WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED
SENATE BILL NO. 145

(BY MR. MCDERMOTT, MR. PRESIDENT)

PASSED February 25, 1983
In Effect ninety days from Passage
ENROLLED

Senate Bill No. 145

(BY MR. MCGRAW, MR. PRESIDENT)

[Passed February 25, 1983; in effect ninety days from passage.]

AN ACT to amend and reenact section one hundred one, article one, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by amending and reenacting sections two hundred four and two hundred twelve, article two, and section four hundred one, article four, of said chapter, relating to controlled substances generally; defining certain terms; adding to the uniformed controlled substances act definitions of the terms “imitation controlled substance” and “placebo”; redefining the terms “deliver” and “distribute”; updating the uniform controlled substances act; adding the drugs N-ethylamphetamine and parahexyl to Schedule I; deleting the drug loperamide from Schedule V; making it unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance and prescribing penalties therefor; making it unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance and prescribing penalties therefor; making it unlawful for a person to knowingly or intentionally possess a controlled substance and prescribing penalties therefor; and making it unlawful for a person to knowingly or intentionally create, distribute, or deliver, or possess with intent to distribute or deliver, an imitation controlled substance, or to create, possess, or sell or otherwise transfer equipment with the intent that such equipment shall be used to apply a trademark, trade name or other identification
upon a counterfeit substance, an imitation controlled
substance, or the container or label of such substance, and
prescribing penalties for such offenses.

Be it enacted by the Legislature of West Virginia:

That section one hundred one, article one, sections two
hundred four and two hundred twelve, article two, and section
four hundred one, article four, all of chapter sixty-a of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, be amended and reenacted, all to read as follows:

ARTICLE 1. DEFINITIONS.


1 As used in this act:
2 (a) "Administer" means the direct application of a
3 controlled substance whether by injection, inhalation,
4 ingestion, or any other means, to the body of a patient or
5 research subject by:
6 (1) A practitioner (or, in his presence, by his authorized
7 agent), or
8 (2) The patient or research subject at the direction and
9 in the presence of the practitioner.
10 (b) "Agent" means an authorized person who acts on
11 behalf of or at the direction of a manufacturer, distributor,
12 or dispenser. It does not include a common or contract
13 carrier, public warehouseman, or employee of the carrier or
14 warehouseman.
15 (c) "Bureau" means the "Bureau of Narcotics and
16 Dangerous Drugs, United States Department of Justice," or
17 its successor agency.
18 (d) "Controlled substance" means a drug, substance, or
19 immediate precursor in Schedules I through V of article
20 two.
21 (e) "Counterfeit substance" means a controlled
22 substance which, or the container or labeling of which,
23 without authorization, bears the trademark, trade name, or
24 other identifying mark, imprint, number or device, or any
25 likeness thereof, of a manufacturer, distributor, or
26 dispenser other than the person who in fact manufactured,
27 distributed, or dispensed the substance.
28 (f) "Imitation controlled substance" means (1) a
29 controlled substance which is falsely represented to be a
different controlled substance, or, (2) a drug or substance
which is not a controlled substance but which is falsely
represented to be a controlled substance, or (3) a controlled
substance or other drug or substance or a combination
thereof which is shaped, sized, colored, marked, imprinted,
numbered, labeled, packaged, distributed, or priced so as to
cause a reasonable person to believe that it is a controlled
substance.

(g) "Deliver" or "delivery" means the actual,
constructive, or attempted transfer from one person to
another of (1) a controlled substance, whether or not there is
an agency relationship, (2) a counterfeit substance, or (3) an
imitation controlled substance.

(h) "Dispense" means to deliver a controlled substance
to an ultimate user or research subject by or pursuant to the
lawful order of a practitioner, including the prescribing,
administering, packaging, labeling, or compounding
necessary to prepare the substance for that delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver, other than by
administering or dispensing, a controlled substance, a
counterfeit substance, or an imitation controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means (1) substances recognized as drugs in
the official "United States Pharmacopoeia, official
Homeopathic Pharmacopoeia of the United States, or
official National Formulary," or any supplement to any of
them; (2) substances intended for use in the diagnosis, cure,
mitigation, treatment, or prevention of disease in man or
animals; (3) substances (other than food) intended to affect
the structure or any function of the body of man or animals;
and (4) substances intended for use as a component of any
article specified in clause (1), (2) or (3) of this subdivision. It
does not include devices or their components, parts, or
accessories.

(m) "Immediate precursor" means a substance which
the "West Virginia Board of Pharmacy" (hereinafter in this
act referred to as the state board of pharmacy) has found to
be and by rule designates as being the principal compound
commonly used or produced primarily for use, and which is
an immediate chemical intermediary used or likely to be
used in the manufacture of a controlled substance, the
control of which is necessary to prevent, curtail, or limit
manufacture.
(n) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(1) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or

(2) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(o) "Marihuana" means all parts of the plant "Cannabis sativa L.," whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(p) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1) of this subdivision, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.
(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(q) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 201, article two of this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does not include its racemic and levorotatory forms.

