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
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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.


As used in this act:

(a) "Administer" means the direct application of a controlled substance whether by injection, inhalation, ingestion or any other means to the body of a patient or research subject by:

(1) A practitioner (or, in his presence, by his authorized agent); or

(2) The patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman.

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

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

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

(f) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without
authorization, bears the trademark, trade name or other
identifying mark, imprint, number or device, or any likeness
thereof, of a manufacturer, distributor or dispenser other than
the person who in fact manufactured, distributed or dispensed
the substance.

(g) "Imitation controlled substance" means: (1) A
controlled substance which is falsely represented to be a
different controlled substance; (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.

(h) "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.

(i) "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.

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

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

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

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

(o) "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.

(p) "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, 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.

(q) "Marijuana" 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, immediate 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, immediate 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.

(r) "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, immediate
derivative or preparation of opium or opiate.

(2) Any salt, compound, isomer, immediate derivative or
preparation thereof which is chemically equivalent or
identical with any of the substances referred to in paragraph
(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, immediate
derivative or preparation of coca leaves and any salt,
compound, isomer, immediate 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 egeonine.

(s) "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 two
hundred one, 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.

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

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

(v) "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.
(w) “Poppy straw” means all parts, except the seeds, of
the opium poppy after mowing.

(x) “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.

(y) “Production” includes the manufacture, planting,
cultivation, growing or harvesting of a controlled substance.

(z) “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.

(aa) “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.

§60A-2-204. Schedule I.

(a) Schedule I shall consist of the drugs and other
substances, by whatever official name, common or usual
name, chemical name, or brand name designated, listed in
this section.
(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their 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 (for purposes of subdivision (34) of this subsection only, the term isomer includes the optical and geometric isomers):

1. Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidanyl]-N-phenylacetamide);

2. Acetylmethadon;

3. Allylprodine;

4. Alphacetylmethadon (except levoalphacetylmethadon also known as levo-alpha-acetylmethadon, levomethadyl acetate, or LAAM);

5. Alphameprodine;

6. Alphamethadon;

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

8. Alpha-methylthiofentanyl(N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);

9. Benzethidine;

10. Betacetylmethadon;

11. Beta-hydroxyfentanyl(N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
(12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidiny1]-N-phenylpropanamide);

(13) Betameprodine;

(14) Betamethadol;

(15) Betaprodine;

(16) Clonitazene;

(17) Dextromoramide;

(18) Diampromide;

(19) Diethylthiambutene;

(20) Difenoxin;

(21) Dimenoxadol;

(22) Dimepeptanol;

(23) Dimethylthiambutene;

(24) Dioxaphetyl butyrate;

(25) Dipipanone;

(26) Ethylmethyliambutene;

(27) Etonitazene;

(28) Etoxeridine;
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        acetoxy piperidine);
69  (44) Phenadoxone;
(45) Phenampromide;

(46) Phenomorphan;

(47) Phenoperidine;

(48) Piritramide;

(49) Proheptazine;

(50) Properidine;

(51) Propiram;

(52) Racemoramide;

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

(54) Tilidine;

(55) Trimeperidine.

c) Opium derivatives. -- Unless specifically excepted or unless listed in another schedule, any of the following opium immediate 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) Dihydromorphine;
(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) Myrophine;
(19) Nicocodeine;
(20) Nicomorphine;
(21) Normorphine;
(22) Pholcodine;
(23) Thebacon.

(d) Hallucinogenic substances. -- 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 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 (for purposes of this subsection only, the term "isomer" includes the optical, position and geometric isomers):

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

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

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

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

(5) 2,5-dimethoxy-4-ethylamphetamine; some trade or other names: DOET;

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

(7) 5-methyloxy-3, 4-methylenedioxy-amphetamine;
(8) 4-methyl-2,5-dimethoxy-amphetamine; some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; “DOM”; and “STP”;

(9) 3,4-methylenedioxy amphetamine;

(10) 3,4-methylenedioxyxymethamphetamine (MDMA);

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

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

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

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

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

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

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

(18) Lysergic acid diethylamide;
162  (19) Marijuana;

163  (20) Mescaline;

