

1 **H. B. 2961**

2
3 (By Delegates Manypenny, Kump, Wells, Moore, Canterbury,
4 Morgan, Diserio, Stephens, Reynolds and Fragale)

5
6 [Introduced March 19, 2013; referred to the
7 Committee on Health and Human Resources then the
8 Judiciary.]

**FISCAL
NOTE**

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §16-8A-1, §16-8A-2,
12 §16-8A-3, §16-8A-4, §16-8A-5, §16-8A-6, §16-8A-7, §16-8A-8,
13 §16-8A-9, §16-8A-10, §16-8A-11, §16-8A-12, §16-8A-13, §16-8A-
14 14, §16-8A-15, §16-8A-16, §16-8A-17, §16-8A-18, §16-8A-19,
15 §16-8A-20, §16-8A-21, §16-8A-22, §16-8A-23, §16-8A-24, §16-8A-
16 25 and §16-8A-26, all relating to creating the Compassionate
17 Medical Marijuana Use Act of 2013; protecting patients with
18 debilitating medical conditions, as well as their
19 practitioners and providers, from arrest and prosecution,
20 criminal and other penalties, and property forfeiture, if such
21 patients engage in the medical use of marijuana; providing
22 that the West Virginia Department of Health and Human
23 Resources administer the provisions of the act providing short
24 title; legislative findings; definitions; promulgation of
25 rules; requiring annual reports; limitations of act;

1 prohibiting discrimination; authorizing registered compassion
 2 centers; registration of qualifying patients and designated
 3 caregivers; issuance of registry identification cards;
 4 creating oversight committee; creating the "Drug and Abuse
 5 Prevention Fund" to receive sales tax imposed on all sales of
 6 marihuana in this state; providing civil penalties and
 7 criminal penalties; providing affirmative defense and
 8 dismissal for medical marijuana; providing that circuit court
 9 of Kanawha County has jurisdiction to hear petitions and
 10 appeals concerning provisions of act; enforcement; and
 11 severability.

12 *Be it enacted by the Legislature of West Virginia:*

13 That the Code of West Virginia, 1931, as amended, be amended
 14 by adding thereto a new article, designated §16-8A-1, §16-8A-2,
 15 §16-8A-3, §16-8A-4, §16-8A-5, §16-8A-6, §16-8A-7, §16-8A-8, §16-8A-
 16 9, §16-8A-10, §16-8A-11, §16-8A-12, §16-8A-13, §16-8A-14, §16-8A-
 17 15, §16-8A-16, §16-8A-17, §16-8A-18, §16-8A-19, §16-8A-20, §16-8A-
 18 21, §16-8A-22, §16-8A-23, §16-8A-24, §16-8A-25 and §16-8A-26, all
 19 to read as follows:

20 **ARTICLE 8A. COMPASSIONATE MEDICAL MARIJUANA USE ACT OF 2013.**

21 **§16-8A-1. Short title.**

22 This article shall be known as the Medical Marijuana Act.

23 **§16-8A-2. Legislative findings.**

24 (a) Marijuana's recorded use as a medicine goes back nearly

1 five thousand years. Modern medical research has confirmed the
2 beneficial uses for marijuana in treating or alleviating the pain,
3 nausea and other symptoms associated with a variety of debilitating
4 medical conditions, including cancer, multiple sclerosis and
5 HIV/AIDS, as found by the National Academy of Sciences' Institute
6 of Medicine in March 1999.

7 (b) Studies published since the 1999 Institute of Medicine
8 report have continued to show the therapeutic value of marijuana in
9 treating a wide array of debilitating medical conditions. These
10 include relief of the neuropathic pain caused by multiple
11 sclerosis, HIV/AIDS and other illnesses and injuries that often
12 fails to respond to conventional treatments and relief of nausea,
13 vomiting and other side effects of drugs used to treat HIV/AIDS and
14 hepatitis C, increasing the chances of patients continuing on life-
15 saving treatment regimens.

16 (c) Marijuana has many currently accepted medical uses in the
17 United States, having been recommended by thousands of licensed
18 physicians to more than five hundred thousand patients in states
19 with medical marijuana laws. Marijuana's medical utility has been
20 recognized by a wide range of medical and public health
21 organizations, including the American Academy of HIV Medicine, the
22 American College of Physicians, the American Nurses Association,
23 the American Public Health Association, the Leukemia & Lymphoma
24 Society and many others.

1 (d) Data from the Federal Bureau of Investigation's Uniform
2 Crime Reports and the Compendium of Federal Justice Statistics show
3 that approximately ninety-nine out of every one hundred marijuana
4 arrests in the United States are made under state law, rather than
5 under federal law. Consequently, changing state law will have the
6 practical effect of protecting from arrest the vast majority of
7 seriously ill patients who have a medical need to use marijuana.

8 (e) Alaska, Arizona, California, Colorado, Connecticut,
9 Delaware, Hawaii, Maine, Massachusetts, Michigan, Montana, Nevada,
10 New Mexico, New Jersey, Oregon, Vermont, Rhode Island, Washington
11 state, and the District of Columbia, have removed state-level
12 criminal penalties from the medical use and cultivation of
13 marijuana. West Virginia joins in this effort for the health and
14 welfare of its citizens.

15 (f) States are not required to enforce federal law or
16 prosecute people for engaging in activities prohibited by federal
17 law. Therefore, compliance with this article does not put the State
18 of West Virginia in violation of federal law.

19 (g) State law should make a distinction between the medical
20 and nonmedical uses of marijuana. Hence, the purpose of this
21 article is to protect patients with debilitating medical
22 conditions, as well as their practitioners and providers, from
23 arrest and prosecution, criminal and other penalties, and property
24 forfeiture, if such patients engage in the medical use of

1 marijuana.

2 **§16-8A-3. Definitions.**

3 For purposes of this article, unless the context otherwise
4 requires:

5 (a) "Bona fide practitioner-patient relationship" means:

6 (1) A practitioner and patient have a treatment or consulting
7 relationship, during the course of which the physician has
8 completed an assessment of the patient's medical history and
9 current medical condition, including an appropriate personal
10 physical examination;

11 (2) The practitioner has consulted with the patient with
12 respect to the patient's debilitating medical condition; and

13 (3) The physician is available to or offers to provide follow-
14 up care and treatment to the patient, including, but not limited
15 to, patient examinations.

16 (b) "Cardholder" means a qualifying patient or a designated
17 caregiver who has been issued and possesses a valid registry
18 identification card.

19 (c) "Compassion center agent" means a principal officer, board
20 member, employee or agent of a registered compassion center who is
21 twenty one years of age or older and has not been convicted of a
22 disqualifying felony offense.

23 (d) "Debilitating medical condition" means:

24 (1) Cancer, glaucoma, positive status for human

1 immunodeficiency virus, acquired immune deficiency syndrome,
2 hepatitis C, amyotrophic lateral sclerosis, Crohn's disease,
3 agitation of Alzheimer's disease, post-traumatic stress disorder or
4 the treatment of these conditions;

5 (2) A chronic or debilitating disease or medical condition or
6 its treatment that produces one or more of the following: cachexia
7 or wasting syndrome; severe, debilitating pain; severe nausea;
8 seizures; or severe and persistent muscle spasms, including but not
9 limited to those characteristic of multiple sclerosis; or

10 (3) Any other medical condition or its treatment added by the
11 department, as provided for in section seven of this article.

12 (e) "Department" means the West Virginia Department of Health
13 and Human Resources or its successor agency.

14 (f) "Designated caregiver" means a person who:

15 (1) Is at least twenty one years of age;

16 (2) Has agreed to assist with a patient's medical use of
17 marijuana;

18 (3) Has not been convicted of a disqualifying felony offense;
19 and

20 (4) Assists no more than five qualifying patients with their
21 medical use of marijuana.

22 (g) "Disqualifying felony offense" means:

23 (1) A violent crime defined in article two, chapter sixty-one
24 of this code that was classified as a felony in the jurisdiction

1 where the person was convicted; or

2 (2) A violation of a state or federal controlled substance law
3 that was classified as a felony in the jurisdiction where the
4 person was convicted, not including:

5 (A) An offense for which the sentence, including any term of
6 probation, incarceration or supervised release, was completed ten
7 or more years earlier; or

8 (B) An offense that consisted of conduct for which this
9 article would likely have prevented a conviction, but the conduct
10 either occurred prior to the enactment of this article or was
11 prosecuted by an authority other than the State of West Virginia.