(r) "Opium poppy" means the plant of the species "Papaver somniferum L.,” except its seeds.

(s) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association, or any other legal entity.

(t) "Placebo" means an inert medicament or preparation administered or dispensed for its psychological effect, to satisfy a patient or research subject or to act as a control in experimental series.

(u) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(v) "Practitioner" means:

(1) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(2) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(w) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.
"State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

"Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

(a) The controlled substances listed in this section are included in Schedule I.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol;
(2) Allylprodine;
(3) Alphacetylmethadol;
(4) Alphameprodine;
(5) Alphamethadol;
(6) Alpha-methylfentanyl;
(7) Benzethidine;
(8) Betacetylmethadol;
(9) Betameprodine;
(10) Betamethadol;
(11) Betaprodine;
(12) Clonitazene;
(13) Dextromoramide;
(14) Diampropide;
(15) Diethylthiambutene;
(16) Difenoxin;
(17) Dimenoxadol;
(18) Dimepheaoptanol;
(19) Dimethylthiambutene;
(20) Dioxyphethyl butyrate;
(21) Dipipanone;
(22) Ethylmethylthiambutene;
(23) Etonitazene;
(24) Etoxeridine;
(25) Fenethylline;
(26) Furethidine;
(27) Hydroxypethidine;
(28) Ketobemidone;
(29) Levomoramide;
(30) Levophenacylmorphan;
(31) Morpheridine;
(32) Noracrynethadol;
(33) Norlevorphanol;
(34) Normethadone;
(35) Norpipanone;
(36) Phenadoxone;
(37) Phenamprone;
(38) Phenomorphan;
(39) Phenoperidine;
(40) Piritramide;
(41) Proheptazine;
(42) Properidine;
(43) Propiram;
(44) Racemoramide;
(45) Sufentanil;
(46) Tilidine;
(47) Trimeperidine.

(c) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphone;
(9) Drotebanol;
(10) Etorphine (except HCl Salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Morphine methylbromide;
(16) Morphine methylsulfonate;
(17) Morphine-N-Oxide;
(18) Myrophone;
(19) Nicocodeine;
(20) Nicomorphine;
(21) Normorphine;
(22) Phoclo dine;
(23) Thebacon.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of the salts, isomers and salts of isomers of any thereof whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation and for the purposes of this subsection only, "isomer" includes the optical position and geometric isomers:

(1) 2,5-dimethoxyamphetamine; also known by these trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA;
(2) 3,4-methylenediox yamphetamine;
(3) 4-bromo-2,5-dimethoxyamphetamine or 4-bromo-2,5-dimethoxy-a-methylphenethylamine, or 4-bromo-2,5-DMA;
(4) 5-methyloxy-3,4-methylenedioxyamphetamine;
(5) 4-methoxyamphetamine; also known by these trade or other names; 4-methoxy-amethylphenethylamine; paramethoxyamphetamine; PMA;
(6) 3,4,5-trimethoxyamphetamine;
(7) Bufotenine; known also by these trade and other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylamino-ethyl)-5 indolol; N-N-dimethylserotonin; 5-hydroxy-N-dimethyltryptamine; mappine;
(8) Diethyltryptamine; known also by these trade and other names: N-N-Diethyltryptamine; "DET";
(9) Dimethyltryptamine; known also by the name "DMT";
(10) 4-methyl-2,5-dimethoxyamphetamine; known also by these trade and other names; 4-methyl-2, 5-dimethoxy-a-methylphenethylamine; "DOM"; "STP";
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117 (11) Iboqaine; known also by these trade and other names: 7-Ethyl-6, 6a, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1', 2': 1, 2 azepino 4,5b) indole; tabernanthe iboga;
121 (12) Lysergic acid diethylamide;
122 (13) Marihuana;
123 (14) Mescaline;
124 (15) Peyote; meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lematre, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or extracts;
129 (16) N-ethyl-3-piperidyl benzilate;
131 (17) N-methyl-e-piperidyl benzilate;
132 (18) Psilocybin;
133 (19) Psilocyn;
134 (20) Tetrahydrocannabinols; including synthetic equivalents of the substances contained in the plant or in the resinous extractives of Cannabis or synthetic substances, derivatives and their isomers with similar chemical structure and pharmacological activity such as the following:
140 Delta 1 Cis or trans tetrahydrocannabinol, and their optical isomers;
143 Delta 6 Cis or trans tetrahydrocannabinol, and their optical isomers;
146 Delta 3, 4 Cis or trans tetrahydrocannabinil tetrahydrocannabinol, and their optical isomers;
149 (21) Thiophene analog of phencyclidine; also known by these trade or other names: (A) (1-(2-thienyl) cyclohexyl) piperidine; (B) Thienyl analog of phencyclidine; TPCP;
152 (22) Ethylamine analog of phencyclidine...Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;
156 (23) Pyrrolidine analog of phencyclidine...Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;
N-ethylamphetamine; Parahexyl.

