Introduced

Senate Bill 123

BY SENATORS ROMANO AND STOLLINGS

[Introduced January 9, 2019; Referred to the Committee on the Judiciary]
A BILL to amend and reenact §60A-4-401 of the Code of West Virginia, 1931, as amended, relating to providing that the penalty for possession of marijuana carries a fine of no more 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.

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

Any person who violates this subsection with respect to:

(i) A controlled substance classified in Schedule I or II, which is a narcotic drug, is guilty of a felony and, upon conviction, may be imprisoned confined in the state correctional facility for not less than one year nor more than 15 years, or fined not more than $25,000, or both fined and confined;

(ii) Any other controlled substance classified in Schedule I, II or III is guilty of a felony and, upon conviction, may be imprisoned confined in the state correctional facility for not less than one year nor more than five years, or fined not more than $15,000, or both fined and confined;

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

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

(b) Except as authorized by this act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.
Any person who violates this subsection with respect to:

(i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, is guilty of a felony and, upon conviction, may be imprisoned confined in the state correctional facility for not less than one year nor more than 15 years, or fined not more than $25,000, or both fined and confined;

(ii) Any other counterfeit substance classified in Schedule I, II or III is guilty of a felony and, upon conviction, may be imprisoned confined in the state correctional facility for not less than one year nor more than five years, or fined not more than $15,000, or both fined and confined;

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

(iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than $5,000, or both fined and confined; Provided, That for offenses relating to any substance classified as Schedule V in §60A-10-1 et seq. of this code, the penalties established in said article apply.

(c) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this act. Any person who violates this subsection is guilty of a misdemeanor and, disposition may be made under §60A-4-407 of this code, subject to the limitations specified in said section, or upon conviction, such person may be confined in jail not less than 90 days nor more than six months, or fined not more than $1,000, or both fined and confined; Provided, That if the controlled substance is marijuana then, upon conviction, the person may be fined not more than $1,000, but may not be confined; Provided, however, That notwithstanding any other provision of this act to the contrary, any first offense for possession of
Synthetic Cannabinoids as defined by §60A-1-101(d)(32) of this code; 3,4-methylenedioxyamphetamine (MDMA) and 3,4-methylenedioxypyrovalerone and/or mephedrone as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall be disposed of under said that section.

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

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

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

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

(4) The provisions of subdivision (1) of this subsection shall may not apply to a practitioner 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.