

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 90

By Senator Woelfel

[Introduced January 11, 2023; 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 amending the penalty of simple possession of marijuana from a misdemeanor
3 crime to a civil violation; and amending the penalties from those of a misdemeanor crime to
4 a civil violation.

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, or
2 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 is
5 methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state
6 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;

8 (ii) Any other controlled substance classified in Schedule I, II, or III is guilty of a felony and,
9 upon conviction thereof, may be imprisoned in a state correctional facility for not less than one
10 year nor 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 thereof,
12 may be imprisoned in a state correctional facility for not less than one year nor more than three
13 years, 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 thereof, may be confined in jail for not less than six months nor more than one year, or fined not
16 more than \$5,000, or both fined and confined: *Provided*, That for offenses relating to any
17 substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in
18 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, or
23 methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state
24 correctional facility for not less than one year nor more than 15 years, or fined not more than
25 \$25,000, or both fined and imprisoned;

26 (ii) Any other counterfeit substance classified in Schedule I, II, or III is guilty of a felony and,
27 upon conviction thereof, may be imprisoned in a state correctional facility for not less than one
28 year nor 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 thereof, may be imprisoned in a state correctional facility for not less than one year nor
31 more 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 thereof, may be confined in jail for not less than six months nor more than one year, or
34 fined 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 in
36 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 or her 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 thereof, the person may be confined in jail
43 not less than 90 days nor more than six months, or fined not more than \$1,000, or both fined and
44 confined: *Provided*, That notwithstanding any other provision of this act to the contrary, possession

45 of less than 15 grams of marijuana is subject to a civil penalty of no more than \$25 and any
46 violation thereof constitutes a civil offense: *Provided, however,* That notwithstanding any other
47 provision of this act to the contrary, any first offense for possession of synthetic cannabinoids as
48 defined by §60A-1-101(d)(32) of this code; 3,4-methylenedioxypropylvalerone (MPVD) and 3,4-
49 methylenedioxypropylvalerone and/or mephedrone as defined in §60A-1-101(f) of this code; ~~or less~~
50 than 15 grams of marijuana shall be disposed of under §60A-4-407 of this code.

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

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

54 (2) To create, possess, sell, or otherwise transfer any equipment with the intent that the
55 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 thereof, may be confined in jail for not less than six months nor more than one year, or
61 fined not more than \$5,000, or both fined and confined. Any person 18 years old or more who
62 violates subdivision (1) of this subsection and distributes or delivers an imitation controlled
63 substance to a minor child who is at least three years younger than that person is guilty of a felony
64 and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than
65 one year nor more than three years, or fined not more than \$10,000, or both fined and imprisoned.

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

NOTE: The purpose of this bill is to amend the penalty of simple possession of marijuana
(less than 15 grams) from a misdemeanor crime to a civil violation.

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