

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 269

BY SENATORS DEEDS, GRADY, TAKUBO, STUART, TRUMP,

CAPUTO, SWOPE, HUNT, AND WOELFEL

[Originating in the Committee on the Judiciary;

reported January 17, 2024]

1 A BILL to amend and reenact §47-19-3 of the Code of West Virginia, 1931, as amended; and to
2 repeal §60A-4-403a of said code, relating to excluding test strips from the definition of
3 drug paraphernalia; and specifying that possession, sale, or purchase of drug test strips
4 is 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 §47-19-1 *et seq.* of this
3 code:

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: *Provided, That fentanyl* test strips
13 ~~shall~~ are not be considered drug paraphernalia for the purpose stated in §47-19-1 *et seq.* of this
14 code;

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

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

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

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

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

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

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

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

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

35 (14) Miniature cocaine spoons and cocaine vials; ~~or~~ and

36 (15) Chillums or bongs.

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

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

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

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

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

- 43 (5) National and local advertising concerning its use;
- 44 (6) The manner in which the object is displayed for sale;
- 45 (7) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or
46 related items to the community, such as a licensed distributor or dealer of tobacco products;
- 47 (8) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total
48 sales of the business enterprise; and
- 49 (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 [Repealed.]