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2011 APR -5 PM 5: 04

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2011



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 2505

(By Delegates Perdue, Boggs, Hatfield, Cann, Rodighiero,
Moye, Poore, Border, C. Miller, Hamilton and Lawrence)



Passed March 12, 2011

In Effect Thirty Days From Passage

HB 2505

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FOR

H. B. 2505

(BY DELEGATES PERDUE, BOGGS, HATFIELD, CANN, RODIGHIERO,
MOYE, POORE, BORDER, C. MILLER, HAMILTON AND LAWRENCE)

[Passed March 12, 2011; in effect thirty days from passage.]

AN ACT to amend and reenact §60A-1-101 the Code of West Virginia, 1931, as amended, to amend and reenact §60A-2-204 of said code, and to amend and reenact §60A-4-401 of said code, all relating to adding certain cannabinoids, hallucinogens and stimulants to the Schedule I list of controlled substances; proving penalties; and clarifying references to definitions.

Be it enacted by the Legislature of West Virginia:

That §60A-1-101 of the Code of West Virginia, 1931, as amended, be amended and reenacted, that §60A-2-204 of said code be amended and reenacted, and that §60A-4-401 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-1-101. 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 in
9 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 or
12 dispenser. It does not include a common or contract carrier,
13 public warehouseman or employee of the carrier or
14 warehouseman.

15 (c) "Analogue" means a substance that, in relation to a
16 controlled substance, has a substantially similar chemical
17 structure.

18 (d) "Bureau" means the "Bureau of Narcotics and
19 Dangerous Drugs, United States Department of Justice" or its
20 successor agency.

21 (e) "Controlled substance" means a drug, substance or
22 immediate precursor in Schedules I through V of article two.

23 (f) "Counterfeit substance" means a controlled substance
24 which, or the container or labeling of which, without

25 authorization, bears the trademark, trade name or other
26 identifying mark, imprint, number or device, or any likeness
27 thereof, of a manufacturer, distributor or dispenser other than
28 the person who in fact manufactured, distributed or dispensed
29 the substance.

30 (g) "Imitation controlled substance" means: (1) A
31 controlled substance which is falsely represented to be a
32 different controlled substance; (2) a drug or substance which
33 is not a controlled substance but which is falsely represented
34 to be a controlled substance; or (3) a controlled substance or
35 other drug or substance or a combination thereof which is
36 shaped, sized, colored, marked, imprinted, numbered,
37 labeled, packaged, distributed or priced so as to cause a
38 reasonable person to believe that it is a controlled substance.

39 (h) "Deliver" or "delivery" means the actual, constructive
40 or attempted transfer from one person to another of: (1) A
41 controlled substance, whether or not there is an agency
42 relationship; (2) a counterfeit substance; or (3) an imitation
43 controlled substance.

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

49 (j) "Dispenser" means a practitioner who dispenses.

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

53 (l) "Distributor" means a person who distributes.

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

65 (n) "Immediate derivative" means a substance which the
66 "West Virginia Board of Pharmacy" has found to be and by
67 rule designates as being the principal compound or any
68 analogue of the parent compound manufactured from a
69 known controlled substance primarily for use and which has
70 equal or similar pharmacologic activity as the parent
71 compound which is necessary to prevent, curtail or limit
72 manufacture.

73 (o) "Immediate precursor" means a substance which the
74 "West Virginia Board of Pharmacy" (hereinafter in this act
75 referred to as the State Board of Pharmacy) has found to be
76 and by rule designates as being the principal compound
77 commonly used or produced primarily for use and which is
78 an immediate chemical intermediary used or likely to be used
79 in the manufacture of a controlled substance, the control of
80 which is necessary to prevent, curtail or limit manufacture.

81 (p) "Manufacture" means the production, preparation,
82 propagation, compounding, conversion or processing of a
83 controlled substance, either directly or indirectly or by
84 extraction from substances of natural origin, or independently
85 by means of chemical synthesis, or by a combination of
86 extraction and chemical synthesis, and includes any

87 packaging or repackaging of the substance or labeling or
88 relabeling of its container, except that this term does not
89 include the preparation, compounding, packaging or labeling
90 of a controlled substance:

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

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

97 (q) "Marijuana" means all parts of the plant "Cannabis
98 sativa L.", whether growing or not; the seeds thereof; the
99 resin extracted from any part of the plant; and every
100 compound, manufacture, salt, immediate derivative, mixture
101 or preparation of the plant, its seeds or resin. It does not
102 include the mature stalks of the plant, fiber produced from
103 the stalks, oil or cake made from the seeds of the plant, any
104 other compound, manufacture, salt, immediate derivative,
105 mixture or preparation of the mature stalks (except the resin
106 extracted therefrom), fiber, oil or cake, or the sterilized seed
107 of the plant which is incapable of germination.