12 (h) "Enclosed, locked facility" means a closet, room,
13 greenhouse, building or other enclosed area that is equipped with
14 locks or other security devices that permit access only by the
15 cardholder allowed to cultivate the plants or, in the case of a
16 registered compassion center, the compassion center agents working
17 for the registered compassion center. Two or more registered
18 qualifying patients or registered designated caregivers who reside
19 in the same dwelling and have a registry identification card that
20 removes state penalties for marijuana cultivation may share one
21 enclosed, locked facility for cultivation.

22 (i) "Marijuana" has the meaning given that term in section one
23 hundred one, article one, chapter sixty-a of this code.

24 (j) "Mature marijuana plant" means a marijuana plant that with

1 one or more of the following characteristics:

2 (1) The plant has flowers;

3 (2) The plant is twelve or more inches in height; or

4 (3) The plant is twelve inches or greater in diameter.

5 (k) "Medical use" includes the acquisition, administration,
6 cultivation or manufacture in an enclosed, locked facility;
7 delivery, possession, transfer, transportation or use of marijuana
8 or paraphernalia relating to the administration of marijuana to
9 treat or alleviate a registered qualifying patient's debilitating
10 medical condition or symptoms associated with the patient's
11 debilitating medical condition. It does not include cultivation by
12 a visiting qualifying patient or cultivation by a registered
13 designated caregiver or registered qualifying patient who is not
14 designated as being allowed to cultivate.

15 (l) "Practitioner" means a person who is licensed with
16 authority to prescribe drugs to humans except as otherwise provided
17 in this subsection. If the qualifying patient's debilitating
18 medical condition is post-traumatic stress disorder, the
19 practitioner must be a licensed psychiatrist. In relation to a
20 visiting qualifying patient, "practitioner" means a person who is
21 licensed with authority to prescribe drugs to humans in the state
22 of the patient's residence.

23 (m) "Qualifying patient" means a person who has been diagnosed
24 by a practitioner as having a debilitating medical condition.

1 (n) "Registered compassion center" means a not-for-profit
2 entity registered pursuant to section fifteen of this article that
3 acquires, possesses, cultivates, manufactures, delivers, transfers,
4 transports, sells, supplies or dispenses marijuana, paraphernalia
5 or related supplies and educational materials to registered
6 qualifying patients.

7 (o) "Registry identification card" means a document issued by
8 the department that identifies a person as a registered qualifying
9 patient or registered designated caregiver.

10 (p) "Registered safety compliance facility" means an entity
11 registered under section sixteen of this article by the department
12 to provide one or more of the following services:

13 (1) Testing marijuana produced for medical use, including for
14 potency and contaminants; and

15 (2) Training cardholders and compassion center agents. The
16 training may include, but need not be limited to, information
17 related to one or more of the following:

18 (A) The safe and efficient cultivation, harvesting, packaging,
19 labeling and distribution of marijuana;

20 (B) Security and inventory accountability procedures; and

21 (C) Up-to-date scientific and medical research findings
22 related to medical marijuana.

23 (q) "Safety compliance facility agent" means a principal
24 officer, board member, employee or agent of a registered safety

1 compliance facility who is twenty-one years of age or older and has
2 not been convicted of a disqualifying felony offense.

3 (r) "Seedling" means a marijuana plant that has no flowers, is
4 less than twelve inches in height, and is less than twelve inches
5 in diameter.

6 (s) "Usable marijuana" means the flowers of the marijuana
7 plant and any mixture or preparation thereof, but does not include
8 the seeds, stalks and roots of the plant. It does not include the
9 weight of any nonmarijuana ingredients combined with marijuana,
10 including ingredients added to prepare a topical administration,
11 food or drink.

12 (t) "Verification system" means a phone or Web-based system
13 established and maintained by the department that is available to
14 law-enforcement personnel and compassion center agents on a twenty-
15 four-hour basis for verification of registry identification cards.

16 (u) "Visiting qualifying patient" means a person who:

17 (1) Has been diagnosed with a debilitating medical condition;

18 (2) Possesses a valid registry identification card, or its
19 equivalent, that was issued pursuant to the laws of another state,
20 district, territory, commonwealth, insular possession of the United
21 States or country recognized by the United States that allows the
22 person to use marijuana for medical purposes in the jurisdiction of
23 issuance; and

24 (3) Is not a resident of West Virginia or who has been a

1 resident of West Virginia for less than thirty days.

2 (v) "Written certification" means a document dated and signed
3 by a practitioner, stating that in the practitioner's professional
4 opinion the patient is likely to receive therapeutic or palliative
5 benefit from the medical use of marijuana to treat or alleviate the
6 patient's debilitating medical condition or symptoms associated
7 with the debilitating medical condition. A written certification
8 shall affirm that it is made in the course of a bona fide
9 practitioner-patient relationship and shall specify the qualifying
10 patient's debilitating medical condition.

11 **§16-8A-4. Protections for the medical use of marijuana.**

12 (a) A registered qualifying patient may not be subject to
13 arrest, prosecution or denial of any right or privilege, including
14 but not limited to, civil penalty or disciplinary action by a court
15 or occupational or professional licensing board or bureau, for the
16 medical use of marijuana pursuant to this article, if the
17 registered qualifying patient does not possess more than:

18 (1) Six ounces of usable marijuana; and

19 (2) Twelve mature marijuana plants and twelve seedlings, if
20 the qualifying patient has not specified that a designated
21 caregiver will be allowed under state law to cultivate marijuana
22 for the qualifying patient.

23 (b) A registered designated caregiver may not be subject to
24 arrest, prosecution or denial of any right or privilege, including

1 but not limited to civil penalty or disciplinary action by a court
2 or occupational or professional licensing board or bureau:

3 (1) For assisting a registered qualifying patient to whom he
4 or she is connected through the department's registration process
5 with the medical use of marijuana if the designated caregiver does
6 not possess more than:

7 (A) Six ounces of usable marijuana for each qualifying patient
8 to whom the registered caregiver is connected through the
9 department's registration process; and

10 (B) Twelve mature marijuana plants and twelve seedlings for
11 each registered qualifying patient who has specified that the
12 designated caregiver will be allowed under state law to cultivate
13 marijuana for the qualifying patient.

14 (2) For receiving compensation for costs associated with
15 assisting a registered qualifying patient's medical use of
16 marijuana if the registered designated caregiver is connected to
17 the registered qualifying patient through the department's
18 registration process.

19 (c) All mature marijuana plants and seedlings possessed
20 pursuant to this section must be kept in an enclosed, locked
21 facility, unless they are being transported to a permissible
22 location, including because the cardholder is moving, the
23 registered qualifying patient has changed his or her designation of
24 who can cultivate or the plants are being given to someone allowed

1 to possess them pursuant to this article.

2 (d) A visiting qualifying patient may not be subject to
3 arrest, prosecution or denial of any right or privilege, including
4 but not limited to civil penalty or disciplinary action by a court
5 or occupational or professional licensing board or bureau, for the
6 medical use of marijuana pursuant to this article if the visiting
7 qualifying patient does not possess more than six ounces of usable
8 marijuana.

9 (e) A registered qualifying patient, visiting qualifying
10 patient, or registered designated caregiver may not be subject to
11 arrest, prosecution or denial of any right or privilege, including
12 but not limited to civil penalty or disciplinary action by a court
13 or occupational or professional licensing board or bureau for:

14 (1) Possession of marijuana that is incidental to medical use,
15 but is not mature marijuana plants, seedlings or usable marijuana
16 as defined in this article;

17 (2) Selling, transferring or delivering marijuana seeds
18 produced by the registered qualifying patient, visiting qualifying
19 patient or registered designated caregiver to a registered
20 compassion center;

21 (3) Transferring marijuana to a registered safety compliance
22 facility for testing; or

23 (4) Giving marijuana to a registered qualifying patient, a
24 registered compassion center or a registered designated caregiver

1 for a registered qualifying patient's medical use where nothing of
2 value is transferred in return, or for offering to do the same, if
3 the person giving the marijuana does not knowingly cause the
4 recipient to possess more marijuana than is permitted by this
5 section.

