

SB536

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 536**

BY SENATORS BLAIR (MR. PRESIDENT) AND BALDWIN

(BY REQUEST OF THE EXECUTIVE)

[Passed March 12, 2022; in effect 90 days from passage]

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

2022 MAR 28 P 3:42

FILED

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1 AN ACT to repeal §60A-4-415 of the Code of West Virginia, 1931, as amended; to amend and  
2 reenact §60A-4-401 and §60A-4-409 of said code; and to amend said code by adding  
3 thereto a new section, designated §60A-4-418, all relating generally to controlled  
4 substance criminal offenses; increasing the penalty for manufacture, delivery, or  
5 possession with intent to manufacture or deliver fentanyl; creating the offenses of  
6 counterfeit fentanyl or adulterating another controlled substance with fentanyl; creating the  
7 offense of using minors to illegally manufacture, distribute, or possess with intent to  
8 distribute; and establishing criminal penalties.

*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,  
2 or 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  
5 is methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a  
6 state 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  
8 knowing that the controlled substance classified in Schedule II is fentanyl, either alone or in  
9 combination with any other substance shall be fined not more than \$50,000, or be imprisoned in  
10 a state correctional facility for not less than 3 nor more than 15 years, or both fined and  
11 imprisoned;

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

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

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

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

25 Any person who violates this subsection with respect to:

26 (i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, or  
27 methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state  
28 correctional facility for not less than one year nor more than 15 years, or fined not more than  
29 \$25,000, or both fined and imprisoned;

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

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

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

41 (c) It is unlawful for any person knowingly or intentionally to possess a controlled  
42 substance unless the substance was obtained directly from, or pursuant to, a valid prescription or  
43 order of a practitioner while acting in the course of his or her professional practice, or except as  
44 otherwise authorized by this act. Any person who violates this subsection is guilty of a  
45 misdemeanor, and disposition may be made under §60A-4-407 of this code, subject to the  
46 limitations specified in said section, or upon conviction thereof, the person may be confined in jail  
47 not less than 90 days nor more than six months, or fined not more than \$1,000, or both fined and  
48 confined: *Provided*, That notwithstanding any other provision of this act to the contrary, any first  
49 offense for possession of synthetic cannabinoids as defined by §60A-1-101(d)(32) of this code;  
50 3,4-methylenedioxypropylvalerone (MPVD) and 3,4-methylenedioxypropylvalerone and/or  
51 mephedrone as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall  
52 be disposed of under §60A-4-407 of this code.

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

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

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

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

66 and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than  
67 one year nor more than three years, or fined not more than \$10,000, or both fined and imprisoned.

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

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

71 (1) To adulterate another controlled substance using fentanyl as an adulterant;

72 (2) To create a counterfeit substance or imitation controlled substance using fentanyl; or

73 (3) To cause the adulteration or counterfeiting or imitation of another controlled substance  
74 using fentanyl.

75 (4) Any person who violates this subsection is guilty of a felony and, upon conviction  
76 thereof, shall be imprisoned in a state correctional facility for not less than three nor more than 15  
77 years, or fined not more than \$50,000, or both fined and imprisoned.

78 (5) For purposes of this section:

79 (i) A controlled substance has been adulterated if fentanyl has been mixed or packed with  
80 it; and

81 (ii) Counterfeit substances and imitation controlled substances are further defined in §60A-  
82 1-101 of this code.

**§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 is unlawful for any  
2 person to transport or cause to be transported into this state a controlled substance with the intent  
3 to deliver the same 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 guilty of a felony and, upon conviction thereof, may be imprisoned in the state correctional facility  
7 for not less than one year nor more than 15 years, or fined not more than \$25,000, or both:  
8 *Provided*, That any person who violates this section knowing that the controlled substance

9 classified in Schedule II is fentanyl, either alone or in combination with any other substance shall  
10 be fined not more than \$50,000 or imprisoned in a state correctional facility for a definite term of  
11 not less than 10 nor more than 20 years, or both fined and imprisoned.