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

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

115 (2) Any salt, compound, isomer, immediate derivative or
116 preparation thereof which is chemically equivalent or

117 identical with any of the substances referred to in paragraph
118 (1) of this subdivision, but not including the isoquinoline
119 alkaloids of opium.

120 (3) Opium poppy and poppy straw.

121 (4) Coca leaves and any salt, compound, immediate
122 derivative or preparation of coca leaves and any salt,
123 compound, isomer, immediate derivative or preparation
124 thereof which is chemically equivalent or identical with any
125 of these substances, but not including decocainized coca
126 leaves or extractions of coca leaves which do not contain
127 cocaine or ecgonine.

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

137 (t) "Opium poppy" means the plant of the species
138 "Papaver somniferum L.", except its seeds.

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

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

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

148 (x) "Practitioner" means:

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

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

159 (y) "Production" includes the manufacture, planting,
160 cultivation, growing or harvesting of a controlled substance.

161 (z) "State", when applied to a part of the United States,
162 includes any state, district, commonwealth, territory, insular
163 possession thereof and any area subject to the legal authority
164 of the United States of America.

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

§60A-2-204. Schedule I.

1 (a) Schedule I shall consist of the drugs and other
2 substances, by whatever official name, common or usual
3 name, chemical name, or brand name designated, listed in
4 this section.

5 (b) Opiates. Unless specifically excepted or unless listed
6 in another schedule, any of the following opiates, including
7 their isomers, esters, ethers, salts and salts of isomers, esters
8 and ethers, whenever the existence of such isomers, esters,
9 ethers and salts is possible within the specific chemical
10 designation (for purposes of subdivision (34) of this
11 subsection only, the term isomer includes the optical and
12 geometric isomers):

13 (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-
14 phenethyl) 4-piperidiny]-N-phenylacetamide);

15 (2) Acetylmethadol;

16 (3) Allylprodine;

17 (4) Alphacetylmethadol (except levoalphacetylmethadol
18 also known as levo-alpha-acetylmethadol, levomethadyl
19 acetate, or LAAM);

20 (5) Alphameprodine;

21 (6) Alphamethadol;

22 (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-
23 phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-
24 phenylethyl)-4-(N- propanilido) piperidine);

25 (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)
26 ethyl- 4-piperidiny]-N-phenylpropanamide);

27 (9) Benzethidine;

28 (10) Betacetylmethadol;

29 (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-
30 phenethyl)-4- piperidiny]-N-phenylpropanamide);

31 (12) Beta-hydroxy-3-methylfentanyl (other name:
32 N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]
33 -N-phenylpropanamide);

34 (13) Betameprodine;

35 (14) Betamethadol;

36 (15) Betaprodine;

37 (16) Clonitazene;

38 (17) Dextromoramide;

39 (18) Diampromide;

40 (19) Diethylthiambutene;

41 (20) Difenoxyin;

42 (21) Dimenoxadol;

43 (22) Dimepheptanol;

44 (23) Dimethylthiambutene;

45 (24) Dioxaphetyl butyrate;

46 (25) Dipipanone;

47 (26) Ethylmethylthiambutene;

48 (27) Etonitazene;

49 (28) Etoxicridine;

- 50 (29) Furethidine;
- 51 (30) Hydroxypethidine;
- 52 (31) Ketobemidone;
- 53 (32) Levomoramide;
- 54 (33) Levophenacylmorphan;
- 55 (34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-
56 piperidyl]-N-phenylpropanamide);
- 57 (35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)
58 ethyl-4- piperidinyl]-N-phenylpropanamide);
- 59 (36) Morpheridine;
- 60 (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- 61 (38) Noracymethadol;
- 62 (39) Norlevorphanol;
- 63 (40) Normethadone;
- 64 (41) Norpipanone;
- 65 (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-
66 phenethyl)-4-piperidinyl] propanamide);
- 67 (43) PEPAP (1-(2-phenethyl)-4-phenyl-4-
68 acetoxypiperidine);
- 69 (44) Phenadoxone;

70 (45) Phenampromide;

71 (46) Phenomorphan;

72 (47) Phenoperidine;

73 (48) Pir tramide;

74 (49) Proheptazine;

75 (50) Properidine;

76 (51) Propiram;

77 (52) Racemoramide;

78 (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-
79 piperidiny]-propanamide);

80 (54) Tilidine;

81 (55) Trimeperidine.

