

# CHAPTER 5D CONTROLLED SUBSTANCES

<b>ARTICLE 1. DEFINITIONS.</b> .....	1
<b>ARTICLE 2. STANDARDS AND SCHEDULES.</b> .....	5
<b>ARTICLE 3. OFFENSES AND PENALTIES.</b> .....	25
<b>ARTICLE 4. METHAMPHETAMINE LAB ERADICATION ACT.</b> .....	30
<b>ARTICLE 5. DRUG PARAPHERNALIA.</b> .....	30

## Article 1. Definitions.

### Section 5D-1-1. Definitions.

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) "Bureau" means the "Bureau of Narcotics and Dangerous Drugs, United States Department of Justice" or its successor agency.
- (d) "Controlled substance" means a drug, substance or immediate precursor in Schedules I through V of article two.
- (e) "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.
- (f) "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

## Controlled Substances

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

## Ronceverte Municipal Code

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, 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) "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, 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 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, 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

## Controlled Substances

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 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.
- (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.
- (x) "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.
- (y) "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.

*For State Law basis of this section, see WV Code §60A-1-101.*

## **Article 2. Standards and Schedules.**

### **Section 5D-2-1. Nomenclature.**

The controlled substances listed in the schedules in this article are included by whatever official, common, usual, chemical or trade name designated.

*For State Law basis of this section, see WV Code §60A-2-202.*

### **Section 5D-2-2. Schedule I criteria.**

The state board of pharmacy shall recommend to the Legislature that a substance be included in Schedule I if it finds that the substance:

- (a) Has high potential for abuse; and
- (b) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

*For State Law basis of this section, see WV Code §60A-2-203.*

### **Section 5D-2-3. 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-piperidinyl]-N-phenylacetamide);
  - (2) Acetylmethadol;
  - (3) Allylprodine;
  - (4) Alphacetylmethadol (except levoalphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

## Controlled Substances

- (5) Alphameprodine;
- (6) Alphamethadol;
- (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) Betacetylmethadol;
- (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-piperidinyl]-N-phenylpropanamide);
- (13) Betameprodine;
- (14) Betamethadol;
- (15) Betaprodine;
- (16) Clonitazene;
- (17) Dextromoramide;
- (18) Diampromide;
- (19) Diethylthiambutene;
- (20) Difenoazin;
- (21) Dimenoxadol;
- (22) Dimepheptanol;
- (23) Dimethylthiambutene;
- (24) Dioxaphetyl butyrate;
- (25) Dipipanone;

## Ronceverte Municipal Code

- (26) Ethylmethylthiambutene;
- (27) Etonitazene;
- (28) Etoperidone;
- (29) Furethidine;
- (30) Hydroxypethidine;
- (31) Ketobemidone;
- (32) Levomoramide;
- (33) Levophenacymorphan;
- (34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4- piperidyl]-N-phenylpropanamide);
- (35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl) ethyl-4- piperidiny]-N-phenylpropanamide);
- (36) Morpheridine;
- (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (38) Noracymethadol;
- (39) Norlevorphanol;
- (40) Normethadone;
- (41) Norpipanone;
- (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2- phenethyl)-4- piperidiny] propanamide);
- (43) PEPAP(1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- (44) Phenadoxone;
- (45) Phenampromide;
- (46) Phenomorphan;

## Controlled Substances

- (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 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;

## Ronceverte Municipal Code

- (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;

## Controlled Substances

- (5) 2,5-dimethoxy-4-ethylamphet-amine; some trade or other names: DOET;
- (6) 4-methoxyamphetamine; some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA;
- (7) 5-methoxy-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-methylenedioxymethamphetamine (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-dimethylaminoethyl) -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;
- (19) Marihuana;
- (20) Mescaline;
- (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;

## Ronceverte Municipal Code

- (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, derivative, mixture or preparation of such plant, its seeds or extracts;
  - (23) N-ethyl-3-piperidyl benzilate;
  - (24) N-methyl-3-piperidyl benzilate;
  - (25) Psilocybin;
  - (26) Psilocyn;
  - (27) Tetrahydrocannabinols; synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, derivatives and their isomers with similar chemical structure and pharmacological activity such as the following:
    - delta-1 Cis or trans tetrahydrocannabinol, and their optical isomers;
    - 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-thienyl analog of phencyclidine; TCP, TCP;
  - (31) 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other names: TCPy.
- (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;