(e) Unless specifically excepted or unless listed in another schedule, any of the following depressants, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone.

§60A-2-212. Schedule V.

(a) The controlled substances listed in this section are included in Schedule V.

(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone;

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams and not more than 10 milligrams per dosage unit;

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams and not more than 5 milligrams per dosage unit;

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams and not more than 5 milligrams per dosage unit;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Amyl nitrite, isobutyl nitrite and the other organic nitrites are controlled substances and no product containing these compounds as a significant component shall be possessed, bought or sold other than pursuant to a bona fide prescription, or for industrial or manufacturing purposes.
ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-401. Prohibited acts A; penalties.

1 (a) Except as authorized by this act, it is unlawful for
2 any person to manufacture, deliver, or possess with intent
3 to manufacture or deliver, a controlled substance.
4 (1) Any person who violates this subsection with respect
5 to:
6 (i) A controlled substance classified in Schedule I or II
7 which is a narcotic drug, is guilty of a felony, and, upon
8 conviction, may be imprisoned in the penitentiary for not
9 less than one year nor more than fifteen years, or fined not
10 more than twenty-five thousand dollars, or both;
11 (ii) Any other controlled substance classified in
12 Schedule I, II or III, is guilty of a felony, and, upon
13 conviction, may be imprisoned in the penitentiary for not
14 less than one year nor more than five years, or fined not
15 more than fifteen thousand dollars, or both;
16 (iii) A substance classified in Schedule IV, is guilty of a
17 felony, and, upon conviction, may be imprisoned in the
18 penitentiary for not less than one year nor more than three
19 years, or fined not more than ten thousand dollars, or both;
20 (iv) A substance classified in Schedule V, is guilty of a
21 misdemeanor, and, upon conviction, may be confined in the
22 county jail for not less than six months nor more than one
23 year, or fined not more than five thousand dollars, or both.

24 (b) Except as authorized by this act, it is unlawful for
25 any person to create, deliver, or possess with intent to
26 deliver, a counterfeit substance.
27 (1) Any person who violates this subsection with respect
28 to:
29 (i) A counterfeit substance classified in Schedule I or II
30 which is a narcotic drug, is guilty of a felony, and, upon
31 conviction, may be imprisoned in the penitentiary for not
32 less than one year nor more than fifteen years, or fined not
33 more than twenty-five thousand dollars, or both;
34 (ii) Any other counterfeit substance classified in
35 Schedule I, II, or III, is guilty of a felony, and, upon
36 conviction, may be imprisoned in the penitentiary for not
37 less than one year nor more than five years, or fined not
38 more than fifteen thousand dollars, or both;
(iii) A counterfeit substance classified in Schedule IV, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;
(iv) A counterfeit substance classified in Schedule V, is guilty of a misdemeanor, and, upon conviction, may be confined in the county jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both.
(c) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this act. Any person who violates this subsection is guilty of a misdemeanor, and disposition may be made under section 407, subject to the limitations specified in said section 407, or upon conviction, such person may be confined in the county jail not less than ninety days nor more than six months, or fined not more than one thousand dollars, or both: Provided, That notwithstanding any other provision of this act to the contrary, any first offense for possession of less than 15 grams of marihuana shall be disposed of under said section 407.
(d) It is unlawful for any person knowingly or intentionally:
(1) To create, distribute, or deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or
(2) To create, possess, or sell or otherwise transfer any equipment with the intent that such equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance, or the container or label of a counterfeit substance or an imitation controlled substance;
(3) Any person who violates this subsection is guilty of a misdemeanor, and, upon conviction, may be imprisoned in the county jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or
both. Any person being eighteen years old or more, who violates subdivision one of this subsection, and, in so doing distributes or delivers an imitation controlled substance to a minor child who is at least three years younger than such person, is guilty of a felony, and, upon conviction, may be imprisoned in the penitentiary for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;

(4) The provisions of subdivision one of this subsection shall not apply to a practitioner who administers or dispenses a placebo.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Arnold Grolee  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Jude C. Halk  
Clerk of the Senate

Donald L. Hoppe  
Clerk of the House of Delegates

Warren P. McGraw  
President of the Senate

J. M. See, Jr.  
Speaker House of Delegates

The within .......... in approved .......... this the .......... 12th  
day of .......... March .......... 1933.  

Governor