

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4602

**FISCAL
NOTE**

BY DELEGATES SOBONYA, ROHRBACH, MILLER, BORDER,

D. EVANS, COOPER, AMBLER, WAXMAN, B. WHITE,

STATLER AND SUMMERS

[Introduced February 17, 2016; referred to the Select

Committee on Prevention and Treatment of

Substance Abuse then the Judiciary.]

1 A BILL to amend and reenact §60A-4-409 of the Code of West Virginia, 1931, as amended, and
 2 to amend said code by adding thereto three new sections, designated §60A-4-414, §60A-
 3 4-415 and §60A-4-416; relating to mandatory minimum sentences for trafficking drugs into
 4 the state and for other drug offenses; increasing period of ineligibility for parole for certain
 5 violations of possession or distribution of controlled substances and establishing
 6 applicable conditions; increasing period of ineligibility for parole for transporting certain
 7 controlled substances into the state and establishing applicable conditions; prohibiting
 8 application of alternative sentences; providing an exception to the mandatory minimums;
 9 increasing the penalties for transporting controlled substances into the state; establishing
 10 a penalty for conspiracy; establishing a penalty for attempt; and establishing a penalty for
 11 possession or use of a firearm in furtherance of a drug transaction.

Be it enacted by the Legislature of West Virginia:

1 That §60A-4-409 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that said code be amended by adding thereto three new sections, designated
 3 §60A-4-414, §60A-4-415 and §60A-4-416, all to read as follows:

ARTICLE 4. OFFENSES AND PENALTIES.

§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 ~~shall be~~ is unlawful for
 2 any person to transport into this state a controlled substance with the intent to deliver the same
 3 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 is guilty of a felony and, upon conviction, ~~may~~ shall be imprisoned in the state correctional facility
 7 for not less than ~~one year~~ ten years nor more than ~~fifteen~~ thirty years, or fined not more than
 8 \$25,000, or both;

9 (2) Any other controlled substance classified in Schedule I, II or III ~~shall be~~ is guilty of a
10 felony and, upon conviction, ~~may~~ shall be imprisoned in the state correctional facility for not less
11 than ~~one year~~ five years nor more than ~~five~~ fifteen years, or fined not more than \$15,000, or both:
12 Provided, That this subsection does not apply to offenses involving less than one pound of
13 marihuana;

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

17 (4) A substance classified in Schedule V ~~shall be~~ is guilty of a misdemeanor and, upon
18 conviction, ~~may~~ shall be confined in jail for not less than six months nor more than one year, or
19 fined not more than \$5,000, or both: *Provided, That for offenses relating to any substance*
20 *classified as Schedule V in article ten of this chapter, the penalties established in ~~said~~ that article*
21 *apply.*

22 (c) The offense established by this section ~~shall be~~ is in addition to and a separate and
23 distinct offense from any other offense set forth in this code.

§60A-4-414. Mandatory minimum sentences for violations.

1 (a) Notwithstanding any other provision of law to the contrary, a person is ineligible for
2 parole for a period of ten years if he or she is sentenced to the custody of the Commissioner of
3 Corrections for service of a sentence of incarceration and is convicted of a felony violation under
4 the provisions of subdivision (i), subsection (a), section four hundred one of this article for
5 distribution of a controlled substance and:

6 (1) Is in possession at the time of arrest of controlled substances classified in Schedule I
7 or II, which is a narcotic drug, that has a street value of greater than \$1,000; and

8 (2) Has previously been convicted of a second or subsequent offense under this chapter
9 or under any statute of the United States or of any state relating to narcotic drugs.

10 (b) Notwithstanding any other provision of law to the contrary, a person is ineligible for

11 parole for a period of five years if he or she is sentenced to the custody of the commissioner of
12 corrections for service of a sentence of incarceration and is convicted of a felony violation under
13 the provisions of subdivision (ii), subsection (a), section four hundred one of this article for
14 distribution of a controlled substance and:

15 (1) Is in possession at time of arrest of controlled substances classified in Schedule I, II or
16 III, that has a street value of greater than \$1,000; and

17 (2) Has previously been convicted of a second or subsequent offense under this chapter
18 or under any statute of the United States or of any state relating to depressant, stimulant, or
19 hallucinogenic drugs.

20 (c) Notwithstanding any other provision of law to the contrary, a person is ineligible for
21 parole for a period of fifteen years if he or she is sentenced to the custody of the commissioner of
22 corrections for service of a sentence of incarceration and is convicted of a felony violation under
23 the provisions of subdivision (1), subsection (b), section four hundred nine of this article for
24 distribution of a controlled substance and:

25 (1) Is in possession at time of arrest of controlled substances classified in Schedule I or II,
26 which is a narcotic drug, that has a street value of greater than \$1,000; and

27 (2) Has previously been convicted of a second or subsequent offense under this chapter
28 or under any statute of the United States or of any state relating to narcotic drugs.

29 (d) Notwithstanding any other provision of law to the contrary, a person is ineligible for
30 parole for a period of ten years if he or she is sentenced to the custody of the commissioner of
31 corrections for service of a sentence of incarceration and is convicted of a felony violation under
32 the provisions of subdivision (2), subsection (b), section four hundred nine of this article for
33 distribution of a controlled substance and:

34 (1) Is in possession at time of arrest of controlled substances classified in Schedule I, II or
35 III, that has a street value of greater than \$1,000; and

36 (2) Has previously been convicted of a second or subsequent offense under this chapter

37 or under any statute of the United States or of any state relating to depressant, stimulant, or
38 hallucinogenic drugs.

39 (e) Those individuals subject to this section are not eligible for sentencing alternatives
40 made available to circuit court judges under other provisions of this code.

41 (f) Offenses involving marihuana are excluded from the mandatory minimums for the
42 purposes of this section.

§60A-4-415. Attempt; Conspiracy.

1 (a) Any person who attempts to commit any offense defined in this article, or conspires to
2 commit any offense defined in this article, is subject to the same penalties as those prescribed for
3 the offense, the commission of which was the object of the attempt or conspiracy.

4 (b) The offense established by this section is in addition to and a separate and distinct
5 offense from any other offense set forth in this code.

§60A-4-416. Use or possession of a firearm.

1 Any person convicted of an offense under this article while in possession of a firearm or
2 who used a firearm in furtherance of the offense may be imprisoned for a term up to twice the
3 term otherwise authorized, fined an amount up to twice that otherwise authorized, or both. When
4 a term of imprisonment is doubled under section four hundred six of this article, such term of
5 imprisonment shall not be further increased for such offense under this section, even though such
6 term of imprisonment is for a second or subsequent offense: *Provided*, That this section does not
7 apply to offenses under subsection (c), section four hundred one of this article.

NOTE: The purpose of this bill is to increase mandatory minimum sentences for trafficking drugs into the state; to increase periods of ineligibility for parole for certain violations; to establish a penalties for conspiracy and for use or possession of a firearm in drug transactions. .

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