## Controlled Substances

- (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) Fenethylamine;
  - (4) Methcathinone, its salts, optical isomers and salts of optical isomers; some other names: (2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1- one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL- 463 and UR1432;
  - (5) (+-) cis-4-methylaminorex; ((+)-cis-4,5-dihydro-4-methyl- 5-phenyl-2-oxazolamine);
  - (6) N-ethylamphetamine;
  - (7) N,N-dimethylamphetamine; also known as N,N-alpha- trimethylbenzeneethanamine; N,N-alpha-trimethylphenethylamine.
- (g) *Temporary listing of substances subject to emergency scheduling.* Any material, compound, mixture or preparation which contains any quantity of the following substances:
  - (1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers.
  - (2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thethylfentanyl), its optical isomers, salts and salts of isomers.

*For State Law basis of this section, see WV Code §60A-2-204.*

### **Section 5D-2-4. Schedule II criteria.**

The state board of pharmacy shall recommend to the Legislature that a substance be placed in Schedule II if it finds that:

## Ronceverte Municipal Code

- (a) The substance has high potential for abuse;
- (b) The substance has currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions;
- (c) Abuse of the substance may lead to severe psychic or physical dependence.

*For State Law basis of this section, see WV Code §60A-2-205.*

### **Section 5D-2-5. Schedule II.**

- (a) Schedule II consists 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) *Substances, vegetable origin or chemical synthesis.* -- Unless specifically excepted or unless listed in another schedule, any of the following substances 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 excluding apomorphine, thebaine- derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone and naltrexone, and their respective salts, but including the following:
    - (A) Raw opium;
    - (B) Opium extracts;
    - (C) Opium fluid;
    - (D) Powdered opium;
    - (E) Granulated opium;
    - (F) Tincture of opium;
    - (G) Codeine;
    - (H) Ethylmorphine;
    - (I) Etorphine hydrochloride;
    - (J) Hydrocodone;

## Controlled Substances

- (K) Hydromorphone;
  - (L) Metopon;
  - (M) Morphine;
  - (N) Oxycodone;
  - (O) Oxymorphone;
  - (P) Thebaine;
- (2) Any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (1) of this subsection, except that these substances shall not include the isoquinoline alkaloids of opium;
  - (3) Opium poppy and poppy straw;
  - (4) Coca leaves and any salt, compound, derivative or preparation of coca leaves (including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine or ecgonine;
  - (5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).
- (c) *Opiates*. -- Unless specifically excepted or unless 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, dextrophan and levopropoxyphene excepted:
- (1) Alfentanil;
  - (2) Alphaprodine;
  - (3) Anileridine;
  - (4) Bezitramide;
  - (5) Bulk dextropropoxyphene (nondosage forms);

## Ronceverte Municipal Code

- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levo-alphaacetylmethadol; some other names: levo-alpha- acetylmethadol, levomethadyl acetate, LAAM;
- (12) Levomethorphan;
- (13) Levorphanol;
- (14) Metazocine;
- (15) Methadone;
- (16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (17) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- (18) Pethidine; (meperidine);
- (19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4- phenylpiperidine;
- (20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4- carboxylate;
- (21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4- carboxylic acid;
- (22) Phenazocine;
- (23) Piminodine;
- (24) Racemethorphan;
- (25) Racemorphan;
- (26) Remifentanil;

## Controlled Substances

- (27) Sufentanil.
- (d) *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:
- (1) Amphetamine, its salts, optical isomers and salts of its optical isomers;
  - (2) Methamphetamine, its salts, isomers and salts of its isomers;
  - (3) Methylphenidate;
  - (4) Phenmetrazine and its salts.
- (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) Amobarbital;
  - (2) Glutethimide;
  - (3) Pentobarbital;
  - (4) Phencyclidine;
  - (5) Secobarbital.
- (f) Hallucinogenic substances:
- Nabilone: [Another name for nabilone: (+-)-trans-3-(1, 1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo [b,d] pyran-9-one].
- (g) *Immediate precursors*. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:
- (1) Immediate precursor to amphetamine and methamphetamine:
    - (A) Phenylacetone;  
Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;

Ronceverte Municipal Code

- (2) Immediate precursors to phencyclidine (PCP):
  - (A) 1-phenylcyclohexylamine;
  - (B) 1-piperidinocyclohexanecarbonitrile (PCC).

