

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 610

BY SENATOR ROMANO, BEACH, DRENNAN, FACEMIRE,
GAUNCH, JEFFRIES, MANN, PALUMBO, PREZIOSO,
RUCKER, SMITH, STOLLINGS, SWOPE, SYPOLT, PLYMALE,
AND CLINE

[Introduced February 19, 2018; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §60A-4-401 of the Code of West Virginia, 1931, as amended,
2 relating to providing that the penalty for possession of marijuana carries a fine of no more
3 than \$1,000 without confinement.

Be it enacted by the Legislature of West Virginia:

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 not less
6 than one year nor more than 15 years, or fined not more than \$25,000, or both fined and
7 imprisoned;

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 not less than one year nor
10 more than five years, or fined not more than \$15,000, or both fined and imprisoned;

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

14 (iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction,
15 may be confined in jail for not less than six months nor more than one year, or fined not more
16 than \$5,000, or both fined and confined: *Provided*, That for offenses relating to any substance
17 classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in ~~said~~ that
18 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 not less
24 than one year nor more than 15 years, or fined not more than \$25,000, or both fined and
25 imprisoned:

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 not less than one year nor
28 more than five years, or fined not more than \$15,000, or both fined and imprisoned:

29 (iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon
30 conviction, may be imprisoned in the state correctional facility for not less than one year nor more
31 than three years, or fined not more than \$10,000, or both fined and imprisoned:

32 (iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon
33 conviction, may be confined in jail for not less than six months nor more than one year, or fined
34 not more than \$5,000, or both fined and confined: *Provided*, That for offenses relating to any
35 substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established
36 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 §60A-4-407 of this code, subject to the
42 limitations specified in said section, or upon conviction, such person may be confined in jail not
43 less than 90 days nor more than six months, or fined not more than \$1,000, or both fined and
44 confined: *Provided*, That if the controlled substance is marijuana then, upon conviction, the person
45 may be fined not more than \$1,000, but may not be confined: *Provided, however*, That
46 notwithstanding any other provision of this act to the contrary, any first offense for possession of

47 Synthetic Cannabinoids as defined by §60A-1-101(d)(32) of this code; 3,4-
48 methylenedioxypropylvalerone (MPVD) and 3,4-methylenedioxypropylvalerone and/or mephedrone
49 as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall be disposed of
50 under said that section.

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

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

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

59 (3) Any person who violates this subsection is guilty of a misdemeanor and, upon
60 conviction, may be imprisoned in jail for not less than six months nor more than one year, or fined
61 not more than \$5,000, or both fined and confined. Any person being 18 years old or more who
62 violates subdivision (1) of this subsection and, in so doing, distributes or delivers an imitation
63 controlled substance to a minor child who is at least three years younger than such person is
64 guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not
65 less than one year nor more than three years, or fined not more than \$10,000, or both fined and
66 imprisoned.

67 (4) The provisions of subdivision (1) of this subsection ~~shall~~ may not apply to a practitioner
68 who administers or dispenses a placebo.

NOTE: The purpose of this bill is to provide that the penalty for possession of marijuana carries a fine of no more than \$1,000 without confinement.

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