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

167  (22) Peyote; meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, immediate derivative, mixture or preparation of such 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 substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, immediate derivatives and their isomers with similar chemical structure and pharmacological activity such as the following:

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

185  delta-6 Cis or trans tetrahydrocannabinol, and their optical isomers;
delta-3,4 Cis or trans tetrahydrocannabinol, and its optical isomers;

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

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

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

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

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

(32) Synthetic Cannabinoids as follows:

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

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

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

(e) 1-Pentyl-3-(1-naphthoyl)indole {also known as JWH-018};

(f) 1-Butyl-3-(1-naphthoyl)indole {also known as JWH-073};

(g) (2-methyl-1-propyl-1H-indol-3-yl)-1-napthalenyl-methanone {also known as JWH-015};

(h) (1-hexyl-1H-indol-3-yl)-1-napthalenyl-methanone {also known as JWH-019};

(i) [1-[2-(4-morpholinyl)ethyl]-1H-indol-3-yl]-1-napthalenyl-methanone {also known as JWH-200};

(j) 1-(1-pentyl-1H-indol-3-yl)-2-(3-hydroxyphenyl)ethanone {also known as JWH-250};

(k) 2-((1S,2S,5S)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl)-5-(2-methyloctan-2-yl)phenol {also known as CP 55,940};

(l) (4-methyl-1-napthalenyl)(1-pentyl-1H-indol-3-yl)-methanone {also known as JWH-122};

(m) (4-methyl-1-napthalenyl)(1-pentyl-1H-indol-3-yl)-methanone {also known as JWH-398};

(n) (4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone {also known as RCS-4};

(o) 1-((2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-methoxyphenyl)ethanone {also known as RCS-8}; and
(Since nomenclature of these substances is not
internationally standardized, any immediate precursor or
immediate derivative of these substances shall be covered).

(e) Depressants. Unless specifically excepted or unless
listed in another schedule, any material, compound, mixture,
or preparation which contains any quantity of the following
substances having a depressant effect on the central nervous
system, including 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;

(2) Methaqualone.

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

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

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

(3) Fenethylline;

(4) Methcathinone, its immediate precursors and
immediate derivatives, its salts, optical isomers and salts of
optical isomers; some other names: (2-(methylamino)-
propiophenone; alpha-(methylamino) propiophenone;
268  2-(methylamino)-1-phenylpropan-1-one; alpha-
269  methylaminopropiophenone; monomethylpropion; 3,4-
270  methylenedioxyxpyrovalerone and/or mephedrone; 3,4-
271  methylenedioxyxpyrovalerone (MPVD); ephedrine; –
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  (2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanam
287  ide (thenylfentanyl), its optical isomers, salts and salts of
288  isomers.
289  (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
manufacture or deliver, a controlled substance.

Any person who violates this subsection with respect to:

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

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

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

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

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

Any person who violates this subsection with respect to:
(i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(ii) Any other counterfeit substance classified in Schedule I, II or III is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than five years, or fined not 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 state correctional facility 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 jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both: Provided, That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in said article apply.

(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 four hundred seven of this article, subject to the limitations specified in said section, or upon conviction, such person may be confined in 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 Synthetic
Cannabinoids as defined by subdivision (32) subsection, (d),
section 101, article 1 of this chapter; 3,4-
methylenedioxyppyrovalerone (MPVD) and 3,4-
methylenedioxyppyrovalerone and/or mephedrone as defined
in subsection (f), section 101, article 1 of this chapter; or less
than 15 grams of marijuana, shall be disposed of under said
section.

(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
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 (1) 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
state correctional facility 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 (1) 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.

Michael J. Ford
Chairman, House Committee

Howard Mill
Chairman, Senate Committee

Originating in the House.

To take effect thirty days from passage.

Sergeant at Arms
Clerk of the House of Delegates

Darrell C. Clarke
Clerk of the Senate

Speaker of the House of Delegates

Jeffrey D. Kittle
Acting President of the Senate

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

Earl Ray Tomblin
Governor
PRESENTED TO THE GOVERNOR

MAR 2 1 2011

Time 11:05 AM