

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 536

BY SENATORS BLAIR (MR. PRESIDENT) AND BALDWIN

(BY REQUEST OF THE EXECUTIVE)

[Originating in the Committee on the Judiciary;

reported on February 15, 2022]

1 A BILL to repeal §60A-4-415 of the Code of West Virginia, 1931, as amended; to amend and
2 reenact §60A-4-401 and §60A-4-409 of said code; and to amend said code by adding
3 thereto a new section, designated §60A-4-418, all relating generally to controlled
4 substance criminal offenses; increasing the penalty for manufacture, delivery, or
5 possession with intent to manufacture or deliver fentanyl; creating the offenses of
6 counterfeit fentanyl or adulterating another controlled substance with fentanyl; creating the
7 offense of using minors to illegally manufacture, distribute, or possess with intent to
8 distribute; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-401. Prohibited acts; 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 or which
5 is methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a
6 state correctional facility for not less than one year nor more than 15 years, or fined not more than
7 \$25,000, or both fined and imprisoned; Provided, That if the controlled substance classified in
8 Schedule II is fentanyl, either alone or in combination with any other substance, the person is
9 guilty of a felony, and upon conviction thereof, shall be fined not more than \$50,000, or be
10 imprisoned in a state correctional facility for not less than 3 nor more than 15 years, or both fined
11 and imprisoned;

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

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

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

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

25 Any person who violates this subsection with respect to:

26 (i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, or
27 methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state
28 correctional facility for not less than one year nor more than 15 years, or fined not more than
29 \$25,000, or both fined and imprisoned;

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

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

36 (iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon
37 conviction thereof, may be confined in jail for not less than six months nor more than one year, or

38 fined not more than \$5,000, or both fined and confined: *Provided*, That for offenses relating to any
39 substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established
40 in said article apply.

41 (c) It is unlawful for any person knowingly or intentionally to possess a controlled
42 substance unless the substance was obtained directly from, or pursuant to, a valid prescription or
43 order of a practitioner while acting in the course of his or her professional practice, or except as
44 otherwise authorized by this act. Any person who violates this subsection is guilty of a
45 misdemeanor, and disposition may be made under §60A-4-407 of this code, subject to the
46 limitations specified in said section, or upon conviction thereof, the person may be confined in jail
47 not less than 90 days nor more than six months, or fined not more than \$1,000, or both fined and
48 confined: *Provided*, That notwithstanding any other provision of this act to the contrary, any first
49 offense for possession of synthetic cannabinoids as defined by §60A-1-101(d)(32) of this code;
50 3,4-methylenedioxypropylvalerone (MPVD) and 3,4-methylenedioxypropylvalerone and/or
51 mephedrone as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall
52 be disposed of under §60A-4-407 of this code.

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

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

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

61 (3) Any person who violates this subsection is guilty of a misdemeanor and, upon
62 conviction thereof, may be confined in jail for not less than six months nor more than one year, or
63 fined not more than \$5,000, or both fined and confined. Any person 18 years old or more who

64 violates subdivision (1) of this subsection and distributes or delivers an imitation controlled
65 substance to a minor child who is at least three years younger than that person is guilty of a felony
66 and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than
67 one year nor more than three years, or fined not more than \$10,000, or both fined and imprisoned.

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

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

71 (1) To adulterate another controlled substance using fentanyl as an adulterant;

72 (2) To create a counterfeit substance or imitation controlled substance using fentanyl; or

73 (3) To cause the adulteration or counterfeiting or imitation of another controlled substance
74 using fentanyl.

75 (4) Any person who violates this subsection is guilty of a felony and, upon conviction
76 thereof, shall be imprisoned in a state correctional facility for not less than three nor more than 15
77 years, or fined not more than \$50,000, or both fined and imprisoned.

78 (5) For purposes of this section:

79 (i) A controlled substance has been adulterated if fentanyl has been mixed or packed with
80 it; and

81 (ii) Counterfeit substances and imitation controlled substances are further defined in §60A-
82 1-101 of this code.

§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 is unlawful for any
2 person to transport or cause to be transported into this state a controlled substance with the intent
3 to deliver the same 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 thereof, may be imprisoned in the state correctional facility

7 for not less than one year nor more than 15 years, or fined not more than \$25,000, or both;
8 Provided, That if the controlled substance classified in Schedule II is fentanyl, either alone or in
9 combination with any other substance, the person is guilty of a felony, and upon conviction
10 thereof, shall be fined not more than \$50,000 or imprisoned in a state correctional facility for a
11 definite term of not less than 10 nor more than 20 years, or both fined and imprisoned.