12 (2) Any other controlled substance classified in Schedule I, II or III shall be guilty of a  
13 felony and, upon conviction thereof, may be imprisoned in the state correctional facility for not  
14 less than one year nor more than 10 years, or fined not more than \$15,000, or both: *Provided*,  
15 That for the substance marijuana, as scheduled in subdivision (24) subsection (d), §60A-2-204 of  
16 this code, the penalty, upon conviction of a violation of this subsection, shall be that set forth in  
17 subdivision (3) of this subsection.

18 (3) A substance classified in Schedule IV shall be guilty of a felony and, upon conviction  
19 thereof, may be imprisoned in the state correctional facility for not less than one year nor more  
20 than five years, or fined not more than \$10,000, or both;

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

26 (c) Notwithstanding the provisions of subsection (b) of this section, any person violating  
27 or causing a violation of subsection (a) of this section involving one kilogram or more of heroin,  
28 five kilograms or more of cocaine or cocaine base, 100 grams or more of phencyclidine, 10 grams  
29 or more of lysergic acid diethylamide, or 50 grams or more of methamphetamine or 500 grams of  
30 a substance or material containing a measurable amount of methamphetamine, is guilty of a  
31 felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a  
32 determinate sentence of not less than two nor more than 30 years.

33 (d) Notwithstanding the provisions of subsection (b) of this section, any person violating  
34 or causing a violation of subsection (a) of this section involving 100 but fewer than 1,000 grams

35 of heroin, not less than 500 but fewer than 5,000 grams of cocaine or cocaine base, not less than  
36 ten but fewer than 99 grams of phencyclidine, not less than one but fewer than 10 grams of  
37 lysergic acid diethylamide, or not less than five but fewer than 50 grams of methamphetamine or  
38 not less than 50 grams but fewer than 500 grams of a substance or material containing a  
39 measurable amount of methamphetamine, is guilty of a felony and, upon conviction thereof, shall  
40 be imprisoned in a state correctional facility for a determinate sentence of not less than two nor  
41 more than 20 years.

42 (e) Notwithstanding the provisions of subsection (b) of this section, any person violating  
43 or attempting to violate the provisions of subsection (a) of this section involving not less than 10  
44 grams nor more than 100 grams of heroin, not less than 50 grams nor more than 500 grams of  
45 cocaine or cocaine base, not less than two grams nor more than 10 grams of phencyclidine, not  
46 less than 200 micrograms nor more than one gram of lysergic acid diethylamide, or not less than  
47 499 milligrams nor more than five grams of methamphetamine or not less than 20 grams nor more  
48 than 50 grams of a substance or material containing a measurable amount of methamphetamine  
49 is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility  
50 for a determinate sentence of not less than two nor more than 15 years.

51 (f) The offense established by this section shall be in addition to and a separate and  
52 distinct offense from any other offense set forth in this code.

**§60A-4-415. Unlawful manufacture, delivery, transport into state, or possession of fentanyl.**

1 [Repealed.]

**§60A-4-418. Use of a minor to commit a felony drug offense; penalties.**

1 Any person over the age of 21 who knowingly and intentionally causes, aids, abets, or  
2 encourages a person under the age of 18 to distribute, dispense, manufacture, or possess with  
3 the intent to distribute a controlled substance in violation or the provisions of this chapter is guilty  
4 of a felony and, upon conviction thereof, shall be fined not more than \$10,000 or imprisoned in a  
5 state correctional facility for not more than five years, or both fined and imprisoned.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Matt Blaylock*  
.....  
Chairman, Senate Committee

*Leon Duffin*  
.....  
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

*Joe Lavin*  
.....  
Clerk of the Senate

*Steve Hannon*  
.....  
Clerk of the House of Delegates

*C. P. Brantley*  
.....  
President of the Senate

*Leon Hunsler*  
.....  
Speaker of the House of Delegates

FILED  
2022 MAR 28 P 3:42  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

The within *is approved* this the *28th*  
Day of *March* ..... 2022.

*James O. Eastman*  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 17 2022

Time 1:50 pm