*For State Law basis of this section, see WV Code §60A-2-206.*

**Section 5D-2-6. Schedule III criteria.**

The state board of pharmacy shall recommend to the Legislature that a substance be placed in Schedule III if it finds that:

- (a) The substance has a potential for abuse less than the substances listed in Schedules I and II;
- (b) The substance has currently accepted medical use in treatment in the United States; and
- (c) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

*For State Law basis of this section, see WV Code §60A-2-207.*

**Section 5D-2-7. Schedule III.**

- (a) Schedule III consists 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) 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 (whether optical, position or geometric), and salts of such isomers whenever the existence of the salts, isomers and salts of isomers is possible within the specific chemical designation:
  - (1) Those compounds, mixtures or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures or preparations were listed on the twenty-fifth day of August, one thousand nine hundred seventy-one, as excepted compounds under 21 C.F.R §1308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;
  - (2) Benzphetamine;

## Controlled Substances

- (3) Chlorphentermine;
  - (4) Clortermine;
  - (5) Phendimetrazine;
  - (6) Hydrocodone.
- (c) 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:
- (1) Any compound, mixture or preparation containing:
    - (A) Amobarbital;
    - (B) Secobarbital;
    - (C) Pentobarbital; or any salt of pentobarbital and one or more other active medicinal ingredients which are not listed in any schedule;
  - (2) Any suppository dosage form containing:
    - (A) Amobarbital;
    - (B) Secobarbital;
    - (C) Pentobarbital; or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository;
  - (3) Any substance which contains any quantity of a derivative of barbituric acid or any salt of barbituric acid;
  - (4) Chlorhexadol;
  - (5) Lysergic acid;
  - (6) Lysergic acid amide;
  - (7) Methyprylon;
  - (8) Sulfondiethylmethane;
  - (9) Sulfonethylmethane;

## Ronceverte Municipal Code

- (10) Sulfonmethane;
  - (11) Tiletamine and zolazepam or any salt of tiletamine and zolazepam; some trade or other names for a tiletamine-zolazepam combination product: Telazol; some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone; some trade or other names for zolazepam: 4-(2-fluorophenyl)-6, 8-dihydro-1, 3, 8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one, flupyrzapon;
  - (12) Human growth hormones or anabolic steroids.  
Ketamine, its salts, isomers and salts of isomers, including ketamine hydrochloride.
- (d) Nalorphine.
- (e) Narcotic drugs. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
- (1) Not more than 1.8 grams of codeine per 100 milliliters and not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
  - (2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
  - (3) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
  - (4) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
  - (5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters and not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
  - (6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
  - (7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more

## Controlled Substances

active, nonnarcotic ingredients in recognized therapeutic amounts;

- (8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- (f) Anabolic steroids. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of anabolic steroids, including its salts, isomers and salts of isomers whenever the existence of the salts of isomers is possible within the specific chemical designation.
- (g) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a- tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1- ol or (-)-delta-9- (trans)-tetrahydrocannabinol).

*For State Law basis of this section, see WV Code §60A-2-208.*

### **Section 5D-2-8. Schedule IV criteria.**

The state board of pharmacy shall recommend to the Legislature that a substance be placed in Schedule IV if it finds that:

- (a) The substance has a low potential for abuse relative to substances in Schedule III;
- (b) The substance has currently accepted medical use in treatment in the United States; and
- (c) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

*For State Law basis of this section, see WV Code §60A-2-209.*

### **Section 5D-2-9. Schedule IV.**

- (a) Schedule IV 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) *Narcotic drugs.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
  - (1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