6 (f) (1) There is a presumption that a qualifying patient is
7 engaged in, or a designated caregiver is assisting with, the
8 medical use of marijuana in accordance with this article if the
9 qualifying patient or designated caregiver:

10 (A) Is in possession of a valid registry identification card,
11 or, in the case of a visiting qualifying patient, its equivalent;
12 and

13 (B) Is in possession of an amount of marijuana that does not
14 exceed the amount allowed under section four (a) through (c).

15 (2) The presumption may be rebutted by evidence that conduct
16 related to marijuana was not for the purpose of treating or
17 alleviating the qualifying patient's debilitating medical condition
18 or symptoms associated with the debilitating medical condition in
19 compliance with this article.

20 (g) A practitioner may not be subject to arrest, prosecution
21 or penalty in any manner, or denied any right or privilege,
22 including but not limited to civil penalty or disciplinary action
23 by the West Virginia Board of Medicine or by any other occupational
24 or professional licensing board or bureau, solely for providing

1 written certifications or for otherwise stating that, in the
2 practitioner's professional opinion, a patient is likely to receive
3 therapeutic or palliative benefit from the medical use of marijuana
4 to treat or alleviate the patient's serious or debilitating medical
5 condition or symptoms associated with the serious or debilitating
6 medical condition: *Provided*, That nothing in this article may
7 prevent a practitioner from being sanctioned for:

8 (1) Issuing a written certification to a patient with whom the
9 practitioner does not have a bona fide practitioner-patient
10 relationship, or

11 (2) Failing to properly evaluate a patient's medical
12 condition.

13 (h) No person may be subject to arrest, prosecution or denial
14 of any right or privilege, including but not limited to civil
15 penalty or disciplinary action by a court or occupational or
16 professional licensing board or bureau, for:

17 (1) Selling marijuana paraphernalia to a cardholder upon
18 presentation of a registry identification card in the recipient's
19 name that has not expired or to a compassion center agent or
20 registered safety compliance facility agent upon presentation of an
21 unexpired copy of the entity's registration certificate;

22 (2) Being in the presence or vicinity of the medical use of
23 marijuana as allowed under this article; or

24 (3) Assisting a registered qualifying patient with using or

1 administering marijuana. For purposes of illustration and not
2 limitation, this includes preparing a vaporizer for a registered
3 qualifying patient's use or brewing tea for a registered qualifying
4 patient. It does not include providing marijuana to a patient that
5 the patient did not already possess.

6 (i) A registered compassion center may not be subject to
7 prosecution under state, county or municipal law; search or
8 inspection, except by the department pursuant to section twenty
9 (u); seizure; or penalty in any manner or be denied any right or
10 privilege, including but not limited to civil penalty or
11 disciplinary action by a court or business licensing board or
12 entity, for acting pursuant to this article and department rules
13 to: sell marijuana seeds to similar entities that are registered to
14 dispense marijuana for medical use in other jurisdictions; acquire,
15 possess, cultivate, manufacture, deliver, transfer, transport,
16 supply, sell or dispense marijuana or related supplies and
17 educational materials to registered qualifying patients and
18 visiting qualifying patients who have designated the compassion
19 center to provide for them, to registered designated caregivers on
20 behalf of the registered qualifying patients who have designated
21 the registered compassion center, or to other registered compassion
22 centers.

23 (j) A registered compassion center agent may not be subject to
24 prosecution, search or penalty, in any manner, or be denied any

1 right or privilege, including but not limited to civil penalty or
2 disciplinary action by a court or business licensing board or
3 entity, for working for a registered compassion center pursuant to
4 this article and department rules to acquire, possess, cultivate,
5 manufacture, deliver, transfer, transport, supply, sell or dispense
6 marijuana or related supplies and educational materials to
7 registered qualifying patients who have designated the registered
8 compassion center to provide for them, to registered designated
9 caregivers on behalf of the registered qualifying patients who have
10 designated the registered compassion center or to other registered
11 compassion centers.

12 (k) A registered safety compliance facility and registered
13 safety compliance facility agents acting on behalf of a registered
14 safety compliance facility may not be subject to prosecution;
15 search, except by the department pursuant to section twenty (u);
16 seizure; penalty in any manner, or be denied any right or
17 privilege, including but not limited to civil penalty or
18 disciplinary action by a court or business licensing board or
19 entity, solely for acting in accordance with this article and
20 department rules to provide the following services:

21 (1) Acquiring or possessing marijuana obtained from registered
22 cardholders or registered compassion centers;

23 (2) Returning the marijuana to registered cardholders or
24 registered compassion centers;

1 (3) Transporting marijuana that was produced by registered
2 cardholders and registered compassion centers to or from those
3 registered cardholders and registered compassion centers;

4 (4) The production or sale of educational materials related to
5 medical marijuana;

6 (5) The production, sale or transportation of equipment or
7 materials other than marijuana to registered compassion centers or
8 cardholders, including lab equipment and packaging materials, that
9 are used by registered compassion centers and cardholders;

10 (6) Testing of medical marijuana samples, including for
11 potency, pesticides, mold and contamination;

12 (7) Providing training to cardholders and prospective
13 compassion center agents: *Provided*, That only cardholders may be
14 allowed to possess or cultivate marijuana and any possession or
15 cultivation of marijuana must occur on the location registered with
16 the department; and

17 (8) Receiving compensation for actions allowed under this
18 section.

19 (1) Any marijuana, marijuana paraphernalia, licit property or
20 interest in licit property that is possessed, owned or used in
21 connection with the medical use of marijuana as allowed under this
22 article, or acts incidental to such use, may not be seized or
23 forfeited. This article may not prevent the seizure or forfeiture
24 of marijuana exceeding the amounts allowed under this article, nor

1 may it prevent seizure or forfeiture if the basis for the action is
2 unrelated to the marijuana that is possessed, manufactured,
3 transferred or used pursuant to this article.

4 (m) Mere possession of, or application for, a registry
5 identification card or registration certificate does not constitute
6 probable cause or reasonable suspicion, nor may it be used to
7 support the search of the person, property or home of the person
8 possessing or applying for the registry identification card. The
9 possession of, or application for, a registry identification card
10 may not preclude the existence of probable cause if probable cause
11 exists on other grounds.

12 (n) For the purposes of this article, the medical use of
13 marijuana by a cardholder or registered compassion center shall be
14 considered lawful as long as it is in accordance with this article.

15 (o) No law-enforcement officer employed by an agency which
16 receives state or local government funds may expend any state or
17 local resources, including the officer's time, to effect any arrest
18 or seizure of marijuana, or conduct any investigation, on the sole
19 basis of activity the officer believes to constitute a violation of
20 the federal Controlled Substances Act if the officer has reason to
21 believe that such activity is in compliance with state medical
22 marijuana laws, nor may any such officer expend any state or local
23 resources, including the officer's time, to provide any information
24 or logistical support related to such activity to any federal law

1 enforcement authority or prosecuting entity.

2 (p) An attorney may not be subject to disciplinary action by
3 the State Bar Association or other professional licensing
4 association for providing legal assistance to prospective or
5 registered compassion centers, prospective or registered safety
6 compliance facilities or others related to activity that is no
7 longer subject to criminal penalties under state law pursuant to
8 this article.

9 **§16-8A-5. Limitations.**

10 (a) This article does not authorize any person to engage in,
11 and does not prevent the imposition of any civil, criminal or other
12 penalties for engaging in, the following conduct:

13 (1) Undertaking any task under the influence of marijuana,
14 when doing so would constitute negligence or professional
15 malpractice;

16 (2) Possessing marijuana, or otherwise engaging in the medical
17 use of marijuana:

18 (A) In a school bus;

19 (B) On the grounds of any preschool or primary or secondary
20 school; or

21 (C) In any correctional facility.

22 (3) Smoking marijuana:

23 (A) On any form of public transportation; or

24 (B) In any public place.

1 (4) Operating, navigating or being in actual physical control
2 of any motor vehicle, aircraft or motorboat while under the
3 influence of marijuana, except that a registered qualifying patient
4 or visiting qualifying patient may not be considered to be under
5 the influence of marijuana solely because of the presence of
6 metabolites or components of marijuana that appear in insufficient
7 concentration to cause impairment.

8 (5) Using marijuana, if that person does not have a serious or
9 debilitating medical condition.

