APPROVED AND SIGNED BY THE GOVERNOR

Date 3-30-82

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1982

ENROLLED

SENATE BILL NO. 48

(By Mr. Gilligan & Mr. Wright)

PASSED March 13, 1982

In Effect from passage
AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nineteen, relating to regulation of trade; license required for the sale of items designed for or marketed for use with controlled substances; application for license, contents; drug paraphernalia defined; factors to be considered in determining whether an object is marketed or designed for use as drug paraphernalia; records to be kept by licensee, contents; promulgation of regulations by state tax commissioner; sale to minors prohibited; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article nineteen, all to read as follows:

ARTICLE 19. DRUG PARAPHERNALIA.

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

1 It shall be unlawful for any person or persons as principal, 2 clerk, agent or servant to sell any items, effect, paraphernalia, 3 accessory or thing which is designed or marketed for use with 4 controlled substances, as defined in chapter sixty-a of this 5 code, without obtaining a license therefor from the state tax 6 commissioner. Such licenses shall be in addition to any or all 7 other licenses held by applicant. The fee for such license shall 8 be one hundred fifty dollars.

(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.


(a) The following items, if marketed for use or designed for use with controlled substances, are considered drug paraphernalia for the purpose stated in section one of this article:

(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;

(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;

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

(14) Miniature cocaine spoons, and cocaine vials; or

(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;

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


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
§47-19-5. Regulations.

1 The applicant shall comply with all applicable rules of the
2 state tax commissioner, promulgated pursuant to the
3 provisions of chapter twenty-nine-a of this code.

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

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


1 Any person violating any provision of this article shall, if
2 convicted, be guilty of a misdemeanor and be fined not less
3 than ten dollars nor more than five hundred dollars for the
4 first offense and succeeding offenses, and each day that such
5 violation shall continue shall be deemed a separate and
6 distinct offense.


1 If any provision of this article or the application thereof to
2 any person or circumstance is held invalid, such invalidity
3 shall not affect other provisions or applications of this article,
4 and to this end the provisions of this article are hereby
5 declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 10th day of January, 1982.

Governor