

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-8-80

Time 9:00 A.M.

**WEST VIRGINIA LEGISLATURE**  
**REGULAR SESSION, 1980**



**ENROLLED**  
*Committee Substitute for*  
**SENATE BILL NO. 62**

(By Mr. *Gilligan, original sponsor*.....)



PASSED February 27 1980

In Effect April 1, 1980 ~~Passage~~



*No: 62*

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 62**  
(MR. GILLIGAN, *original sponsor*)

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[Passed February 27, 1980; in effect April 1, 1980.]

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AN ACT to amend article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four hundred three-a, relating to the prohibition of illegal drug paraphernalia businesses; providing that any person who conducts, finances, manages, supervises, directs or owns all or part of such business is guilty of a misdemeanor, and setting forth the penalty therefor; describing the elements of such offense; defining the term "drug device"; providing for certain places to be deemed common and public nuisances; providing that a person who maintains, aids and abets, or knowingly associates with others in maintaining such nuisance is guilty of a misdemeanor, and setting forth the penalty therefor; providing for abatement of nuisances; suits to abate nuisances; requiring bond in certain cases; providing for injunction; providing for the issuance of search warrants; forfeiture of property.

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

That article four, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended, by adding thereto a new section, designated section four hundred three-a, to read as follows:

**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 (a) Any person who conducts, finances, manages,  
2 supervises, directs or owns all or part of an illegal drug  
3 paraphernalia business is guilty of a misdemeanor, and,  
4 upon conviction thereof, shall be fined not more than five  
5 thousand dollars, or confined in jail not less than six  
6 months nor more than one year, or both.

7 (b) A person violates subsection (a) of this section  
8 when:

9 (1) The person conducts, finances, manages, supervises,  
10 directs, or owns all or part of a business which for profit,  
11 in the regular course of business or as a continuing  
12 course of conduct, manufactures, sells, stores, possesses,  
13 gives away or furnishes objects designed to be primarily  
14 useful as drug devices.

15 (2) The person knows or has reason to know that the  
16 design of such objects renders them primarily useful as  
17 drug devices.

18 (c) As used in this section, "drug device" means an  
19 object usable for smoking marihuana, for smoking con-  
20 trolled substances defined as tetrahydrocannabinols, or  
21 for ingesting or inhaling cocaine, and includes, but is not  
22 limited to:

23 (i) Metal, wooden, acrylic, glass, stone, plastic or  
24 ceramic pipes with or without screens, permanent screens,  
25 hashish heads, or punctured metal bowls;

26 (ii) Water pipes;

27 (iii) Carburetion tubes and devices;

28 (iv) Smoking and carburetion masks;

29 (v) Roach clips; meaning objects used to hold burning  
30 material, such as a marijuana cigarette, that has become  
31 too small or too short to be held in the hand;

32 (vi) Chamber pipes;

33 (vii) Carburetor pipes;

- 34 (viii) Electric pipes;
- 35 (ix) Air-driven pipes;
- 36 (x) Chillums;
- 37 (xi) Bongs;
- 38 (xii) Ice pipes or chillers; and
- 39 (xiii) Miniature cocaine spoons, and cocaine vials.

40 In any prosecution under this section, the question  
41 whether an object is a drug device shall be a question  
42 of fact.

43 (d) A place where drug devices are manufactured,  
44 sold, stored, possessed, given away or furnished in viola-  
45 tion of this section shall be deemed a common or public  
46 nuisance. Conveyances or vehicles of any kind shall be  
47 deemed places within the meaning of this section and  
48 may be proceeded against under the provisions of sub-  
49 section (e) of this section. A person who shall maintain,  
50 or shall aid or abet or knowingly be associated with  
51 others in maintaining such common or public nuisance  
52 shall be guilty of a misdemeanor, and, upon conviction  
53 thereof, shall be punished by a fine of not more than one  
54 thousand dollars, or by confinement in jail not more  
55 than six months for each offense, and judgment shall be  
56 given that such nuisance be abated or closed as a place  
57 for the manufacture, sale, storage, possession, giving away  
58 or furnishing of drug devices.

59 (e) The prosecuting attorney or a citizen of the county  
60 or municipality where a nuisance as defined in subsec-  
61 tion (d) is located, may maintain a suit in the name of  
62 the state to abate and perpetually enjoin the same. Cir-  
63 cuit courts shall have jurisdiction thereof. The injunction  
64 may be granted at the commencement of the suit and no  
65 bond shall be required if such action for injunction be  
66 brought by the prosecuting attorney. If such suit for  
67 injunction be brought or maintained by a citizen of the  
68 county or municipality where such nuisance is alleged  
69 to be located, then the court may require a bond as in  
70 other cases of injunction. On the finding that the ma-  
71 terial allegations of the complaint are true, the court or  
72 judge thereof in vacation shall order the injunction for  
73 such period of time as it or he may think proper, with

74 the right to dissolve the injunction upon the application  
75 of the owner of the place, if a proper case is shown for  
76 such dissolution.

77 The continuance of the injunction as provided in this  
78 section may be ordered, although the place complained  
79 of may not at the time of hearing be unlawfully used.

80 (f) If there be complaint on oath or affirmation support-  
81 ed by affidavit or affidavits setting forth the facts for such  
82 belief that drug devices are being manufactured, sold,  
83 kept, stored or in any manner held, used or concealed in a  
84 particular house or other place with intent to engage in  
85 illegal drug paraphernalia business in violation of law,  
86 a magistrate or a circuit court, or the judge thereof in  
87 vacation to whom such complaint is made, if satisfied that  
88 there is probable cause for such belief, shall issue a  
89 warrant to search such house or other place for such  
90 devices. Such warrants, except as herein otherwise pro-  
91 vided, shall be issued, directed and executed in accord-  
92 ance with the laws of West Virginia pertaining to search  
93 warrants. Warrants issued under this section for the  
94 search of any automobile, boat, conveyance or vehicle,  
95 or for the search of any trunk, grip or other article of  
96 baggage, for such devices, may be executed in any part  
97 of the state where the same are overtaken, and shall be  
98 made returnable before any magistrate or circuit court,  
99 or the judge thereof in vacation, within whose jurisdic-  
100 tion such automobile, boat, conveyance, vehicle, trunk,  
101 grip or other article of baggage, or any of them, were  
102 transported or attempted to be transported.

103 An officer charged with the execution of a warrant  
104 issued under this section, may, whenever it is necessary,  
105 break open and enter a house, or other place herein  
106 described.

107 (g) Any property, including money, used in violation  
108 of the provisions of this section may be seized and for-  
109 feited to the state.

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

*James L. Davis*  
Chairman Senate Committee

*Clarence M. Brantley*  
Chairman House Committee

Originated in the Senate.

To take effect April 1, 1980.

*Joseph C. Mills*  
Clerk of the Senate

*Clarence M. Blankenship*  
Clerk of the House of Delegates

*W. B. Galloway*  
President of the Senate

*Clayton M. Lee, Jr.*  
Speaker House of Delegates

The within is approved this the 8  
day of March 1980.

*James I. Royster*  
Governor



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