

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

INTERIM
BILL

Senate Bill 269

By Senators Deeds, Grady, Takubo, Stuart, Trump,
Caputo, Swope, Woodrum, Hunt and Woelfel

[Introduced January 11, 2024; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §47-19-3 of the Code of West Virginia, 1931, as amended; and to
 2 amend §60A-4-403a of said code, all relating to excluding test strips from the definition of
 3 drug paraphernalia; and specifying that possession, sale, or purchase of drug test strips
 4 are not prohibited.

Be it enacted by the Legislature of West Virginia:

CHAPTER 47. REGULATION OF TRADE

ARTICLE 19. DRUG PARAPHERNALIA

§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 article:

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

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

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

10 (4) Testing equipment marketed for use, or designed for use in identifying, or in analyzing
 11 the strength, effectiveness, or purity of controlled substances; *Provided*, That ~~fantanyl~~ test strips
 12 shall are not be considered drug paraphernalia for the purpose stated in section one of this article;

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

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

17 (7) Separation gins and sifters marketed for use, or designed for use in removing twigs and

18 seeds from, or in otherwise cleaning or refining, marijuana;

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

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

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

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

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

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

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

34 (15) Chillums or bongs.

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

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

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

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

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

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

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

43 (7) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or

- 44 related items to the community, such as a licensed distributor or dealer of tobacco products;
- 45 (8) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total
- 46 sales of the business enterprise;
- 47 (9) The existence and scope of legitimate uses for the object in the community.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES

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 of
2 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) Bongs;
- 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 or
33 furnished in violation of this section shall be deemed a common or public nuisance. Conveyances
34 or vehicles of any kind shall be deemed places within the meaning of this section and may be
35 proceeded against under the provisions of subsection (e) of this section. A person who shall
36 maintain, or shall aid or abet or knowingly be associated with others in maintaining such common
37 or public nuisance shall be guilty of a misdemeanor, and, upon conviction thereof, shall be
38 punished by a fine of not more than \$1,000, or by confinement in jail not more than six months for
39 each offense, and judgment shall be given that such nuisance be abated or closed as a place for
40 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 as
42 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 injunction
45 be brought by the prosecuting attorney. If such suit for injunction be brought or maintained by a
46 citizen of the county or municipality where such nuisance is alleged to be located, then the court
47 may require a bond as in other cases of injunction. On the finding that the material allegations of
48 the complaint are true, the court or judge thereof in vacation shall order the injunction for such
49 period of time as it or he or she may think proper, with the right to dissolve the injunction upon the
50 application of the owner of the place, if a proper case is shown for such dissolution.

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

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

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

68 (g) Any property, including money, used in violation of the provisions of this section may be

69 seized and forfeited to the state.

70 (h) Nothing in this chapter prohibits the possession, sale, or purchase of ~~fenanyl~~ drug test

71 strips.

NOTE: The purpose of this bill is to exclude drug test strips from the definition of drug paraphernalia, and to specify that the possession, sale, and purchase of drug test strips is not prohibited within West Virginia.

The bill was recommended for passage during the 2024 legislative session, by the Joint Committee on Health.

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