## Ronceverte Municipal Code

- (2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2- diphenyl-3-methyl-2-propionoxybutane).
- (c) *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, 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) Alprazolam;
  - (2) Barbital;
  - (3) Bromazepam;
  - (4) Camazepam;
  - (5) Carisoprodol;
  - (6) Chloral betaine;
  - (7) Chloral hydrate;
  - (8) Chlordiazepoxide;
  - (9) Clobazam;
  - (10) Clonazepam;
  - (11) Clorazepate;
  - (12) Clotiazepam;
  - (13) Cloxazolam;
  - (14) Delorazepam;
  - (15) Diazepam;
  - (16) Estazolam;
  - (17) Ethchlorvynol;
  - (18) Ethinamate;

## Controlled Substances

- (19) Ethyl loflazepate;
- (20) Fludiazepam;
- (21) Flunitrazepam;
- (22) Flurazepam;
- (23) Halazepam;
- (24) Haloxazolam;
- (25) Ketazolam;
- (26) Loprazolam;
- (27) Lorazepam;
- (28) Lormetazepam;
- (29) Mebutamate;
- (30) Medazepam;
- (31) Meprobamate;
- (32) Methohexital;
- (33) Methylphenobarbital (mephobarbital);
- (34) Midazolam;
- (35) Nimetazepam;
- (36) Nitrazepam;
- (37) Nordiazepam;
- (38) Oxazepam;
- (39) Oxazolam;
- (40) Paraldehyde;
- (41) Petrichloral;

## Ronceverte Municipal Code

- (42) Phenobarbital;
  - (43) Pinazepam;
  - (44) Prazepam;
  - (45) Quazepam;
  - (46) Temazepam;
  - (47) Tetrazepam;
  - (48) Triazolam;
  - (49) Zolpidem.
- (d) *Fenfluramine*. Any material, compound, mixture or preparation which contains any quantity of the following substance, including its salts, isomers (whether optical, position or geometric) and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible: Fenfluramine.
- (e) *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) Cathine ((+)-norpseudoephedrine);
  - (2) Diethylpropion;
  - (3) Fencamfamin;
  - (4) Fenproporex;
  - (5) Mazindol;
  - (6) Mefenorex;
  - (7) Pemoline (including organometallic complexes and chelates thereof);
  - (8) Phentermine;
  - (9) Pipradrol;
  - (10) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

## Controlled Substances

- (f) *Other substances.* -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:
- (1) Pentazocine;
  - (2) Butorphanol.

Amyl nitrite, butyl 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.

*For State Law basis of this section, see WV Code §60A-2-210.*

### **Section 5D-2-10. Schedule V.**

The state board of pharmacy shall recommend to the Legislature that a substance be placed in Schedule V if it finds that:

- (a) The substance has a low potential for abuse relative to the controlled substances listed in Schedule IV;
- (b) The substance has currently accepted medical use in treatment in the United States; and
- (c) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

*For State Law basis of this section, see WV Code §60A-2-211.*

### **Section 5D-2-11. Schedule V.**

- (a) Schedule V 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) Narcotic drugs. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following narcotic drugs and their salts, as set forth below:
  - (1) Buprenorphine.
- (c) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts calculated as the free anhydrous base or alkaloid in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal

## Ronceverte Municipal Code

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;
  - (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;
  - (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;
  - (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 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
- (d) Stimulants. -- Unless specifically exempted or excluded 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) Pyrovalerone.
- (e) Any compound, mixture or preparation containing as its single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers except products which are for pediatric use primarily intended for administration to children under the age of twelve: Provided, That neither the offenses set forth in section four hundred one, article four of this chapter, nor the penalties therein, shall be applicable to ephedrine, pseudoephedrine or phenylpropanolamine which shall be subject to the provisions of article ten of this chapter.

*For State Law basis of this section, see WV Code §60A-2-212.*

### **Article 3. Offenses and Penalties.**

#### **Section 5D-3-1. Prohibited Acts A; penalties.**

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

## Controlled Substances

Any person who violates this subsection with respect to:

- (1) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, may be fined not more than five thousand dollars: Provided, That for offenses relating to any substance classified as Schedule V in WV Code 60A-10-1 et seq., 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:

- (1) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, may be fined not more than five thousand dollars: Provided, That for offenses relating to any substance classified as Schedule V in WV Code 60A-10-1 et seq., 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 WV Code 60A-4-407, subject to the limitations specified in said section, or upon conviction, such person may be fined not more than one thousand dollars, or confined in the regional jail not more than ten days, 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 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 the regional jail for not more than ten days, or fined not more than five thousand dollars, or both.

