

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 79**

BY SENATORS WOELFEL, TRUMP, PLYMALE AND JEFFRIES

[Introduced February 8, 2017; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §60A-4-401, §60A-4-403, §60A-4-409 and §60A-4-411 of the Code  
 2 of West Virginia, 1931, as amended, all relating to creating determinative penalties for  
 3 certain felony controlled substance-related offenses without changing the range of years  
 4 a person may be imprisoned in order to provide greater discretion to judges.

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

1 That §60A-4-401, §60A-4-403, §60A-4-409 and §60A-4-411 of the Code of West Virginia,  
 2 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 4. OFFENSES AND PENALTIES.**

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

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

3 Any person who violates this subsection with respect to:

4 (i) A controlled substance classified in Schedule I or II, which is a narcotic drug, is guilty  
 5 of a felony and, upon conviction, may be imprisoned in the state correctional facility for a  
 6 determinate period of not less than one year nor more than fifteen years, or fined not more than  
 7 twenty-five thousand dollars, or both;

8 (ii) Any other controlled substance classified in Schedule I, II or III is guilty of a felony and,  
 9 upon conviction, may be imprisoned in the state correctional facility for a determinate period of  
 10 not less than one year nor more than five years, or fined not more than fifteen thousand dollars,  
 11 or both;

12 (iii) A substance classified in Schedule IV is guilty of a felony and, upon conviction, may  
 13 be imprisoned in the state correctional facility for a determinate period of not less than one year  
 14 nor more than three years, or fined not more than ten thousand dollars, or both;

15 (iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction,  
 16 may be confined in jail for not less than six months nor more than one year, or fined not more  
 17 than five thousand dollars, or both: *Provided*, That for offenses relating to any substance classified

18 as Schedule V in article ten of this chapter, the penalties established in said article apply.

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

21 Any person who violates this subsection with respect to:

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

26 (ii) Any other counterfeit substance classified in Schedule I, II or III is guilty of a felony and,  
27 upon conviction, may be imprisoned in the state correctional facility for a determinate period of  
28 not less than one year nor more than five years, or fined not more than fifteen thousand dollars,  
29 or both;

30 (iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon  
31 conviction, may be imprisoned in the state correctional facility for a determinate period of not less  
32 than one year nor more than three years, or fined not more than ten thousand dollars, or both;

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

37 (c) It is unlawful for any person knowingly or intentionally to possess a controlled  
38 substance unless the substance was obtained directly from, or pursuant to, a valid prescription or  
39 order of a practitioner while acting in the course of his professional practice, or except as  
40 otherwise authorized by this act. Any person who violates this subsection is guilty of a  
41 misdemeanor and, disposition may be made under section four hundred seven of this article,  
42 subject to the limitations specified in said section, or upon conviction, such person may be  
43 confined in jail not less than ninety days nor more than six months, or fined not more than \$1,000,

44 or both: *Provided*, That notwithstanding any other provision of this act to the contrary, any first  
45 offense for possession of Synthetic Cannabinoids as defined by subdivision (32) subsection, (d),  
46 section 101, article 1 of this chapter; 3,4-methylenedioxypropylvalerone (MPVD) and 3,4-  
47 methylenedioxypropylvalerone and/or mephedrone as defined in subsection (f), section 101, article  
48 1 of this chapter; or less than 15 grams of marijuana, shall be disposed of under said section.

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

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

52 (2) To create, possess or sell or otherwise transfer any equipment with the intent that such  
53 equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint,  
54 number or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled  
55 substance, or the container or label of a counterfeit substance or an imitation controlled  
56 substance.

57 (3) Any person who violates this subsection is guilty of a misdemeanor and, upon  
58 conviction, may be imprisoned in jail for not less than six months nor more than one year, or fined  
59 not more than \$5,000, or both. Any person being eighteen years old or more who violates  
60 subdivision (1) of this subsection and, in so doing, distributes or delivers an imitation controlled  
61 substance to a minor child who is at least three years younger than such person is guilty of a  
62 felony and, upon conviction, may be imprisoned in the state correctional facility for a determinate  
63 period of not less than one year nor more than three years, or fined not more than \$10,000, or  
64 both.