12 (2) Any other controlled substance classified in Schedule I, II or III shall be guilty of a
13 felony and, upon conviction thereof, may be imprisoned in the state correctional facility for not
14 less than one year nor more than 10 years, or fined not more than \$15,000, or both: *Provided,*
15 That for the substance marijuana, as scheduled in subdivision (24) subsection (d), §60A-2-204 of
16 this code, the penalty, upon conviction of a violation of this subsection, shall be that set forth in
17 subdivision (3) of this subsection.

18 (3) A substance classified in Schedule IV shall be guilty of a felony and, upon conviction
19 thereof, may be imprisoned in the state correctional facility for not less than one year nor more
20 than five years, or fined not more than \$10,000, or both;

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

26 (c) Notwithstanding the provisions of subsection (b) of this section, any person violating
27 or causing a violation of subsection (a) of this section involving one kilogram or more of heroin,
28 five kilograms or more of cocaine or cocaine base, 100 grams or more of phencyclidine, 10 grams
29 or more of lysergic acid diethylamide, or 50 grams or more of methamphetamine or 500 grams of
30 a substance or material containing a measurable amount of methamphetamine, is guilty of a
31 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a
32 determinate sentence of not less than two nor more than 30 years.

33 (d) Notwithstanding the provisions of subsection (b) of this section, any person violating
34 or causing a violation of subsection (a) of this section involving 100 but fewer than 1,000 grams
35 of heroin, not less than 500 but fewer than 5,000 grams of cocaine or cocaine base, not less than
36 ten but fewer than 99 grams of phencyclidine, not less than one but fewer than 10 grams of
37 lysergic acid diethylamide, or not less than five but fewer than 50 grams of methamphetamine or
38 not less than 50 grams but fewer than 500 grams of a substance or material containing a
39 measurable amount of methamphetamine, is guilty of a felony and, upon conviction thereof, shall
40 be imprisoned in a state correctional facility for a determinate sentence of not less than two nor
41 more than 20 years.

42 (e) Notwithstanding the provisions of subsection (b) of this section, any person violating
43 or attempting to violate the provisions of subsection (a) of this section involving not less than 10
44 grams nor more than 100 grams of heroin, not less than 50 grams nor more than 500 grams of
45 cocaine or cocaine base, not less than two grams nor more than 10 grams of phencyclidine, not
46 less than 200 micrograms nor more than one gram of lysergic acid diethylamide, or not less than
47 499 milligrams nor more than five grams of methamphetamine or not less than 20 grams nor more
48 than 50 grams of a substance or material containing a measurable amount of methamphetamine
49 is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility
50 for a determinate sentence of not less than two nor more than 15 years.

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

~~**§60A-4-415. Unlawful manufacture, delivery, transport into state, or possession of
fontanyl; aggravated transportation of fontanyl into state; penalties.**~~

1 ~~(a) For purposes of this section,~~

2 ~~(1) "Controlled substance" shall have the same meaning as provided in subsection (e),~~
3 ~~section one hundred one, article one of this chapter.~~

4 ~~(2) “Fentanyl” refers to the substance identified in subdivision (9), subsection (c), section~~
5 ~~two hundred six, article two of this chapter and any analog or derivative thereof.~~

6 ~~(b) Any person who violates the provisions of subsection (a), section four hundred one of~~
7 ~~this article or section four hundred nine of this article in which fentanyl is a controlled substance~~
8 ~~involved in the offense, either alone or in combination with another controlled substance, shall be~~
9 ~~guilty of a felony, and upon conviction thereof, shall be punished in accordance with the following:~~

10 ~~(1) If the net weight of fentanyl involved in the offense is less than one gram, such person~~
11 ~~shall be imprisoned in a correctional facility not less than two nor more than ten years.~~

12 ~~(2) If the net weight of fentanyl involved in the offense is one gram or more but less than~~
13 ~~five grams, such person shall be imprisoned in a correctional facility not less than three nor more~~
14 ~~than fifteen years.~~

15 ~~(3) If the net weight of fentanyl involved in the offense is five grams or more, such person~~
16 ~~shall be imprisoned in a correctional facility not less than four nor more than twenty years.~~

§60A-4-418. Use of a minor to commit a felony drug offense; penalties.

1 Any person who knowingly and intentionally causes, aids, abets, or encourages a person
2 under the age of 18 to distribute, dispense, manufacture, or possess with the intent to distribute
3 a controlled substance, other than marijuana, in violation of the provisions of this chapter is guilty
4 of a felony and, upon conviction thereof, shall be fined not more than \$10,000 or imprisoned in a
5 state correctional facility for not more than five years, or both fined and imprisoned.