## Ronceverte Municipal Code

*For State Law basis of this section, see WV Code §60A-4-401.*

### **Section 5D-3-2. Prohibited Acts B; penalties.**

- (a) It is unlawful for any person:
  - (1) Who is subject to WV Code 60A-3 et seq. to distribute or dispense a controlled substance in violation of 60A-3-308;
  - (2) Who is a registrant, to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;
  - (3) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under this act;
  - (4) To refuse any entry into any premises for any inspection authorized by this act; or
  - (5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this act for the purpose of using these substances, or which is used for keeping or selling them in violation of this act.
- (b) Any person who violates this section is guilty of a misdemeanor, and, upon conviction, may be confined in the regional jail for not less than ten days nor more than thirty days, or fined not more than twenty-five thousand dollars, or both.
- (c) Notwithstanding any other provision of this act to the contrary, any first offense for distributing less than 15 grams of marijuana without any remuneration shall be disposed of under WV Code 60A-4-407.

*For State Law basis of this section, see WV Code §60A-4-402.*

### **Section 5D-3-3. Prohibition of illegal drug paraphernalia businesses; definitions; places deemed common and public nuisances; abatement; suit to abate nuisances; injunction; search warrants; forfeiture of property; penalties.**

- (a) Any person who conducts, finances, manages, supervises, directs or owns all or part of an illegal drug paraphernalia business is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or confined in jail not less than ten days nor more than thirty days, or both.

## Controlled Substances

- (b) A person violates subsection (a) of this section when:
- (1) The person conducts, finances, manages, supervises, directs, or owns all or part of a business which for profit, in the regular course of business or as a continuing course of conduct, manufactures, sells, stores, possesses, gives away or furnishes objects designed to be primarily useful as drug devices.
  - (2) The person knows or has reason to know that the design of such objects renders them primarily useful as drug devices.
- (c) As used in this section, "drug device" means an object usable for smoking marijuana, for smoking controlled substances defined as tetrahydrocannabinols, or for ingesting or inhaling cocaine, and includes, but is not limited to:
- (1) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
  - (2) Water pipes;
  - (3) Carburetion tubes and devices;
  - (4) Smoking and carburetion masks;
  - (5) 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;
  - (6) Chamber pipes;
  - (7) Carburetor pipes;
  - (8) Electric pipes;
  - (9) Air-driven pipes;
  - (10) Chillums;
  - (11) Bongs;
  - (12) Ice pipes or chillers; and
  - (13) Miniature cocaine spoons, and cocaine vials.

In any prosecution under this section, the question whether an object is a drug device shall be a question of fact.

## Ronceverte Municipal Code

- (d) A place where drug devices are manufactured, sold, stored, possessed, given away or furnished in violation of this section shall be deemed a common or public nuisance. Conveyances or vehicles of any kind shall be deemed places within the meaning of this section and may be proceeded against under the provisions of subsection (e) of this section. A person who shall maintain, or shall aid or abet or knowingly be associated with others in maintaining such common or public nuisance shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by confinement in jail not more than thirty days for each offense, and judgment shall be given that such nuisance be abated or closed as a place for the manufacture, sale, storage, possession, giving away or furnishing of drug devices.
- (e) If there be complaint on oath or affirmation supported by affidavit or affidavits setting forth the facts for such belief that drug devices are being manufactured, sold, kept, stored or in any manner held, used or concealed in a particular house or other place with intent to engage in illegal drug paraphernalia business in violation of law, a municipal judge to whom such complaint is made, if satisfied that there is probable cause for such belief, shall issue a warrant to search such house or other place for such devices. Such warrants, except as herein otherwise provided, shall be issued, directed and executed in accordance with the laws of West Virginia pertaining to search warrants. Warrants issued under this section for the search of any automobile, boat, conveyance or vehicle, or for the search of any trunk, grip or other article of baggage, for such devices, may be executed in any part of the state where the same are overtaken, and shall be made returnable before any municipal judge, within whose jurisdiction such automobile, boat, conveyance, vehicle, trunk, grip or other article of baggage, or any of them, were transported or attempted to be transported.
- An officer charged with the execution of a warrant issued under this section, may, whenever it is necessary, break open and enter a house, or other place herein described.
- (f) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the municipality.