82 (c) Opium derivatives. -- Unless specifically excepted or
83 unless listed in another schedule, any of the following opium
84 immediate derivatives, its salts, isomers and salts of isomers
85 whenever the existence of such salts, isomers and salts of
86 isomers is possible within the specific chemical designation:

87 (1) Acetorphine;

88 (2) Acetyldihydrocodeine;

89 (3) Benzylmorphine;

90 (4) Codeine methylbromide;

- 91 (5) Codeine-N-Oxide;
- 92 (6) Cyprenorphine;
- 93 (7) Desomorphine;
- 94 (8) Dihydromorphine;
- 95 (9) Drotebanol;
- 96 (10) Etorphine (except HCl Salt);
- 97 (11) Heroin;
- 98 (12) Hydromorphenol;
- 99 (13) Methyldesorphine;
- 100 (14) Methyldihydromorphine;
- 101 (15) Morphine methylbromide;
- 102 (16) Morphine methylsulfonate;
- 103 (17) Morphine-N-Oxide;
- 104 (18) Myrophine;
- 105 (19) Nicocodeine;
- 106 (20) Nicomorphine;
- 107 (21) Normorphine;
- 108 (22) Pholcodine;

109 (23) Thebacon.

110 (d) Hallucinogenic substances. -- Unless specifically
111 excepted or unless listed in another schedule, any material,
112 compound, mixture or preparation, which contains any
113 quantity of the following hallucinogenic substances, or which
114 contains any of its salts, isomers and salts of isomers,
115 whenever the existence of such salts, isomers, and salts of
116 isomers is possible within the specific chemical designation
117 (for purposes of this subsection only, the term "isomer"
118 includes the optical, position and geometric isomers):

119 (1) Alpha-ethyltryptamine; some trade or other names:
120 etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine;
121 3-(2-aminobutyl) indole; alpha-ET; and AET;

122 (2) 4-bromo-2,5-dimethoxy-amphetamine; some trade or
123 other names: 4-bromo-2,5-dimethoxy-alpha-
124 methylphenethylamine; 4-bromo-2,5-DMA;

125 (3) 4-Bromo-2,5-dimethoxyphenethylamine; some trade
126 or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-
127 aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;

128 (4) 2,5-dimethoxyamphetamine; some trade or other
129 names: 2,5-dimethoxy-alpha-methylphenethylamine;
130 2,5-DMA;

131 (5) 2,5-dimethoxy-4-ethylamphet-amine; some trade or
132 other names: DOET;

133 (6) 4-methoxyamphetamine; some trade or other names:
134 4-methoxy-alpha-methylphenethylamine;
135 paramethoxyamphetamine; PMA;

136 (7) 5-methoxy-3,4-methylenedioxy-amphetamine;

137 (8) 4-methyl-2,5-dimethoxy-amphetamine; some trade
138 and other names: 4-methyl-2,5-dimethoxy-alpha-
139 methylphenethylamine; "DOM"; and "STP";

140 (9) 3,4-methylenedioxy amphetamine;

141 (10) 3,4-methylenedioxymethamphetamine (MDMA);

142 (11) 3,4-methylenedioxy-N-ethylamphetamine (also
143 known as N- ethyl-alpha-methyl-3,4 (methylenedioxy)
144 phenethylamine, N-ethyl MDA, MDE, MDEA);

145 (12) N-hydroxy-3,4-methylenedioxyamphetamine (also
146 known as N- hydroxy-alpha-methyl-3,4 (methylenedioxy)
147 phenethylamine, and N- hydroxy MDA);

148 (13) 3,4,5-trimethoxy amphetamine;

149 (14) Bufotenine; some trade and other names: 3-
150 (beta-Dimethylaminoethyl)-5-hydroxyindole;3-(2-dimethyl
151 aminoethyl) -5-indolol; N, N-dimethylserotonin;
152 5-hydroxy-N,N- dimethyltryptamine; mappine;