10 **§16-8A-6. Discrimination prohibited.**

11 (a) Except as provided in this article, a registered
12 qualifying patient who uses marijuana for medical purposes shall be
13 afforded all the same rights under state and local law, including
14 those guaranteed under article eleven, chapter five of this code
15 insofar as it relates to the state's disability rights law, as the
16 individual would have been afforded if he or she were solely
17 prescribed pharmaceutical medications, as it pertains to:

18 (1) Any interaction with a person's employer;

19 (2) Drug testing by one's employer; or

20 (3) Drug testing required by any state or local law, agency,
21 or government official.

22 (b) (1) The rights provided by this section do not apply to
23 the extent that they conflict with an employer's obligations under
24 federal law or regulations or to the extent that they would

1 disqualify an employer from a monetary or licensing-related benefit
2 under federal law or regulations.

3 (2) No employer is required to allow the ingestion of
4 marijuana in any workplace or to allow any employee to work while
5 under the influence of marijuana. A registered qualifying patient
6 may not be considered to be under the influence of marijuana solely
7 because of the presence of metabolites or components of marijuana
8 that appear in insufficient concentration to cause impairment.

9 (c) No school or landlord may refuse to enroll or lease to, or
10 otherwise penalize, a person solely for his or her status as a
11 registered qualifying patient or a registered designated caregiver,
12 unless failing to do so would violate federal law or regulations or
13 cause the school or landlord to lose a monetary or licensing-
14 related benefit under federal law or regulations.

15 (d) For the purposes of medical care, including organ
16 transplants, a registered qualifying patient's authorized use of
17 marijuana in accordance with this article is the equivalent of the
18 authorized use of any other medication used at the direction of a
19 physician, and does not constitute the use of an illicit substance
20 or otherwise disqualify a qualifying patient from needed medical
21 care.

22 (e) A person otherwise entitled to custody of or visitation or
23 parenting time with a minor may not be denied such a right, and
24 there is no presumption of neglect or child endangerment, for

1 conduct allowed under this article, unless the person's actions in
2 relation to marijuana were such that they created an unreasonable
3 danger to the safety of the minor as established by clear and
4 convincing evidence.

5 (f) No school, landlord or employer may be penalized or denied
6 any benefit under state law for enrolling, leasing to or employing
7 a cardholder.

8 **§16-8A-7. Addition of debilitating medical conditions.**

9 Any citizen may petition the department to add conditions or
10 treatments to the list of debilitating medical conditions listed in
11 section three(d). The department shall consider petitions in the
12 manner required by department rule, including public notice and
13 hearing. The department shall approve or deny a petition within one
14 hundred eighty days of its submission. The approval or denial of
15 any petition is a final decision of the department subject to
16 judicial review. Jurisdiction and venue are vested in the circuit
17 court of Kanawha County.

18 **§16-8A-8. Acts not required; acts not prohibited.**

19 (a) Nothing in this article requires:

20 (1) A government medical assistance program or private insurer
21 to reimburse a person for costs associated with the medical use of
22 marijuana, or

23 (2) Any person or establishment in lawful possession of
24 property to allow a guest, client, customer, or other visitor to

1 smoke marijuana on or in that property.

2 (b) Nothing in this article prohibits an employer from
3 disciplining an employee for ingesting marijuana in the workplace
4 or working while under the influence of marijuana.

5 **§16-8A-9. Registration of qualifying patients and designated**
6 **caregivers.**

7 (a) The department shall issue registry identification cards
8 to qualifying patients who submit the following, in accordance with
9 the department's rules:

10 (1) A written certification issued by a practitioner within
11 ninety days immediately preceding the date of an application;

12 (2) If the patient is not a visiting qualifying patient,
13 documentation required by department rules to reasonably establish
14 proof of residency in this state;

15 (3) If the patient is a visiting qualifying patient, a copy of
16 his or her registry identification card or its equivalent that was
17 issued pursuant to the laws of the jurisdiction of the person's
18 residence;

19 (4) The application or renewal fee;

20 (5) The name, address and date of birth of the qualifying
21 patient, except that if the applicant is homeless no address is
22 required;

23 (6) The name, address and telephone number of the qualifying
24 patient's practitioner;

1 (7) The name, address and date of birth of the designated
2 caregiver, if any, chosen by the qualifying patient, except that a
3 visiting qualifying patient may not have a designated caregiver;

4 (8) The name of the registered compassion center the
5 qualifying patient designates, if any;

6 (9) If the qualifying patient designates a designated
7 caregiver, a designation as to whether the qualifying patient or
8 designated caregiver will be allowed under state law to possess and
9 cultivate marijuana plants for the qualifying patient's medical
10 use;

11 (10) A statement signed by the qualifying patient, pledging
12 not to divert marijuana to anyone who is not allowed to possess
13 marijuana pursuant to this article; and

14 (11) A signed statement from the designated caregiver, if any,
15 agreeing to be designated as the patient's designated caregiver and
16 pledging not to divert marijuana to anyone who is not allowed to
17 possess marijuana pursuant to this article.

18 (b) The application for qualifying patients' registry
19 identification cards shall ask whether the patient would like the
20 department to notify him or her of any clinical studies needing
21 human subjects for research on the medical use of marijuana. The
22 department shall notify interested patients if it is notified of
23 studies that will be conducted in the United States.

24 **§16-8A-10. Issuance of registry identification cards.**

1 (a) Except as provided in subsection (b), the department
2 shall:

3 (1) Verify the information contained in an application or
4 renewal submitted pursuant to this article, and approve or deny an
5 application or renewal, within fifteen days of receiving a
6 completed application or renewal application;

7 (2) Issue registry identification cards to a qualifying
8 patient and his or her designated caregiver, if any, within five
9 days of approving the application or renewal. A designated
10 caregiver must have a registry identification card for each of his
11 or her qualifying patients; and

12 (3) Enter the registry identification number of the registered
13 compassion center the patient designates into the verification
14 system.

15 (b) The department may not issue a registry identification
16 card to a qualifying patient who is younger than eighteen years of
17 age unless:

18 (1) The qualifying patient's practitioner has explained the
19 potential risks and benefits of the medical use of marijuana to the
20 custodial parent or legal guardian with responsibility for health
21 care decisions for the qualifying patient; and

22 (2) The custodial parent or legal guardian with responsibility
23 for health care decisions for the qualifying patient consents in
24 writing to:

1 (A) Allow the qualifying patient's medical use of marijuana;

2 (B) Serve as the qualifying patient's designated caregiver;

3 and

4 (C) Control the acquisition of the marijuana, the dosage, and

5 the frequency of the medical use of marijuana by the qualifying

6 patient.

7 **§16-8A-11. Denial of registry identification cards.**

8 (a) The department may deny an application or renewal of a

9 qualifying patient's registry identification card only if the

10 applicant:

11 (1) Did not provide the required information or materials;

12 (2) Previously had a registry identification card revoked; or

13 (3) Provided false or falsified information.

14 (b) The department may deny an application or renewal for a

15 designated caregiver chosen by a qualifying patient whose registry

16 identification card was granted only if:

17 (1) The designated caregiver does not meet the requirements of

18 section three (f);

19 (2) The applicant did not provide the information required;

20 (3) The designated caregiver previously had a registry

21 identification card revoked; or

22 (4) The applicant or the designated caregiver provides false

23 or falsified information.

24 (c) The department may conduct a background check of the

1 prospective designated caregiver in order to carry out this
2 provision.

3 (d) The department shall notify the qualifying patient who has
4 designated someone to serve as his or her designated caregiver if
5 a registry identification card will not be issued to the designated
6 caregiver.

7 (e) Denial of an application or renewal is considered a final
8 department action, subject to judicial review. Jurisdiction and
9 venue for judicial review are vested in the circuit court of
10 Kanawha County.

