

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **Senate Bill 100**

By Senator Woelfel

[Introduced January 14, 2026; referred  
to the Committee on Health and Human Resources]

1 A BILL to amend and reenact §60A-4-401 of the Code of West Virginia, 1931, as amended,  
 2 relating to amending the penalty of simple possession of marijuana from a misdemeanor  
 3 crime to a civil violation; and amending the penalties from those of a misdemeanor crime to  
 4 a civil violation.

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

**ARTICLE 4. OFFENSES AND PENALTIES.**

**§60A-4-401. Prohibited acts; penalties.**

1 (a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or  
 2 possess with intent to manufacture or deliver a controlled substance.

3 Any person who violates this subsection with respect to:

4 (i) A controlled substance classified in Schedule I or II, which is a narcotic drug or which is  
 5 methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state  
 6 correctional facility for not less than one year nor more than 15 years, or fined not more than  
 7 \$25,000, or both fined and imprisoned: *Provided*, That any person who violates this section when  
 8 the controlled substance classified in Schedule II is fentanyl, either alone or in combination with  
 9 any other substance shall be fined not more than \$50,000, or be imprisoned in a state correctional  
 10 facility for not less than 3 nor more than 15 years, or both fined and imprisoned;

11 (ii) Any other controlled substance classified in Schedule I, II, or III is guilty of a felony and,  
 12 upon conviction thereof, may be imprisoned in a state correctional facility for not less than one  
 13 year nor more than five years, or fined not more than \$15,000, or both fined and imprisoned;

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

17 (iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction  
 18 thereof, may be confined in jail for not less than six months nor more than one year, or fined not  
 19 more than \$5,000, or both fined and confined: *Provided*, That for offenses relating to any

20 substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in  
21 said article apply.

22 (b) Except as authorized by this act, it is unlawful for any person to create, deliver, or  
23 possess with intent to deliver, a counterfeit substance.

24 Any person who violates this subsection with respect to:

25 (i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, or  
26 methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state  
27 correctional facility for not less than one year nor more than 15 years, or fined not more than  
28 \$25,000, or both fined and imprisoned;

29 (ii) Any other counterfeit substance classified in Schedule I, II, or III is guilty of a felony and,  
30 upon conviction thereof, may be imprisoned in a state correctional facility for not less than one  
31 year nor more than five years, or fined not more than \$15,000, or both fined and imprisoned;

32 (iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon  
33 conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor  
34 more than three years, or fined not more than \$10,000, or both fined and imprisoned;

35 (iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon  
36 conviction thereof, may be confined in jail for not less than six months nor more than one year, or  
37 fined not more than \$5,000, or both fined and confined: *Provided*, That for offenses relating to any  
38 substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in  
39 said article apply.

40 (c) It is unlawful for any person knowingly or intentionally to possess a controlled  
41 substance unless the substance was obtained directly from, or pursuant to, a valid prescription or  
42 order of a practitioner while acting in the course of his or her professional practice, or except as  
43 otherwise authorized by this act. Any person who violates this subsection is guilty of a  
44 misdemeanor, and disposition may be made under §60A-4-407 of this code, subject to the  
45 limitations specified in said section, or upon conviction thereof, the person may be confined in jail

46 not less than 90 days nor more than six months, or fined not more than \$1,000, or both fined and  
47 confined: *Provided, That notwithstanding any other provision of this act to the contrary, possession*  
48 *of less than 15 grams of marijuana is subject to a civil penalty of no more than \$25 and any*  
49 *violation thereof constitutes a civil offense: Provided, however, That notwithstanding any other*  
50 *provision of this act to the contrary, any first offense for possession of synthetic cannabinoids as*  
51 *defined by §60A-1-101(d)(32) of this code; 3,4-methylenedioxypropylone (MPVD) and 3,4-*  
52 *methylenedioxypropylone and/or mephedrone as defined in §60A-1-101(f) of this code; ~~or less~~*  
53 *than 15 grams of marijuana, shall be disposed of under §60A-4-407 of this code.*

54 (d) It is unlawful for any person knowingly or intentionally:

55 (1) To create, distribute, deliver, or possess with intent to distribute or deliver, an imitation  
56 controlled substance; or

57 (2) To create, possess, sell, or otherwise transfer any equipment with the intent that the  
58 equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint,  
59 number, or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled  
60 substance, or the container or label of a counterfeit substance or an imitation controlled  
61 substance.

62 (3) Any person who violates this subsection is guilty of a misdemeanor and, upon  
63 conviction thereof, may be confined in jail for not less than six months nor more than one year, or  
64 fined not more than \$5,000, or both fined and confined. Any person 18 years old or more who  
65 violates subdivision (1) of this subsection and distributes or delivers an imitation controlled  
66 substance to a minor child who is at least three years younger than that person is guilty of a felony  
67 and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than  
68 one year nor more than three years, or fined not more than \$10,000, or both fined and imprisoned.

69 (4) The provisions of subdivision (1) of this subsection shall not apply to a practitioner who  
70 administers or dispenses a placebo.

71 (e) It is unlawful for any person knowingly or intentionally:

- 72 (1) To adulterate another controlled substance using fentanyl as an adulterant;
- 73 (2) To create a counterfeit substance or imitation controlled substance using fentanyl; or
- 74 (3) To cause the adulteration or counterfeiting or imitation of another controlled substance
- 75 using fentanyl.
- 76 (4) Any person who violates this subsection is guilty of a felony and, upon conviction
- 77 thereof, shall be imprisoned in a state correctional facility for not less than three nor more than 15
- 78 years, or fined not more than \$50,000, or both fined and imprisoned.
- 79 (5) For purposes of this section:
- 80 (i) A controlled substance has been adulterated if fentanyl has been mixed or packed with
- 81 it; and
- 82 (ii) Counterfeit substances and imitation controlled substances are further defined in §60A-
- 83 1-101 of this code.

NOTE: The purpose of this bill is to amend the penalty of simple possession of marijuana (less than 15 grams) from a misdemeanor crime to a civil violation.

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