153 (15) Diethyltryptamine; some trade and other names:
154 N, N-Diethyltryptamine; DET;

155 (16) Dimethyltryptamine; some trade or other names:
156 DMT;

157 (17) Ibogaine; some trade and other names: 7-Ethyl-6,
158 6 Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,
159 9-methano-5H- pyrido [1', 2': 1, 2] azepino [5,4-b] indole;
160 Tabernanthe iboga;

161 (18) Lysergic acid diethylamide;

162 (19) Marijuana;

163 (20) Mescaline;

164 (21) Parahexyl-7374; some trade or other names:
165 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-
166 6H-dibenzo [b,d] pyran; Synhexyl;

167 (22) Peyote; meaning all parts of the plant presently
168 classified botanically as *Lophophora williamsii* Lemaire,
169 whether growing or not, the seeds thereof, any extract from
170 any part of such plant, and every compound, manufacture,
171 salts, immediate derivative, mixture or preparation of such
172 plant, its seeds or extracts;

173 (23) N-ethyl-3-piperidyl benzilate;

174 (24) N-methyl-3-piperidyl benzilate;

175 (25) Psilocybin;

176 (26) Psilocyn;

177 (27) Tetrahydrocannabinols; synthetic equivalents of the
178 substances contained in the plant, or in the resinous
179 extractives of *Cannabis*, sp. and/or synthetic substances,
180 immediate derivatives and their isomers with similar
181 chemical structure and pharmacological activity such as the
182 following:

183 delta-1 Cis or trans tetrahydrocannabinol, and their
184 optical isomers;

185 delta-6 Cis or trans tetrahydrocannabinol, and their
186 optical isomers;

187 delta-3,4 Cis or trans tetrahydrocannabinol, and its
188 optical isomers;

189 (Since nomenclature of these substances is not
190 internationally standardized, compounds of these structures,
191 regardless of numerical designation of atomic positions
192 covered.)

193 (28) Ethylamine analog of phencyclidine; some trade or
194 other names: N-ethyl-1-phenylcyclohexylamine,
195 (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)
196 ethylamine, cyclohexamine, PCE;

197 (29) Pyrrolidine analog of phencyclidine; some trade or
198 other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy,
199 PHP;

200 (30) Thiophene analog of phencyclidine; some trade or
201 other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine,
202 2-thienylanalog of phencyclidine; TCP, TCP;

203 (31) 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other
204 names: TCPy.

205 (32) Synthetic Cannabinoids as follows:

206 (a) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-
207 2-yl)phenol {also known as CP 47,497 and homologs};

208 (b) rel-2-[(1S,3R)-3-hydroxycyclohexyl]-5-(2-
209 methylnonan-2-yl)phenol {also known as CP 47,497-C8
210 homolog};

211 (c) [(6aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-
212 methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-
213 1-ol] {also known as HU-210};

- 214 (d) (dexanabinol, (6a*S*,10a*S*)-9-(hydroxymethyl)-6,6-
215 dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-
216 tetrahydrobenzol[*c*]chromen-1-ol) {also known as HU-211};
- 217 (e) 1-Pentyl-3-(1-naphthoyl)indole {also known as JWH-
218 018};
- 219 (f) 1-Butyl-3-(1-naphthoyl)indole {also known as JWH-
220 073};
- 221 (g) (2-methyl-1-propyl-1*H*-indol-3-yl)-1naphthalenyl-
222 methanone {also known as JWH-015};
- 223 (h) (1-hexyl-1*H*-indol-3-yl)-1-naphthalenyl-methanone
224 {also known as JWH-019};
- 225 (i) [1-[2-(4-morpholinyl)ethyl]-1*H*-indol-3-yl]-1-
226 naphthalenyl-methanone {also known as JWH-200};
- 227 (j) 1-(1-pentyl-1*H*-indol-3-yl)-2-(3-hydroxyphenyl)-
228 ethanone {also known as JWH-250};
- 229 (k) 2-((1*S*,2*S*,5*S*)-5-hydroxy-2-(3-hydroxypropyl)
230 cyclohexyl)-5-(2-methyloctan-2-yl)phenol {also known as
231 CP 55,940};
- 232 (l) (4-methyl-1-naphthalenyl)(1-pentyl-1*H*-indol-3-yl)-
233 methanone {also known as JWH-122};
- 234 (m) (4-methyl-1-naphthalenyl)(1-pentyl-1*H*-indol-3-yl)-
235 methanone {also known as JWH-398};
- 236 (n) (4-methoxyphenyl)(1-pentyl-1*H*-indol-3-
237 yl)methanone {also known as RCS-4};
- 238 (o) 1-(1-(2-cyclohexylethyl)-1*H*-indol-3-yl)-2-(2-
239 methoxyphenyl)ethanone {also known as RCS-8}; and

