WEST VIRGINIA CODE: §60a-4-409

§60A-4-409. Prohibited acts – Transportation of controlled substances into state; penalties.

(a) Except as otherwise authorized by the provisions of this code, it is unlawful for any person to transport or cause to be transported into this state a controlled substance with the intent to deliver the same or with the intent to manufacture a controlled substance.

(b) Any person who violates this section with respect to:

(1) A controlled substance classified in Schedule I or II, which is a narcotic drug, is guilty of a felony and, upon conviction thereof, may be imprisoned in the state correctional facility for not less than five years nor more than 20 years, or fined not more than $50,000, or both fined and imprisoned.

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

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

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

(c) Notwithstanding the provisions of subsection (b) of this section, any person violating or attempting to violate the provisions of subsection (a) of this section involving one kilogram or more of heroin, one kilogram or more of cocaine or cocaine base, 100 grams or more of phencyclidine, 10 grams or more of lysergic acid diethylamide, or 50 grams or more of methamphetamine or five or more grams of fentanyl, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than 15 years nor more than 30 years. The sentence provided in this subsection is mandatory. A person convicted of an offense set forth in this subsection is not eligible for probation, home incarceration, or to have his or her sentence suspended for any reason.

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(d) Notwithstanding the provisions of subsection (b) of this section, any person violating or attempting to violate the provisions of subsection (a) of this section involving 100 but fewer than 1,000 grams of heroin, not less than 100 but fewer than 1,000 grams of cocaine or cocaine base, not less than 10 but fewer than 100 grams of phencyclidine, not less than one but fewer than 10 grams of lysergic acid diethylamide, or not less than five but fewer than 50 grams of methamphetamine, or one gram or more but less than five grams of fentanyl is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than seven years nor more than 20 years.

(e) Notwithstanding the provisions of subsection (b) of this section, any person violating or attempting to violate the provisions of subsection (a) of this section involving not less than 10 grams nor more than 100 grams of heroin, not less than 10 grams nor more than 100 grams of cocaine or cocaine base, not less than two grams nor more than 10 grams of phencyclidine, not less than 200 micrograms nor more than one gram of lysergic acid diethylamide, or not less than one gram nor more than five grams of methamphetamine, or less than one gram of fentanyl is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for an indeterminate sentence of not less than five years nor more than 20 years.

(f) The offenses established by this section are in addition to and a separate and distinct offense from any other offense set forth in this code.

(g) For purposes of determining the weight of any controlled substance under this section, a mixture must contain only a detectable amount of a controlled substance for the entire mixture to be considered that controlled substance. If a mixture or substance contains more than one controlled substance, the weight of the entire mixture or substance is assigned to the controlled substance that results in the greater offense penalty.

(h) Under this section, where the transportation into the state involves two or more controlled substances, the transportation into the state of each controlled substance shall be considered a separate and distinct offense unless the controlled substances are mixed together.

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