

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 3098

**FISCAL
NOTE**

BY DELEGATE G. FOSTER

[Introduced March 14, 2017; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §60A-4-412 of the Code of West Virginia, 1931, as amended,
2 relating to the crime of defrauding drug and alcohol screening tests and its penalties.

Be it enacted by the Legislature of West Virginia:

1 That §60A-4-412 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-412. Defeating Defrauding drug and alcohol screening tests; penalties.

1 ~~(a) Any person who:~~

2 ~~(1) Knowingly sells, gives away, distributes or markets any substance or product in this~~
3 ~~state or transports such a substance or product into this state with the intent that the substance~~
4 ~~or product will be used to defeat a drug or alcohol screening test;~~

5 ~~(2) Attempts to defeat a drug or alcohol screening test by the substitution of a false sample;~~

6 ~~(3) Knowingly advertises for sale or distribution any substance or product the advertised~~
7 ~~purpose of which is to defeat a bodily fluid screening test for drugs or alcohol;~~

8 ~~(4) Adulterates a bodily fluid sample with the intent to defeat a drug or alcohol screening~~
9 ~~test;~~

10 ~~(5) Knowingly possesses adulterants for the purpose of defeating a drug or alcohol~~
11 ~~screening test; or~~

12 ~~(6) Knowingly sells adulterants which are intended to be used to adulterate a urine or other~~
13 ~~bodily fluid sample for the purpose of defeating a drug or alcohol screening test.~~

14 ~~(b) A person who violates a provision of subsection (a) of this section:~~

15 ~~(1) For a first offense is guilty of a misdemeanor and, upon conviction, shall be fined not~~
16 ~~more than \$1,000;~~

17 ~~(2) For a second offense is guilty of a misdemeanor and, upon conviction, be fined not~~
18 ~~more than \$5,000; and~~

19 ~~(3) For a third or subsequent offense is guilty of a misdemeanor and, upon conviction, be~~

20 ~~fined not more than \$10,000 or confined in the regional jail for not more than one year, or both.~~

21 ~~(c) As used in this section, "adulterate" means a substance that is not expected to be in~~
22 ~~human fluids but that is a concentration so high that it is not consistent with human bodily fluids,~~
23 ~~including, but not limited to:~~

24 ~~(1) Bleach;~~

25 ~~(2) Chromium;~~

26 ~~(3) Creatinine;~~

27 ~~(4) Detergent;~~

28 ~~(5) Glutaraldehyde;~~

29 ~~(6) Glutaraldehyde/squalene;~~

30 ~~(7) Hydrochloric acid;~~

31 ~~(8) Hydroiodic acid;~~

32 ~~(9) Iodine;~~

33 ~~(10) Nitrite;~~

34 ~~(11) Peroxidase;~~

35 ~~(12) Potassium dichromate;~~

36 ~~(13) Potassium nitrate;~~

37 ~~(14) Pyridinium chlorochromate; and~~

38 ~~(15) Sodium nitrite.~~

39 (a) A person is guilty of defrauding a drug and alcohol screening test if he or she:

40 (1) Manufactures, sells, gives away, distributes or markets synthetic or human substances
41 or other products including, but not limited to urine, in this state or transports synthetic or human
42 substances or other products including, but not limited to urine, into this state with the intent to
43 defraud a drug or alcohol screening test;

44 (2) Adulterates a hair follicle sample or a urine or other bodily fluid sample with the intent
45 to defraud a drug or alcohol screening test;

46 (3) Possesses adulterants which are intended to be used to adulterate a urine or other
47 bodily fluid sample for the purpose of defrauding a drug or alcohol screening test; or

48 (4) Sells adulterants which are intended to be used to adulterate a urine or other bodily
49 fluid sample for the purpose of defrauding a drug or alcohol screening test.

50 (b) Instructions which provide a method for thwarting a drug-screening test and which
51 accompany the sale, giving, distribution or marketing of synthetic or human substances or other
52 products including, but not limited to urine, are prima facie evidence of intent under subsection
53 (a) of this section.

54 (c) A person who violates any provision of subsection (a) of this section is guilty of:

55 (1) A misdemeanor for a first offense and, upon conviction, is subject to confinement in
56 jail for not more than six months, a fine of not more than \$750, or both;

57 (2) A misdemeanor for a second or subsequent offense and, upon conviction, is subject
58 to confinement in jail for not less than seven days nor more than six months, a fine of not more
59 than \$750, or both.

NOTE: The purpose of this bill is to modify the crime of defrauding drug and alcohol screening tests and its penalties.

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