven pipes;
- 20 (10) Chillums;
- 21 (11) Bongos;
- 22 (12) Ice pipes or chillers;
- 23 (13) Miniature cocaine spoons, and cocaine vials; and
- 24 (14) Needles without prescriptions.
- 25 (b) Drug paraphernalia does not include any items traditionally used with tobacco such as
- 26 pipes and rolling papers.

§47-19-7. Penalty.

1 Any person violating the provisions of this article as a first offense is guilty of a
 2 misdemeanor and, upon conviction thereof, shall be fined not more than \$500. A person who
 3 commits a second offense is guilty of a misdemeanor and, upon conviction thereof, shall be fined
 4 not more than \$1,000. A person who violates provisions of this article for a third or subsequent
 5 offense is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than
 6 \$2,000 for each offense.

§47-19-9. Severability.

1 If any provision of this section or the application thereof to any person or circumstance is

- 2 held invalid; the invalidity shall not affect other provisions or applications of this article, and to this
- 3 end the provisions of this article are severable.

NOTE: The purpose of this bill is to prohibit sale of paraphernalia designed or marketed for use with controlled substances.

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

§47-19-1, §47-19-3 and §47-19-7 have been completely rewritten; therefore, they have been completely underscored.