240 (Since nomenclature of these substances is not
241 internationally standardized, any immediate precursor or
242 immediate derivative of these substances shall be covered).

243 (e) Depressants. Unless specifically excepted or unless
244 listed in another schedule, any material, compound, mixture,
245 or preparation which contains any quantity of the following
246 substances having a depressant effect on the central nervous
247 system, including its salts, isomers and salts of isomers
248 whenever the existence of such salts, isomers and salts of
249 isomers is possible within the specific chemical designation:

250 (1) Mecloqualone;

251 (2) Methaqualone.

252 (f) Stimulants. Unless specifically excepted or unless
253 listed in another schedule, any material, compound, mixture,
254 or preparation which contains any quantity of the following
255 substances having a stimulant effect on the central nervous
256 system, including its salts, isomers, and salts of isomers:

257 (1) Aminorex; some other names: aminoxaphen;
258 2-amino-5- phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-
259 2-oxazolamine;

260 (2) Cathinone; some trade or other names:
261 2-amino-1-phenyl-1- propanone, alpha-aminopropiophenone,
262 2-aminopropiophenone, and norephedrone;

263 (3) Fenethylamine;

264 (4) Methcathinone, its immediate precursors and
265 immediate derivatives, its salts, optical isomers and salts of
266 optical isomers; some other names: (2-(methylamino)-
267 propiophenone; alpha-(methylamino) propiophenone;

268 2-(methylamino)-1-phenylpropan-1-one; alpha--
269 methylaminopropiophenone; monomethylpropion; 3,4-
270 methylenedioxypropylvalerone and/or mephedrone; 3,4-
271 methylenedioxypropylvalerone (MPVD); ephedrone; -
272 methylcathinone; methylcathinone; AL-464; AL-422; AL-
273 463 and UR1432;

274 (5) (+-) cis-4-methylaminorex; (+-)cis-4,5-dihydro-4-
275 methyl- 5-phenyl-2-oxazolamine);

276 (6) N-ethylamphetamine;

277 (7) N,N-dimethylamphetamine; also known as
278 N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-
279 trimethylphenethylamine.

280 (g) Temporary listing of substances subject to emergency
281 scheduling. Any material, compound, mixture or preparation
282 which contains any quantity of the following substances:

283 (1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide
284 (benzylfentanyl), its optical isomers, salts, and salts of
285 isomers.

286
287 (2)N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanam
288 ide (thenylfentanyl), its optical isomers, salts and salts of
289 isomers.

290 (8) N-benzylpiperazine, also known as BZP.

ARTICLE 4. OFFENSES AND PENALTIES.

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

1 (a) Except as authorized by this act, it is unlawful for any
2 person to manufacture, deliver, or possess with intent to

3 manufacture or deliver, a controlled substance.

4 Any person who violates this subsection with respect to:

5 (i) A controlled substance classified in Schedule I or II,
6 which is a narcotic drug, is guilty of a felony and, upon
7 conviction, may be imprisoned in the state correctional
8 facility for not less than one year nor more than fifteen years,
9 or fined not more than twenty-five thousand dollars, or both;

10 (ii) Any other controlled substance classified in Schedule
11 I, II or III is guilty of a felony and, upon conviction, may be
12 imprisoned in the state correctional facility for not less than
13 one year nor more than five years, or fined not more than
14 fifteen thousand dollars, or both;

15 (iii) A substance classified in Schedule IV is guilty of a
16 felony and, upon conviction, may be imprisoned in the state
17 correctional facility for not less than one year nor more than
18 three years, or fined not more than ten thousand dollars, or
19 both;

20 (iv) A substance classified in Schedule V is guilty of a
21 misdemeanor and, upon conviction, may be confined in jail
22 for not less than six months nor more than one year, or fined
23 not more than five thousand dollars, or both: *Provided*, That
24 for offenses relating to any substance classified as Schedule
25 V in article ten of this chapter, the penalties established in
26 said article apply.