11 **§16-8A-12. Registry identification cards.**

12 (a) Registry identification cards shall contain all of the
13 following:

14 (1) The name of the cardholder;

15 (2) A designation of whether the cardholder is a designated
16 caregiver or qualifying patient;

17 (3) The date of issuance and expiration date of the registry
18 identification card;

19 (4) A random ten-digit alphanumeric identification number,
20 containing at least four numbers and at least four letters, that is
21 unique to the cardholder;

22 (5) If the cardholder is a designated caregiver, the random
23 ten-digit alphanumeric identification number of the qualifying
24 patient the designated caregiver is receiving the registry

1 identification card to assist;

2 (6) A clear designation as to whether the cardholder will be
3 allowed under state law to possess the marijuana plants for the
4 qualifying patient's medical use, which shall be determined based
5 solely on the qualifying patient's preference;

6 (7) A photograph of the cardholder, if the department's rules
7 require one; and

8 (8) The phone number or Web address for the verification
9 system.

10 (b) (1) Except as provided in this subsection, the expiration
11 date shall be one year after the date of issuance.

12 (2) If the practitioner stated in the written certification
13 that the qualifying patient would benefit from marijuana until a
14 specified earlier date, then the registry identification card shall
15 expire on that date.

16 (c) The department may, at its discretion, electronically
17 store in the card all of the information listed in subsection (a),
18 along with the address and date of birth of the cardholder, to
19 allow it to be read by law-enforcement agents.

20 **§16-8A-13. Notifications to department and responses; civil**
21 **penalty.**

22 (a) The following notifications and department responses are
23 required:

24 (1) A registered qualifying patient shall notify the

1 department of any change in his or her name or address, or if the
2 registered qualifying patient ceases to have his or her
3 debilitating medical condition, within ten days of the change.

4 (2) A registered designated caregiver shall notify the
5 department of any change in his or her name or address, or if the
6 designated caregiver becomes aware the qualifying patient passed
7 away, within ten days of the change.

8 (3) Before a registered qualifying patient changes his or her
9 designated caregiver, the qualifying patient must notify the
10 department.

11 (4) When a registered qualifying patient changes his or her
12 preference as to who may cultivate marijuana for the qualifying
13 patient, the qualifying patient must notify the department.

14 (5) If a cardholder loses his or her registry identification
15 card, he or she shall notify the department within ten days of
16 becoming aware the card has been lost.

17 (b) When a cardholder notifies the department of items listed
18 in subsection (a), but remains eligible under this article, the
19 department shall issue the cardholder a new registry identification
20 card with a new random ten-digit alphanumeric identification number
21 within ten days of receiving the updated information and a \$20 fee.
22 If the person notifying the department is a registered qualifying
23 patient, the department shall also issue his or her registered
24 designated caregiver, if any, a new registry identification card

1 within ten days of receiving the updated information.

2 (c) If a registered qualifying patient ceases to be a
3 registered qualifying patient or changes his or her registered
4 designated caregiver, the department shall promptly notify the
5 designated caregiver. The registered designated caregiver's
6 protections under this article as to that qualifying patient shall
7 expire fifteen days after notification by the department.

8 (d) A cardholder who fails to make a notification to the
9 department that is required by this section is subject to a civil
10 infraction, punishable by a penalty of no more than \$150.

11 (e) A registered qualifying patient shall notify the department
12 before changing his or her designated registered compassion center
13 and pay a \$20 fee. The department must, within five business days
14 of receiving the notification, update the registered qualifying
15 patient's entry in the identification registry system to reflect the
16 change in designation and notify the patient that the change has
17 been processed.

18 (f) If the registered qualifying patient's certifying
19 practitioner notifies the department in writing that either the
20 registered qualifying patient has ceased to suffer from a
21 debilitating medical condition or that the practitioner no longer
22 believes the patient would receive therapeutic or palliative benefit
23 from the medical use of marijuana, the card shall become void.
24 However, the registered qualifying patient shall have fifteen days

1 to dispose of or give away his or her marijuana.

2 **§16-8A-14. Affirmative defense and dismissal for medical**
3 **marijuana.**

4 (a) Except as provided in section five and this section, an
5 individual may assert a medical purpose for using marijuana as a
6 defense to any prosecution of an offense involving marijuana
7 intended for the patient's medical use, and this defense shall be
8 presumed valid and the prosecution shall be dismissed where the
9 evidence shows that:

10 (1) A practitioner states that, in the practitioner's
11 professional opinion, after having completed a full assessment of
12 the individual's medical history and current medical condition made
13 in the course of a bona fide practitioner-patient relationship, the
14 patient is likely to receive therapeutic or palliative benefit from
15 marijuana to treat or alleviate the individual's serious or
16 debilitating medical condition or symptoms associated with the
17 individual's serious or debilitating medical condition; and

18 (2) The individual and the individual's designated caregiver,
19 if any, were collectively in possession of a quantity of marijuana
20 that was not more than was reasonably necessary to ensure the
21 uninterrupted availability of marijuana for the purpose of treating
22 or alleviating the individual's serious or debilitating medical
23 condition or symptoms associated with the individual's serious or
24 debilitating medical condition; and

1 (3) The individual was engaged in the acquisition, possession,
2 cultivation, manufacture, use or transportation of marijuana,
3 paraphernalia, or both marijuana and paraphernalia, relating to the
4 administration of marijuana to treat or alleviate the individual's
5 serious or debilitating medical condition or symptoms associated
6 with the individual's serious or debilitating medical condition; and

7 (4) Any cultivation of marijuana occurred in an enclosed,
8 locked area that only the person asserting the defense could access.

9 (b) The defense and motion to dismiss may not prevail if either
10 of the following are proven:

11 (1) The individual had a registry identification card revoked
12 for misconduct; or

13 (2) The purposes for the possession or cultivation of marijuana
14 were not solely for palliative or therapeutic use by the individual
15 with a serious or debilitating medical condition who raised the
16 defense.

17 (c) An individual is not required to possess a registry
18 identification card to raise the affirmative defense set forth in
19 this section.

20 (d) If an individual demonstrates the individual's medical
21 purpose for using marijuana pursuant to this section, except as
22 provided in section five, the individual may not be subject to the
23 following for the individual's use of marijuana for medical
24 purposes:

1 (1) Disciplinary action by an occupational or professional
2 licensing board or bureau; or

3 (2) Forfeiture of any interest in or right to nonmarijuana,
4 licit property.

5 **§16-8A-15. Registration of compassion centers.**

6 (a) Compassion centers may only operate if they have been
7 issued a valid registration certificate from the department. When
8 applying for a compassion center registration certificate, the
9 applicant shall submit the following in accordance with department
10 rules:

11 (1) A nonrefundable application fee in an amount determined by
12 the department's rules, not to exceed \$4,000.

13 (2) The proposed legal name of the compassion center.

14 (3) The proposed physical address of the compassion center and
15 the proposed physical address of any additional locations, if any,
16 where marijuana will be cultivated, harvested, packaged, labeled or
17 otherwise prepared for distribution by the compassion center.

18 (4) The name, address and date of birth of each principal
19 officer and board member of the compassion center: *Provided, That*
20 all such individuals shall be at least twenty-one years of age.

21 (5) Any instances in which a business or not-for-profit that
22 any of the prospective board members managed or served on the board
23 of was convicted, fined, censured, or had a registration or license
24 suspended or revoked in any administrative or judicial proceeding.

1 (6) Any information required by the department to evaluate the
2 applicant pursuant to the competitive bidding process described in
3 subsection (b).

4 (b) The department shall evaluate applications for compassion
5 center registration certificates using an impartial and numerically
6 scored competitive bidding process developed by the department in
7 accordance with this article. The registration considerations shall
8 consist of the following criteria:

9 (1) The suitability of the proposed location or locations,
10 including compliance with any local zoning laws and the geographic
11 convenience to patients from throughout the State of West Virginia
12 to compassion centers if the applicant were approved.

13 (2) The principal officer and board members' character and
14 relevant experience, including any training or professional
15 licensing related to medicine, pharmaceuticals, natural treatments,
16 botany or marijuana cultivation and preparation and their experience
17 running businesses or not-for-profits.

18 (3) The proposed compassion center's plan for operations and
19 services, including its staffing and training plans, whether it has
20 sufficient capital to operate, and its ability to provide an
21 adequate supply of medical marijuana to the registered patients in
22 the state.

23 (4) The sufficiency of the applicant's plans for record
24 keeping.

1 (5) The sufficiency of the applicant's plans for safety,
2 security, and the prevention of diversion, including proposed
3 locations and security devices employed.

4 (6) The applicant's plan for making medical marijuana available
5 on an affordable basis to registered qualifying patients enrolled
6 in Medicaid or receiving Supplemental Security Income or Social
7 Security Disability Insurance.

