

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

House Bill 4373

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[Introduced January 25, 2022; referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §47-19-3 of the Code of West Virginia, 1931, as amended, relating
2 to excluding fentanyl test strips from the definition of drug paraphernalia; and specifying
3 that fentanyl test strips are not prohibited under Chapter 60A of this code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. OFFENSES AND PENALTIES.

§47-19-3. Drug paraphernalia defined.

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

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

7 (2) Kits marketed for use, or designed for use in manufacturing, compounding, converting,
8 producing, processing or preparing controlled substances;

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

11 (4) Testing equipment marketed for use, or designed for use in identifying, or in analyzing
12 the strength, effectiveness or purity of controlled substances; This does not include fentanyl test
13 strips;

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

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

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

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

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

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

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

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

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

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

35 (15) Chillums or bongs.

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

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

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

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

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

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

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

44 (7) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or
45 related items to the community, such as a licensed distributor or dealer of tobacco products;

46 (8) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total
47 sales of the business enterprise;

48 (9) The existence and scope of legitimate uses for the object in the community.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-403a. Prohibition of illegal drug paraphernalia businesses; definitions; places deemed common and public nuisances; abatement; suit to abate nuisances; injunction; search warrants; forfeiture of property; penalties.

1 (a) Any person who conducts, finances, manages, supervises, directs or owns all or part
2 of an illegal drug paraphernalia business is guilty of a misdemeanor, and, upon conviction thereof,
3 shall be fined not more than \$5,000, or confined in jail not less than six months nor more than one
4 year, or both.

5 (b) A person violates subsection (a) of this section when:

6 (1) The person conducts, finances, manages, supervises, directs, or owns all or part of a
7 business which for profit, in the regular course of business or as a continuing course of conduct,
8 manufactures, sells, stores, possesses, gives away or furnishes objects designed to be primarily
9 useful as drug devices.

10 (2) The person knows or has reason to know that the design of such objects renders them
11 primarily useful as drug devices.

12 (c) As used in this section, "drug device" means an object usable for smoking marijuana,
13 for smoking controlled substances defined as tetrahydrocannabinols, or for ingesting or inhaling
14 cocaine, and includes, but is not limited to:

15 (i) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens,
16 permanent screens, hashish heads, or punctured metal bowls;

17 (ii) Water pipes;

- 18 (iii) Carburetion tubes and devices;
- 19 (iv) Smoking and carburetion masks;
- 20 (v) Roach clips; meaning objects used to hold burning material, such as a marijuana
21 cigarette, that has become too small or too short to be held in the hand;
- 22 (vi) Chamber pipes;
- 23 (vii) Carburetor pipes;
- 24 (viii) Electric pipes;
- 25 (ix) Air-driven pipes;
- 26 (x) Chillums;
- 27 (xi) Bonges;
- 28 (xii) Ice pipes or chillers; and
- 29 (xiii) Miniature cocaine spoons, and cocaine vials.

30 In any prosecution under this section, the question whether an object is a drug device shall
31 be a question of fact.

32 (d) A place where drug devices are manufactured, sold, stored, possessed, given away
33 or furnished in violation of this section shall be deemed a common or public nuisance.
34 Conveyances or vehicles of any kind shall be deemed places within the meaning of this section
35 and may be proceeded against under the provisions of subsection (e) of this section. A person
36 who shall maintain, or shall aid or abet or knowingly be associated with others in maintaining such
37 common or public nuisance shall be guilty of a misdemeanor, and, upon conviction thereof, shall
38 be punished by a fine of not more than \$1,000, or by confinement in jail not more than six months
39 for each offense, and judgment shall be given that such nuisance be abated or closed as a place
40 for the manufacture, sale, storage, possession, giving away or furnishing of drug devices.

41 (e) The prosecuting attorney or a citizen of the county or municipality where a nuisance
42 as defined in subsection (d) is located, may maintain a suit in the name of the state to abate and
43 perpetually enjoin the same. Circuit courts shall have jurisdiction thereof. The injunction may be

44 granted at the commencement of the suit and no bond shall be required if such action for
45 injunction be brought by the prosecuting attorney. If such suit for injunction be brought or
46 maintained by a citizen of the county or municipality where such nuisance is alleged to be located,
47 then the court may require a bond as in other cases of injunction. On the finding that the material
48 allegations of the complaint are true, the court or judge thereof in vacation shall order the
49 injunction for such period of time as it or he or she may think proper, with the right to dissolve the
50 injunction upon the application of the owner of the place, if a proper case is shown for such
51 dissolution.

52 The continuance of the injunction as provided in this section may be ordered, although the
53 place complained of may not at the time of hearing be unlawfully used.

54 (f) If there be complaint on oath or affirmation supported by affidavit or affidavits setting
55 forth the facts for such belief that drug devices are being manufactured, sold, kept, stored or in
56 any manner held, used or concealed in a particular house or other place with intent to engage in
57 illegal drug paraphernalia business in violation of law, a magistrate or a circuit court, or the judge
58 thereof in vacation to whom such complaint is made, if satisfied that there is probable cause for
59 such belief, shall issue a warrant to search such house or other place for such devices. Such
60 warrants, except as herein otherwise provided, shall be issued, directed and executed in
61 accordance with the laws of West Virginia pertaining to search warrants. Warrants issued under
62 this section for the search of any automobile, boat, conveyance or vehicle, or for the search of
63 any trunk, grip or other article of baggage, for such devices, may be executed in any part of the
64 state where the same are overtaken, and shall be made returnable before any magistrate or circuit
65 court, or the judge thereof in vacation, within whose jurisdiction such automobile, boat,
66 conveyance, vehicle, trunk, grip or other article of baggage, or any of them, were transported or
67 attempted to be transported.

68 An officer charged with the execution of a warrant issued under this section, may,
69 whenever it is necessary, break open and enter a house, or other place herein described.

70 (g) Any property, including money, used in violation of the provisions of this section may
71 be seized and forfeited to the state.

72 (h) Nothing in this chapter prohibits the possession or purchase of fentanyl test strips.

NOTE: The purpose of this bill is to exclude fentanyl test strips from the definition of drug paraphernalia and specify that fentanyl test strips are not prohibited under Chapter 60A of this code.

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