WEST VIRGINIA CODE CHAPTER 47 ARTICLE 19

WV Legislature

§47-19-1. Items designed or marketed for use with controlled substances; license required.

It shall be unlawful for any person or persons as principal, clerk, agent or servant to sell any items, effect, paraphernalia, accessory or thing which is designed or marketed for use with controlled substances, as defined in chapter sixty-a of this code, without obtaining a license therefor from the State Tax Commissioner. Such licenses shall be in addition to any or all other licenses held by applicant. The fee for such license shall be $150.

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§47-19-2. Application.

(a) Application to sell any item, effect, paraphernalia, accessory or thing which is designed or marketed for use with controlled substances shall be accompanied by affidavits by applicant and each and every employee authorized to sell such items that such person has never been convicted of a drug-related offense.

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§47-19-3. Drug paraphernalia defined.

(a) The following items, if marketed for use or designed for the use with controlled substances, are considered drug paraphernalia for the purpose stated in §47-19-1 *et seq*. of this code:

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

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

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

(4) Testing equipment marketed for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of controlled substances: *Provided*, That test strips are not considered drug paraphernalia for the purpose stated in §47-19-1 *et seq*. of this code;

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

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

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

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

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

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

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

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

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

(14) Miniature cocaine spoons and cocaine vials; and

(15) Chillums or bongs.

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

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

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

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

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

(5) National and local advertising concerning its use;

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

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

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

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

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§47-19-4. Records.

Every licensee must keep a record of every item, effect, paraphernalia, accessory or thing which is designed or marketed for use with controlled substances which is sold, and this record shall be open to the inspection of any police officer at any time during the hours of business. Such record shall contain the name and address of the purchaser, the name and quantity of the product, the date and time of the sale, and the licensee or agent of the licensee's signature. Such records shall be retained for not less than two years.

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§47-19-5. Regulations.

The applicant shall comply with all applicable rules of the State Tax Commissioner, promulgated pursuant to the provisions of chapter twenty-nine-a of this code.

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§47-19-6. Sale to minors prohibited; penalty.

It shall be unlawful to sell items as described in section three of this article in any form to any male or female child under eighteen years of age. Any person eighteen years of age or older who violates this section is guilty of a felony, and, upon conviction thereof, may be imprisoned in the penitentiary for not less than one nor more than five years, or in the discretion of the court, be confined in the county jail not more than one year and shall be fined not more than $15,000, or both.

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§47-19-7. Penalty.

Any person violating any provision of this article shall, if convicted, be guilty of a misdemeanor and, be fined not less than $10 nor more than $500 for the first offense and succeeding offenses, and each day that such violation shall continue shall be deemed a separate and distinct offense.

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§47-19-8. Sale of drug paraphernalia at certain events or outdoors prohibited.

(a) Any person who attempts to sell or offer for sale drug paraphernalia as such is defined in section three of this article at any fair, festival, musical or theatrical production or at any event performed or conducted outdoors is guilty of a misdemeanor and, upon conviction, shall be fined not less than $10 nor more than $500.

(b) Any person who attempts to sell or offer for sale items as described in section three of this article at any temporary roadside booth or table along any municipal street or highway is guilty of a misdemeanor and, upon conviction, shall be fined not less than $10 nor more than $500.

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