8 (7) The applicant's plan for safe and accurate packaging and
9 labeling of medical marijuana, including the applicant's plan for
10 ensuring that all medical marijuana is free of contaminants.

11 (c) No later than one year after the effective date of this
12 article: *Provided*, That at least five applications have been
13 submitted, the department shall issue compassion center registration
14 certificates to the five highest-scoring applicants, except that the
15 department may divide the state into geographical areas and grant
16 a registration to the highest scoring applicant in each geographical
17 area.

18 (d) No later than two years after the effective date of this
19 article, the department shall issue registration certifications to
20 at least six additional compassion centers If the department
21 determines, after reviewing the report issued pursuant to section
22 twenty-three, that additional compassion centers are needed to meet
23 the needs of registered qualifying patients throughout the state,
24 the department shall issue registration certificates to the

1 corresponding number of applicants who score the highest.

2 (e) (1) At any time after two years after the effective date
3 of this article that the number of outstanding and valid registered
4 compassion center certificates is lower than the number of
5 registration certificates the department is required to issue
6 pursuant to subsections (c) and (d), the department shall accept
7 applications for compassion centers and issue registration
8 certificates to the corresponding number of additional applicants
9 who score the highest, or that score the highest in given geographic
10 areas.

11 (2) Notwithstanding subsections (c), (d), and (e), an
12 application for a compassion center registration certificate must
13 be denied if any of the following conditions are met:

14 (A) The applicant failed to submit the materials required by
15 this section, including if the applicant's plans do not satisfy the
16 security, oversight, or recordkeeping regulations issued by the
17 department;

18 (B) The applicant would not be in compliance with local zoning
19 regulations issued in accordance with section eighteen;

20 (C) The applicant does not meet the requirements of section
21 twenty;

22 (D) One or more of the prospective principal officers or board
23 members has been convicted of a disqualifying felony offense;

24 (E) One or more of the prospective principal officers or board

1 members has served as a principal officer or board member for a
2 registered compassion center that has had its registration
3 certificate revoked; and

4 (F) One or more of the principal officers or board members is
5 younger than twenty-one years of age.

6 (f) After a compassion center is approved, but before it begins
7 operations, it shall submit a registration fee to the department in
8 the amount determined by the department's rules and, if a physical
9 address had not been finalized when it applied, it shall submit a
10 complete listing of all its physical addresses.

11 (g) The department shall issue each compassion center one copy
12 of its registration certificate for each compassion center location.
13 Registration certificates must include the compassion center's
14 identification number. The department shall also provide each
15 registered compassion center with the contact information for the
16 verification system.

17 **§16-8A-16. Registration and certification of safety compliance**
18 **facilities.**

19 (a) Safety compliance facilities may only operate if they have
20 been issued a valid registration certificate from the department.
21 When applying for a safety compliance facility registration
22 certificate, the applicant shall submit the following in accordance
23 with department regulations:

24 (1) A nonrefundable application fee in an amount determined by

1 the department's rules, not to exceed \$4,000;

2 (2) The proposed legal name of the safety compliance facility;

3 (3) The proposed physical address of the safety compliance
4 facility;

5 (4) The name, address, and date of birth of each principal
6 officer and board member of the safety compliance facility, provided
7 that all such individuals shall be at least twenty-one years of age;

8 (5) Any instances in which a business or not-for-profit that
9 any of the prospective board members managed or served on the board
10 of was convicted, fined, censured or had a registration or license
11 suspended or revoked in any administrative or judicial proceeding;
12 and

13 (6) Any information required by the department to evaluate the
14 applicant pursuant to the competitive bidding process described in
15 subsection (b).

16 (b) The department shall evaluate applications for safety
17 compliance facility registration certificates using an impartial and
18 numerically scored competitive bidding process developed by the
19 department in accordance with this article. The registration
20 considerations shall consist of the following criteria:

21 (1) The proposed principal officers' and board members'
22 relevant experience, including any training or professional
23 licensing related to analytical testing, medicine, pharmaceuticals,
24 natural treatments, botany or marijuana cultivation, preparation and

1 testing and their experience running businesses or not-for-profits;

2 (2) The suitability of the proposed location, including
3 compliance with any local zoning laws and the geographic convenience
4 to cardholders and registered compassion centers from throughout the
5 State of West Virginia to registered safety compliance facilities
6 if the applicant were approved;

7 (3) The sufficiency of the applicant's plans for safety,
8 security and the prevention of diversion, including proposed
9 locations and security devices employed; and

10 (4) The proposed safety compliance facility's plan for
11 operations and services, including its staffing and training plans,
12 and whether it has sufficient capital to operate.

13 (c) The department shall issue at least one safety compliance
14 facility registration certificate to the highest scoring applicant
15 within one year of the effective date of this article.

16 (d) (1) The department may issue additional safety compliance
17 facility registration certificates to the highest scoring applicant
18 or applicants, or to the highest applicant or applicants in a given
19 geographic area. If the department determines, after reviewing the
20 report issued pursuant to section twenty three, that additional
21 safety compliance facilities are needed to meet the needs of
22 cardholders and registered compassion centers throughout the state,
23 the department shall issue registration certificates to the
24 corresponding number of applicants who score the highest overall or

1 in a geographic area.

2 (2) Notwithstanding subsections (c) and (d), an application for
3 a safety compliance facility registration certificate must be denied
4 if any of the following conditions are met:

5 (A) The applicant failed to submit the materials required by
6 this section, including if the plans do not satisfy the security,
7 oversight, or recordkeeping rules issued by the department;

8 (B) The applicant would not be in compliance with local zoning
9 regulations issued in accordance with section eighteen;

10 (C) The applicant does not meet the requirements of section
11 twenty.

12 (D) One or more of the prospective principal officers or board
13 members has been convicted of a disqualifying felony offense;

14 (E) One or more of the prospective principal officers or board
15 members has served as a principal officer or board member for a
16 registered safety compliance facility or registered compassion
17 center that has had its registration certificate revoked; and

18 (F) One or more of the principal officers or board members is
19 younger than twenty-one years of age.

20 (e) After a safety compliance facility is approved, but before
21 it begins operations, it shall submit a registration fee paid to the
22 department in the amount determined by department rule and, if a
23 physical address had not been finalized when it applied, its
24 physical address.

1 (f) The department shall issue each safety compliance facility
2 a registration certificate, which must include an identification
3 number for the safety compliance facility. The department shall also
4 provide the registered safety compliance facility with the contact
5 information for the verification system.

6 **§16-8A-17. Compassion Center and Safety Compliance Facilities**

7 **Suspension and Revocation.**

8 (a) The department may on its own motion or on complaint, after
9 investigation and opportunity for a public hearing at which the
10 compassion center or safety compliance facility has been afforded an
11 opportunity to be heard, suspend or revoke a registration
12 certificate for multiple or serious violations by the registrant or
13 any of its agents of this article or any rules promulgated pursuant
14 to this article.

15 (b) The department shall provide notice of suspension,
16 revocation, fine or other sanction, as well as the required notice
17 of the hearing, by mailing the same in writing to the registration
18 at the address on the registration certificate. A suspension shall
19 not be for a longer period than six months.

20 (c) A registered compassion center may continue to cultivate
21 and possess marijuana plants during a suspension, but it may not
22 dispense, transfer or sell marijuana.

23 **§16-8A-18. Local ordinances.**

24 Local governments may not be prohibited from enacting

1 ordinances or regulations not in conflict with this article or with
2 department rules regulating the time, place and manner of registered
3 compassion center operations and registered safety compliance
4 facilities: *Provided*, That a local government may not prohibit
5 registered compassion center operation altogether, either expressly
6 or though the enactment of ordinances or regulations which make
7 registered compassion center and registered safety compliance
8 facility operation unreasonably impracticable in the jurisdiction.

9 **§16-8A-19. Compassion center and safety compliance facility**

10 **agents.**

11 (a) Registered compassion centers and registered safety
12 compliance facilities shall conduct a background check into the
13 criminal history of every person seeking to become a principal
14 officer, board member, agent, volunteer or employee before the
15 person begins working at the registered compassion centers or
16 registered safety compliance facility. A registered compassion
17 center may not employ any person who:

18 (1) Was convicted of a disqualifying felony offense; or

19 (2) Is under twenty-one years of age.