27 (b) Except as authorized by this act, it is unlawful for any
28 person to create, deliver, or possess with intent to deliver, a
29 counterfeit substance.

30 Any person who violates this subsection with respect to:

31 (i) A counterfeit substance classified in Schedule I or II,
32 which is a narcotic drug, is guilty of a felony and, upon
33 conviction, may be imprisoned in the state correctional
34 facility for not less than one year nor more than fifteen years,
35 or fined not more than twenty-five thousand dollars, or both;

36 (ii) Any other counterfeit substance classified in Schedule
37 I, II or III is guilty of a felony and, upon conviction, may be
38 imprisoned in the state correctional facility for not less than
39 one year nor more than five years, or fined not more than
40 fifteen thousand dollars, or both;

41 (iii) A counterfeit substance classified in Schedule IV is
42 guilty of a felony and, upon conviction, may be imprisoned
43 in the state correctional facility for not less than one year nor
44 more than three years, or fined not more than ten thousand
45 dollars, or both;

46 (iv) A counterfeit substance classified in Schedule V is
47 guilty of a misdemeanor and, upon conviction, may be
48 confined in jail for not less than six months nor more than
49 one year, or fined not more than five thousand dollars, or
50 both: *Provided*, That for offenses relating to any substance
51 classified as Schedule V in article ten of this chapter, the
52 penalties established in said article apply.

53 (c) It is unlawful for any person knowingly or
54 intentionally to possess a controlled substance unless the
55 substance was obtained directly from, or pursuant to, a valid
56 prescription or order of a practitioner while acting in the
57 course of his professional practice, or except as otherwise
58 authorized by this act. Any person who violates this
59 subsection is guilty of a misdemeanor, and disposition may
60 be made under section four hundred seven of this article,
61 subject to the limitations specified in said section, or upon
62 conviction, such person may be confined in jail not less than

63 ninety days nor more than six months, or fined not more than
64 one thousand dollars, or both: *Provided*, That
65 notwithstanding any other provision of this act to the
66 contrary, any first offense for possession of Synthetic
67 Cannabinoids as defined by subdivision (32) subsection, (d),
68 section 101, article 1 of this chapter; 3,4-
69 methylenedioxypropylvalerone (MPVD) and 3,4-
70 methylenedioxypropylvalerone and/or mephedrone as defined
71 in subsection (f), section 101, article 1 of this chapter; or less
72 than 15 grams of marijuana, shall be disposed of under said
73 section.

74 (d) It is unlawful for any person knowingly or
75 intentionally:

76 (1) To create, distribute or deliver, or possess with intent
77 to distribute or deliver, an imitation controlled substance; or

78 (2) To create, possess or sell or otherwise transfer any
79 equipment with the intent that such equipment shall be used
80 to apply a trademark, trade name, or other identifying mark,
81 imprint, number or device, or any likeness thereof, upon a
82 counterfeit substance, an imitation controlled substance, or
83 the container or label of a counterfeit substance or an
84 imitation controlled substance.

85 (3) Any person who violates this subsection is guilty of
86 a misdemeanor and, upon conviction, may be imprisoned in
87 jail for not less than six months nor more than one year, or
88 fined not more than five thousand dollars, or both. Any
89 person being eighteen years old or more who violates
90 subdivision (1) of this subsection and, in so doing, distributes
91 or delivers an imitation controlled substance to a minor child
92 who is at least three years younger than such person is guilty
93 of a felony and, upon conviction, may be imprisoned in the
94 state correctional facility for not less than one year nor more

95 than three years, or fined not more than ten thousand dollars,
96 or both.

97 (4) The provisions of subdivision (1) of this subsection
98 shall not apply to a practitioner who administers or dispenses
99 a placebo.

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

Michael T. Fenn
Chairman, House Committee

Donald B. Mull
Chairman, Senate Committee

Originating in the House.

To take effect thirty days from passage.

Ernest R. By
Clerk of the House of Delegates

Darrell E. Holmes
Clerk of the Senate

[Signature]
Speaker of the House of Delegates

[Signature]
Acting President of the Senate

The within is approved this the 5th
day of April, 2011.

Earl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

MAR 21 2011

Time 11:05am