Committee Substitute
for
House Bill 4852

BY DELEGATES SHOTT AND CAPITO

[Originating in the Committee on the Judiciary;
February 17, 2020.]
CS for HB 4852

A BILL to amend and reenact §60A-4-401 of the Code of West Virginia, 1931, as amended, relating to the penalties for the manufacture, delivery, possession, or possession with intent to manufacture or deliver, a controlled substance; and, increasing the penalty for methamphetamine.

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 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;

(ii) Any other controlled substance classified in Schedule I, II or III is guilty of a felony and, upon conviction, may be imprisoned 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; but if the other controlled substance is methamphetamine, upon conviction, may be imprisoned in the state correctional facility for not less than two nor more than 10 years, or fined not more than $25,000, or both.

(iii) A substance classified in Schedule IV is guilty of a felony and, upon conviction, may be imprisoned 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;

(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: Provided, That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in said article apply.

Provided, That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in said 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) (1) 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 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;

(ii) (2) Any other counterfeit substance classified in Schedule I, II or III is guilty of a felony and, upon conviction, may be imprisoned 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;

(iii) (3) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon conviction, may be imprisoned 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;

(iv) (4) 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: Provided, That for offenses relating to any substance classified as Schedule V in article 10 of this chapter, 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: Provided, That notwithstanding any other provision of this act to the contrary, any first offense for possession of Synthetic Cannabinoids equivalents or substitutes for tetrahydrocannabinols subdivision (32) subsection, (d), section 101, article 1 of this chapter; 3, 4-methylenedioxypyrovalerone (MDPV)
(MPVD) and 3, 4-methylenedioxy.pyrovalerone; and/or 4-methylmethcathinone (Mephedrone) as
identified in §60A-2-204(d); defined in subsection (f), section 101, article 1 of this chapter or less
than 15 grams of marijuana, shall be disposed of under said 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 in jail for not less than six months nor more than one year, or fined
not more than $5,000, or both. 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 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.

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

NOTE: The purpose of this bill is to increase the penalty for the manufacture, delivery or
possession of methamphetamine.

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