20 (b) A registered compassion center or safety compliance
21 facility agent must have documentation when transporting marijuana
22 on behalf of the registered safety compliance facility or registered
23 compassion center that specifies the amount of marijuana being
24 transported, the date the marijuana is being transported, the

1 registry ID certificate number of the registered compassion center
2 or registered safety compliance facility and a contact number to
3 verify that the marijuana is being transported on behalf of the
4 registered compassion center or registered safety compliance
5 facility.

6 **§16-8A-20. Requirements; prohibitions; sales tax and special fund**
7 **civil penalties.**

8 (a) A registered compassion center shall be operated on a not-
9 for-profit basis. The by-laws of a registered compassion center
10 shall contain such provisions relative to the disposition of
11 revenues to establish and maintain its not-for-profit character. A
12 registered compassion center need not be recognized as tax-exempt by
13 the Internal Revenue Service and is not required to incorporate
14 pursuant to chapter thirty-one-e of this code.

15 (b) The operating documents of a registered compassion center
16 shall include procedures for the oversight of the registered
17 compassion center and procedures to ensure accurate recordkeeping.

18 (c) A registered compassion center and a registered safety
19 compliance facility shall implement appropriate security measures to
20 deter and prevent the theft of marijuana and unauthorized entrance
21 into areas containing marijuana.

22 (d) A registered compassion center and a registered safety
23 compliance facility may not be located within five hundred feet of
24 the property line of a preexisting public or private school.

1 (e) A registered compassion center is prohibited from
2 acquiring, possessing, cultivating, manufacturing, delivering,
3 transferring, transporting, supplying or dispensing marijuana for
4 the purposes of distributing marijuana to any person except
5 registered qualifying patients directly or through their designated
6 caregivers.

7 (f) All cultivation of marijuana for registered compassion
8 centers must take place in an enclosed, locked location at the
9 physical address or addresses provided to the department during the
10 registration process, which can only be accessed by compassion
11 center agents working on behalf of the registered compassion center.

12 (g) A registered compassion center may not acquire usable
13 marijuana or mature marijuana plants from any person other than
14 another registered compassion center, a registered qualifying
15 patient or a registered designated caregiver. A registered
16 compassion center is only allowed to acquire usable marijuana or
17 mature marijuana plants from a registered qualifying patient or a
18 registered designated caregiver if the registered qualifying patient
19 or registered designated caregiver receives no compensation for the
20 marijuana.

21 (h) Before marijuana may be dispensed to a designated caregiver
22 or a registered qualifying patient, a registered compassion center
23 agent must make a diligent effort to verify each of the following:

24 (1) That the registry identification card presented to the

1 registered compassion center is valid, including by checking the
2 verification system if it is operational;

3 (2) That the person presenting the card is the person
4 identified on the registry identification card presented to the
5 registered compassion center agent, including by examining
6 government-issued photo identification; and

7 (3) That the registered compassion center the compassion center
8 agent is working for is the designated compassion center for the
9 registered qualifying patient who is obtaining the marijuana
10 directly or via his or her designated caregiver.

11 (i) A registered compassion center may not dispense more than
12 three ounces of marijuana to a registered qualifying patient,
13 directly or via a designated caregiver, in any fourteen-day period.
14 Registered compassion centers shall ensure compliance with this
15 limitation by maintaining internal, confidential records that
16 include records specifying how much marijuana is being dispensed to
17 the registered qualifying patient and whether it was dispensed
18 directly to the registered qualifying patient or to the designated
19 caregiver. Each entry must include the date and time the marijuana
20 was dispensed.

21 (j) A registered compassion center or registered compassion
22 center agent may only dispense marijuana to a visiting qualifying
23 patient if he or she possesses a valid West Virginia registry
24 identification card and if the procedures in sections (h) and (i)

1 are followed.

2 (k) No person may advertise medical marijuana sales in printed
3 materials, on radio or television, or by paid in-person solicitation
4 of customers. This may not prevent appropriate signs on the property
5 of the registered compassion center, listings in business
6 directories including phone books, listings in marijuana-related or
7 medical publications or the sponsorship of health or not-for-profit
8 charity or advocacy events.

9 (l) A registered compassion center may not share office space
10 with nor refer patients to a practitioner.

11 (m) A practitioner may not refer patients to a registered
12 compassion center or registered designated caregiver, advertise in
13 a registered compassion center or, if the practitioner issues
14 written certifications, hold any financial interest in a registered
15 compassion center.

16 (n) A person who has been convicted of a disqualifying felony
17 offense may not be a registered compassion center agent.

18 (o) Registered compassion centers and registered safety
19 compliance facilities must display their registration certificates
20 on the premises at all times.

21 (p) The department may issue a civil fine of up to \$3,000 for
22 violations of this section.

23 (q) The suspension or revocation of a certificate is a final
24 department action, subject to judicial review. Jurisdiction and

1 venue for judicial review are vested in the circuit court of Kanawha
2 County.

3 (r) Any cardholder who sells marijuana to a person who is not
4 allowed to possess marijuana for medical purposes under this article
5 shall have his or her registry identification card revoked and shall
6 be subject to other penalties for the unauthorized sale of
7 marijuana.

8 (s) The department may revoke the registry identification card
9 of any cardholder who knowingly commits multiple or serious
10 violations of this article.

11 (t) Registered compassion centers are subject to reasonable
12 inspection by department rules. The department shall give at
13 reasonable notice of an inspection under this paragraph.

14 (u) Sales tax and special fund. - State sales tax at the rate
15 imposed under article fifteen, chapter eleven of this code shall be
16 imposed on all sales of marihuana in this state. However, all
17 revenue collected pursuant to this sales tax is to be deposited into
18 the "Drug and Abuse Prevention Fund" which is hereby created. This
19 fund is to be held by the State Treasurer. The Commissioner of the
20 Bureau for Public Health may distribute proceeds from this fund for
21 drug prevention and substance abuse programs in schools including,
22 but not limited to, after school programs, sports and
23 extracurricular educational opportunities; to offer community grants
24 for substance abuse treatment facilities; and to offer grants for

1 community improvement projects including, but not limited to,
2 playgrounds, public parks, and local farmer markets.

3 **§16-8A-21. Confidentiality; misdemeanor offense and penalty.**

4 (a) The following information received and records kept by
5 department rules for purposes of administering this article are
6 confidential and exempt from the West Virginia Freedom of
7 Information Act, and not subject to disclosure to any individual or
8 public or private entity, except as necessary for authorized
9 employees of the department to perform official duties pursuant to
10 this article:

11 (1) Applications and renewals, their contents and supporting
12 information submitted by qualifying patients and designated
13 caregivers, including information regarding their designated
14 caregivers and practitioners.

15 (2) Applications and renewals, their contents and supporting
16 information submitted by or on behalf of compassion centers and
17 safety compliance facilities in compliance with this article,
18 including their physical addressees.

19 (3) The individual names and other information identifying
20 persons to whom the department has issued registry identification
21 cards.

22 (4) Any dispensing information required to be kept under
23 section twenty or department regulation shall identify cardholders
24 and registered compassion centers by their registry identification

1 numbers and may not contain names or other personal identifying
2 information.

3 (5) Any department hard drives or other data-recording media
4 that are no longer in use and that contain cardholder information
5 must be destroyed.

6 (6) Data subject to this section may not be combined or linked
7 in any manner with any other list or database and it may not be used
8 for any purpose not provided for in this article.

9 (b) Nothing in this section precludes the following:

10 (1) Department employees may notify state or local law
11 enforcement about falsified or fraudulent information submitted to
12 the department or of other apparently criminal violations of this
13 article if the employee who suspects that falsified or fraudulent
14 information has been submitted conferred with his or her supervisor
15 and both agree that circumstances exist that warrant reporting.

16 (2) Department employees may notify the West Virginia Board of
17 Medicine if the department has reasonable suspicion to believe a
18 practitioner did not have a bona fide practitioner-patient
19 relationship with a patient for whom he or she signed a written
20 certification, if the department has reasonable suspicion to believe
21 the practitioner violated the standard of care, or for other
22 suspected violations of this article by a practitioner.

23 (3) Compassion center agents may notify the department of a
24 suspected violation or attempted violation of this article or the

1 rules issued pursuant to this article.