*For State Law basis of this section, see WV Code §60A-4-403a.*

### **Section 5D-3-4. Prohibited acts – Transportation of controlled substances into city; penalties.**

- (a) Except as otherwise authorized by the provisions of this code, it shall be unlawful for any person to transport into this municipality a controlled substance with the intent to deliver the same or with the intent to manufacture a controlled substance.
- (b) Any person who violates this section with respect to:

## Controlled Substances

- (1) A substance classified in Schedule V shall be guilty of a misdemeanor and, upon conviction, may be confined in the regional jail for not less than ten days nor more than thirty days, or fined not more than five thousand dollars, or both: Provided, That for offenses relating to any substance classified as Schedule V in WV Code 60A-10-1 et seq., the penalties established in said article apply.
- (c) The offense established by this section shall be in addition to and a separate and distinct offense from any other offense set forth in this code.

*For State Law basis of this section, see WV Code §60A-4-409.*

### **Article 4. Methamphetamine Lab Eradication Act.**

#### **Section 5D-4-1. Purchase, receipt, acquisition and possession of substances to be used as precursor to manufacture of methamphetamine or another controlled substance; offenses; exceptions; penalties.**

- (a) Any person who within any thirty-day period knowingly purchases, receives or otherwise possesses more than three packages of a drug product containing as its single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine or more than nine grams of ephedrine, pseudoephedrine or phenylpropanolamine in any form shall be guilty of a misdemeanor and, upon conviction, shall be confined in the regional jail for not more than thirty days, fined not more than one thousand dollars, or both.
- (b) The provisions of subsection (a) of this section shall not apply to:
  - (1) Drug products which are for pediatric use primarily intended for administration to children under the age of twelve;
  - (2) Drug products which is unamenable to being used for the manufacture of methamphetamine;
  - (3) Persons lawfully possessing drug products in their capacities as distributors, wholesalers, manufacturers, pharmacists, pharmacy technicians, health care professionals or persons possessing such drug products pursuant to a valid prescription.

*For State Law basis of this section, see WV Code §60A-10-4.*

### **Article 5. Drug Paraphernalia.**

#### **Section 5D-5-1. Items designed or marketed for use with controlled substances; license required.**

## Ronceverte Municipal Code

It shall be unlawful for any person or persons as principal, clerk, agent or servant to sell any items, effect, paraphernalia, accessory or thing which is designed or marketed for use with controlled substances, as defined in 5D-1-1, without obtaining a license therefore from the State Tax Commissioner. Such licenses shall be in addition to any or all other license held by applicant. The fee for such license shall be one hundred fifty dollars.

*For State Law basis of this section, see WV Code §47-19-1.*

### **Section 5D-5-2. Application.**

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 see such items that such person has never been convicted of a drug-related offense.

*For State Law basis of this section, see WV Code §47-19-2.*

### **Section 5D-5-3. Drug paraphernalia defined.**

- (a) The following items, if marketed for use or designed for the 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;

## Controlled Substances

- (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

## Ronceverte Municipal Code

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.

*For State Law basis of this section, see WV Code §47-19-3.*

### **Section 5D-5-4. Penalty.**

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

*For State Law basis of this section, see WV Code §47-19-7.*

### **Section 5D-5-5. Sale of drug paraphernalia at certain events or outdoors prohibited.**

- (a) Any person who attempts to sell or offer for sale drug paraphernalia as such is defined in section 5D-5-3 of this article at any fair, festival, musical or theatrical production or at any event performed or conducted outdoors is guilty of a misdemeanor and, upon conviction, shall be fined not less than ten dollars nor more than five hundred dollars.
- (b) Any person who attempts to sell or offer for sale items as described in section 5D-5-3 of this article at any temporary roadside booth or table along any municipal street or highway is guilty of a misdemeanor and, upon conviction, shall be fined not less than ten dollars nor more than five hundred dollars.

*For State Law basis of this section, see WV Code §47-19-8.*