

1 **H. B. 4141**

2
3 (By Delegates Hamilton, Miller, Storch, Ferro,
4 A. Evans, Azinger, Lynch, Ambler, Canterbury,
5 Iaquina and Marshall)

6 [Introduced January 14, 2014; referred to the
7 Committee on Health and Human Resources then the
8 Judiciary.]

9
10 A BILL to repeal §47-19-2 of the Code of West Virginia, 1931, as
11 amended; and to amend and reenact §47-19-1, §47-19-3, §47-19-4
12 and §47-19-5 of said code, all relating to licenses to sell
13 paraphernalia for use with controlled substances; terminating
14 the tax commissioner's authority to issue business licenses to
15 sell paraphernalia for use with controlled substances;
16 revoking licenses previously issued by the Tax Commissioner;
17 clarifying the definition of drug paraphernalia; requiring the
18 continued retention of transaction records after the
19 revocation of licensed authority; rule-making authority;
20 effective date; and criminal penalties.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §47-19-2 of the Code of West Virginia, 1931, as amended,
23 be repealed; and that §47-19-1, §47-19-3, §47-19-4 and §47-19-5 of
24 said code be amended and reenacted, all to read as follows:

25 **ARTICLE 19. DRUG PARAPHERNALIA.**

1 **§47-19-1. Items designed or marketed for use with controlled**
2 **substances; license required.**

3 On and after July 1, 2014, it ~~shall be~~ is unlawful for any
4 person or persons as principal, clerk, agent or servant to sell any
5 items, effect, paraphernalia, accessory or thing in this state
6 which is designed or marketed for use with controlled substances,
7 as defined in chapter sixty-a of this code. ~~without obtaining a~~
8 ~~license therefor from the State Tax Commissioner. Such licenses~~
9 ~~shall be in addition to any or all other licenses held by~~
10 ~~applicant. The fee for such license shall be \$150. Any license~~
11 issued by the State Tax Commissioner authorizing the sale of drug
12 paraphernalia in this state pursuant to the provisions of this
13 article prior to July 1, 2014 is void and of no effect.

14 **§47-19-3. Drug paraphernalia defined.**

15 (a) The following items, if marketed for use or designed for
16 the use with controlled substances, are considered drug
17 paraphernalia for the purpose stated in section one of this
18 article:

19 (1) Kits marketed for use, or designed for use in planting,
20 propagating, cultivating, growing, or harvesting of any species of
21 plant which is a controlled substance or from which a controlled
22 substance can be derived;

23 (2) Kits marketed for use, or designed for use in
24 manufacturing, compounding, converting, producing, processing or

1 preparing controlled substances;

2 (3) Isomerization devices marketed for use, or designed for
3 use in increasing the potency of any species of plant which is a
4 controlled substance;

5 (4) Testing equipment marketed for use, or designed for use in
6 identifying, or in analyzing the strength, effectiveness or purity
7 of controlled substances;

8 (5) Scales and balances used, intended for use, or designed
9 for use in weighing or measuring controlled substances;

10 (6) Diluents and adulterants, such as quinine hydrochloride,
11 mannitol, mannite, dextrose and lactose, marketed for use, or
12 designed for use in cutting controlled substances;

13 (7) Separation gins and sifters marketed for use, or designed
14 for use in removing twigs and seeds from, or in otherwise cleaning
15 or refining, marijuana;

16 (8) Blenders, bowls, containers, spoons and mixing devices
17 used, intended for use, or designed for use in compounding
18 controlled substances;

19 (9) Capsules, balloons, envelopes and other containers
20 marketed for use, or designed for use in packaging small quantities
21 of controlled substances;

22 (10) Hypodermic syringes, needles and other objects marketed
23 for use, or designed for use in parenterally injecting controlled
24 substances into the human body;

1 (11) Paper of colorful design, with names oriented for use
2 with controlled dangerous substances and displayed: *Provided*, That
3 white paper or tobacco oriented paper not necessarily designed for
4 use with controlled substances is not covered;

5 (12) Pipes displayed in the proximity of roach clips, or
6 literature encouraging illegal use of controlled substances, are
7 covered by this article: *Provided*, That pipes otherwise displayed
8 are not covered by this article;

9 (13) Roach clips: meaning objects used to hold burning
10 material, such as a marijuana cigarette, that has become too small
11 or too short to be held in the hand;

12 (14) Miniature cocaine spoons, and cocaine vials; or

13 (15) Chillums or bong.

14 (b) In determining whether an object is marketed for use or
15 designed for use as drug paraphernalia, the State Tax Commissioner
16 or other authority should consider the following:

17 (1) The proximity of the object, in time and space, to a
18 controlled substance;

19 (2) The existence of any residue of controlled substances on
20 the object;

21 (3) Instructions, oral or written, provided with the object
22 concerning its use;

23 (4) Descriptive materials accompanying the object which
24 explain or depict its use;

1 (5) National and local advertising concerning its use;

2 (6) The manner in which the object is displayed for sale;

3 (7) Whether the owner, or anyone in control of the object, is

4 a legitimate supplier of like or related items to the community,

5 such as a licensed distributor or dealer of tobacco products;

6 (8) Direct or circumstantial evidence of the ratio of sales of

7 the object or objects to the total sales of the business

8 enterprise;

9 (9) The existence and scope of legitimate uses for the object

10 in the community.

11 (c) The following items are not items sold or marketed as drug
12 paraphernalia:

13 (1) An item which is sold in the normal lawful course of
14 business and intended for use with tobacco products, including any
15 pipe, paper or accessory; and

16 (2) Any item which is sold in the normal lawful course of
17 business and intended for use pursuant to a valid prescription
18 issued by a doctor, physician or licensed medical practitioner.

19 **§47-19-4. Records.**

20 Every licensee ~~must keep~~ entity which was issued a license by
21 the State Tax Commissioner to sell drug paraphernalia prior to July
22 1, 2014 shall continue to keep and retain a record of every item,
23 effect, paraphernalia, accessory or thing which is designed or
24 marketed for use with controlled substances which ~~is~~ it sold, and

1 this record shall be open to the inspection of any police officer
2 at any time during the hours of business. ~~Such~~ The record shall
3 contain the name and address of the purchaser, the name and
4 quantity of the product, the date and time of the sale, and the
5 licensee or agent of the licensee's signature. ~~Such~~ The records
6 shall be retained for not less than two years.

7 **§47-19-5. Regulations Rules.**

8 The ~~applicant shall comply with all~~ definition of drug
9 paraphernalia, as contained in the applicable rules of the State
10 Tax Commissioner, ~~promulgated~~ continue to be in effect, until
11 revised. The State Tax Commissioner is granted authority to
12 promulgate emergency rules and propose rules for legislative
13 approval to effectuate the revisions to this article, pursuant to
14 the provisions of article three, chapter twenty-nine-a of this
15 code.

NOTE: The purpose of this bill is to repeal the statutory provision which authorizes the State Tax Commissioner to issue business licenses for the purpose of selling drug paraphernalia, to void licenses already issued and to prohibit the sales sales on and after July 1, 2014.

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