2 (4) The department may verify registry identification cards
3 pursuant to section twenty two.

4 (5) The submission of the section twenty-three report to the
5 Legislature.

6 (c) Any person, including an employee or official of the
7 department or another state agency or local government, who breaches
8 the confidentiality of information obtained pursuant to this article
9 is guilty of a misdemeanor and, upon conviction thereof, shall be
10 fine \$1,000 or confined in jail not more than one hundred eighty
11 days, or both fined and confined.

12 **§16-8A-22. Registry Identification and Registration Certificate**

13 **Verification.**

14 (a) The department shall maintain a confidential list of the
15 persons to whom the department has issued registry identification
16 cards and their addresses, phone numbers, and registry
17 identification numbers. This confidential list may not be combined
18 or linked in any manner with any other list or database, nor may it
19 be used for any purpose not provided for in this article.

20 (b) Within one hundred twenty days of the effective date of
21 this article, the department shall establish a verification system.
22 The verification system must allow law-enforcement personnel,
23 compassion center agents and safety compliance facility agents to
24 enter a registry identification number to determine whether or not

1 the number corresponds with a current, valid registry identification
2 card. The system shall only disclose whether the identification card
3 is valid; whether the cardholder is a registered qualifying patient
4 or a registered designated caregiver; whether the cardholder is
5 permitted to cultivate under this article; and the registry
6 identification number of the registered compassion center designated
7 to serve the registered qualifying patient who holds the card or the
8 registry identification number of the patient who is assisted by the
9 registered designated caregiver who holds the card.

10 (c) The department shall, at a cardholder's request, confirm
11 his or her status as a registered qualifying patient or registered
12 designated caregiver to a third party, such as a landlord, employer,
13 school, medical professional or court.

14 (d) The department shall disclose the fact that a registry
15 identification card was revoked to a prosecutor or court personnel
16 in any case where the prosecutor or court personnel inquires about
17 a specific person who is seeking to assert the protections of
18 section fourteen. The prosecutor or court personnel must provide the
19 department with the person's name and date of birth.

20 **§16-8A-23. Annual reports.**

21 (a) (1) The Legislature shall appoint a nine-member oversight
22 committee comprised of: one member of the House of Delegates; one
23 representative of the department; one member of the Senate; one
24 physician with experience in medical marijuana issues; one nurse;

1 one board member or principal officer of a registered safety
2 compliance facility; one individual with experience in policy
3 development or implementation in the field of medical marijuana; and
4 three registered patients.

5 (2) The oversight committee shall meet at least two times a
6 year for the purpose of evaluating and making recommendations to the
7 Legislature and the department regarding:

8 (A) The ability of qualifying patients in all areas of the
9 state to obtain timely access to high-quality medical marijuana.

10 (B) The effectiveness of the registered compassion centers,
11 individually and together, in serving the needs of qualifying
12 patients, including the provision of educational and support
13 services, the reasonableness of their fees, whether they are
14 generating any complaints or security problems and the sufficiency
15 of the number operating to serve the registered qualifying patients
16 of West Virginia.

17 (C) The effectiveness of the registered safety compliance
18 facility or facilities, including whether a sufficient number are
19 operating.

20 (D) The sufficiency of the regulatory and security safeguards
21 contained in this article and adopted by the department to ensure
22 that access to and use of marijuana cultivated is provided only to
23 cardholders.

24 (E) Any recommended additions or revisions to the department

1 rules or this article, including relating to security, safe
2 handling, labeling and nomenclature.

3 (F) Any research studies regarding health effects of medical
4 marijuana for patients.

5 (b) The department shall submit to the Legislature an annual
6 report that does not disclose any identifying information about
7 cardholders, registered compassion centers or practitioners, but
8 does contain, at a minimum, all of the following information:

9 (1) The number of applications and renewals filed for registry
10 identification cards;

11 (2) The number of registered qualifying patients who are
12 residents of West Virginia at the time of the report;

13 (3) The number of registry identification cards that were
14 issued to visiting qualifying patients at the time of the report;

15 (4) The nature of the debilitating medical conditions of the
16 qualifying patients;

17 (5) The number of registry identification cards revoked for
18 misconduct;

19 (6) The number of practitioners providing written
20 certifications for qualifying patients; and

21 (7) The number of registered compassion centers.

22 **§16-8A-24. Department to issue rules.**

23 (a) Not later than one hundred twenty days after the effective
24 date of this article, the department shall propose rules for

1 legislative approval in accordance with the provisions of article
2 three, chapter twenty-nine-a of this code:

3 (1) Governing the manner in which the department shall consider
4 petitions from the public to add debilitating medical conditions or
5 treatments to the list of debilitating medical conditions set forth
6 in section three(d) of this article, including public notice of and
7 an opportunity to comment in public hearings on the petitions;

8 (2) Establishing the form and content of registration and
9 renewal applications submitted under this article;

10 (3) Governing the manner in which it shall consider
11 applications for and renewals of registry identification cards,
12 which may include creating a standardized written certification
13 form; and

14 (4) Governing the following matters related to registered
15 compassion centers, with the goal of protecting against diversion
16 and theft, without imposing an undue burden on the registered
17 compassion centers or compromising the confidentiality of
18 cardholders:

19 (A) Oversight requirements for registered compassion centers;

20 (B) Recordkeeping requirements for registered compassion
21 centers;

22 (C) Security requirements for registered compassion centers,
23 which shall include, at a minimum, lighting, video security, alarm
24 requirements, on-site parking and measures to prevent loitering;

1 (D) Electrical safety requirements;

2 (E) The competitive scoring process addressed in section
3 fifteen (b);

4 (F) Procedures for suspending or terminating the registration
5 certificates or registry identification cards of cardholders,
6 registered compassion centers, and registered safety compliance
7 facilities that commit multiple or serious violations of the
8 provisions of this article or the rules promulgated pursuant to this
9 section; and

10 (G) Labeling requirements for marijuana and marijuana products
11 sold by compassion centers.

12 (5) Application and renewal fees for registry identification
13 cards and application and registration fees for compassion center
14 and safety compliance facility certificates, according to the
15 following:

16 (A) The total fees collected must generate revenues sufficient
17 to offset all expenses of implementing and administering this
18 article, except that fee revenue may be offset or supplemented by
19 private donations;

20 (B) The department may establish a sliding scale of patient
21 application and renewal fees based upon a qualifying patient's
22 household income; and

23 (C) The department may accept donations from private sources to
24 reduce application and renewal fees.

1 **§16-8A-25. Enforcement of this article.**

2 (a) If the department fails to adopt rules to implement this
3 article within the times provided in this article, any citizen may
4 commence an action in the circuit court of Kanawha County to compel
5 the department to perform the actions mandated pursuant to the
6 provisions of this article.

7 (b) If the department fails to issue a valid registry
8 identification card in response to a valid application or renewal
9 submitted pursuant to this article within twenty days of its
10 submission, the registry identification card shall be considered
11 granted, and a copy of the registry identification application or
12 renewal and proof of receipt of the mailing shall be considered a
13 valid registry identification card.

14 (c) If at any time after the one hundred forty days following
15 the effective date of this article, the department has not
16 established a process for accepting and approving or denying
17 applications, a notarized statement by a qualifying patient
18 containing the information required in an application pursuant to
19 section nine (a) (1 through 9), together with a written certification
20 issued by a practitioner within ninety days immediately preceding
21 the notarized statement, shall be considered a valid registry
22 identification card for all purposes under this article.

23 **§16-8A-26. Severability.**

24 If any section of this article is held invalid as to any person

1 or circumstance, that may not affect the application of any other
2 section of this article that can be given full effect without the
3 invalid section or application.

NOTE: The purpose of this bill is to create the Compassionate Medical Marijuana Use Act of 2013 in order to protect patients with debilitating medical conditions, as well as their practitioners and providers, from arrest and prosecution, criminal and other penalties, and property forfeiture, if such patients engage in the medical use of marijuana. The bill provides that the West Virginia Department of Health and Human Resources administer the provisions of the act. The bill creates the "Drug and Abuse Prevention Fund" to receive sales tax imposed on all sales of marihuana in this state; It also provides that the circuit court of Kanawha County has jurisdiction to hear petitions and appeals concerning provisions of act.

This article is new; therefore, it has been completely underscored.