

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-30-82

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1982

ENROLLED

SENATE BILL NO. 48

(By Mr. Gilligan & M. Wright)

PASSED March 13, 1982

In Effect ninety days from Passage

ENROLLED

Senate Bill No. 48

(BY MR. GILLIGAN AND MR. WRIGHT)

[Passed March 13, 1982; in effect ninety days 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.

§47-19-2. Application.

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

§47-19-3. Drug paraphernalia defined.

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

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

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

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

15 (4) Testing equipment marketed for use, or designed for
16 use in identifying, or in analyzing the strength, effectiveness,
17 or purity of controlled substances;

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

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

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

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

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

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

36 (11) Paper of colorful design, with names oriented for use
37 with controlled dangerous substances and displayed:
38 *Provided*, That white paper or tobacco oriented paper not
39 necessarily designed for use with controlled substances is not
40 covered.

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

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

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

49 (15) Chillums or bongs.

50 (b) In determining whether an object is marketed for use
51 or designed for use as drug paraphernalia, the state tax
52 commissioner or other authority should consider the
53 following:

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

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

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

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

62 (5) National and local advertising concerning its use;

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

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

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

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

§47-19-4. Records.

1 Every licensee must keep a record of every item, effect,
2 paraphernalia, accessory or thing which is designed or
3 marketed for use with controlled substances which is sold,
4 and this record shall be open to the inspection of any police

5 officer at any time during the hours of business. Such record
6 shall contain the name and address of the purchaser, the
7 name and quantity of the product, the date and time of the
8 sale, and the licensee or agent of the licensee's signature.
9 Such records shall be retained for not less than two years.

§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.

§47-19-7. Penalty.

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.

§47-19-8. Severability.

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.

R. P. Bayler
Chairman Senate Committee

Jonny E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Todd C. Mills
Clerk of the Senate

VA Blankenship
Clerk of the House of Delegates

Warren R. McIlwain
President of the Senate

W. H. M. Lee, Jr.
Speaker House of Delegates

The within *is approved* this the *30*

day of *March*, 1982.

[Signature]
Governor

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