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

**§60A-4-403. Prohibited acts C; penalties.**

1 (a) It is unlawful for any person knowingly or intentionally:

2 (1) To distribute as a registrant a controlled substance classified in Schedule I or II, except

3 pursuant to an order form as required by section 307 of this act;

4 (2) To use in the course of the manufacture or distribution of a controlled substance a  
5 registration number which is fictitious, suspended, revoked, or issued to another person;

6 (3) To acquire or obtain possession of a controlled substance by misrepresentation, fraud,  
7 forgery, deception, or subterfuge;

8 (4) To furnish false or fraudulent material information in, or omit any material information  
9 from, any application, report, or other document required to be kept or filed under this act, or any  
10 record required to be kept by this act; or

11 (5) To make, distribute, or possess any punch, die, plate, stone, or other thing designed  
12 to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or  
13 device of another or any likeness of any of the foregoing upon any drug or container or labeling  
14 thereof so as to render the drug a counterfeit substance.

15 (b) Any person who violates this section is guilty of a felony, and, upon conviction, may be  
16 imprisoned in the penitentiary for a determinate period of not less than one year nor more than  
17 four years, or fined not more than \$30,000, or both.

**§60A-4-409. Prohibited acts -- Transportation of controlled substances into state;  
penalties.**

1 (a) Except as otherwise authorized by the provisions of this code, it shall be unlawful for  
2 any person to transport into this state a controlled substance with the intent to deliver the same  
3 or with the intent to manufacture a controlled substance.

4 (b) Any person who violates this section with respect to:

5 (1) A controlled substance classified in Schedule I or II, which is a narcotic drug, shall be  
6 guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for a  
7 determinate period of not less than one year nor more than fifteen years, or fined not more than  
8 \$25,000, or both;

9 (2) Any other controlled substance classified in Schedule I, II or III shall be guilty of a

10 felony and, upon conviction, may be imprisoned in the state correctional facility for a determinate  
11 period of not less than one year nor more than five years, or fined not more than \$15,000, or both;

12 (3) A substance classified in Schedule IV shall be guilty of a felony and, upon conviction,  
13 may be imprisoned in the state correctional facility for a determinate period of not less than one  
14 year nor more than three years, or fined not more than \$10,000, or both;

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

19 (c) The offense established by this section shall be in addition to and a separate and  
20 distinct offense from any other offense set forth in this code.

**§60A-4-411. Operating or attempting to operate clandestine drug laboratories; offenses;  
penalties.**

1 (a) Any person who operates or attempts to operate a clandestine drug laboratory is guilty  
2 of a felony and, upon conviction, shall be confined in a state correctional facility for a determinate  
3 period of not less than two years nor more than ten years or fined not less than \$5,000 nor more  
4 than \$25,000, or both.

5 (b) Any person who operates or attempts to operate a clandestine drug laboratory and  
6 who as a result of, or in the course of doing so, causes to be burned any dwelling, outbuilding,  
7 building or structure of any class or character is guilty of a felony and, upon conviction thereof,  
8 shall be fined not less than \$1,000 nor more than \$5,000, or imprisoned in a state correctional  
9 facility for a determinate period of not less than one nor more than five years, or both fined and  
10 imprisoned.

11 (c) For purposes of this section, a “clandestine drug laboratory” means any property, real  
12 or personal, on or in which a person assembles any chemicals or equipment or combination  
13 thereof for the purpose of manufacturing methamphetamine, methylenedioxymethamphetamine

14 or lysergic acid diethylamide in violation of the provisions of section four hundred one of this  
15 article.

16 (d) The offenses in subsections (a) and (b) of this section are separate and distinct  
17 offenses and subsection (a) of this section shall not be construed to be a lesser included offense  
18 of subsection (b) of this section.

19 (e) For purposes of section one, article two of this chapter, both subsection (a) and (b) of  
20 this section shall be deemed qualifying felony offenses of manufacturing and delivery of a  
21 controlled substance.

22 (f) Any person convicted of a violation of subsection (a) or (b) of this section shall be  
23 responsible for all reasonable costs, if any, associated with remediation of the site of the  
24 clandestine drug laboratory.

NOTE: The purpose of this bill is to provide judges with the flexibility to sentence controlled substance offenders to determinate sentences based on the severity of the offense.

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