

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 386

FISCAL
NOTE

BY SENATORS OJEDA, BEACH, FACEMIRE, MILLER,
PALUMBO, PLYMALE, ROMANO, RUCKER, STOLLINGS,
SWOPE, WOELFEL AND BOSO

[Introduced February 21, 2017; Referred
to the Committee on Health and Human Resources;
and then to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §16-8A-1, §16-8A-2, §16-8A-3, §16-8A-4, §16-8A-5, §16-8A-6, §16-8A-7,
3 §16-8A-8, §16-8A-9, §16-8A-10, §16-8A-11, §16-8A-12, §16-8A-13, §16-8A-14, §16-8A-
4 15 and §16-8A-16, all relating to creating the West Virginia Medical Cannabis Act; defining
5 terms; creating the West Virginia Medical Cannabis Commission; setting forth members
6 of the West Virginia Medical Cannabis Commission; setting forth responsibilities for the
7 West Virginia Medical Cannabis Commission; creating a special revenue account known
8 as the West Virginia Medical Cannabis Commission Fund; detailing the fund's revenue
9 sources and disbursements; detailing requirements of the commission to implement the
10 provisions of the act; setting requirements for becoming a certifying physician; authorizing
11 the commission to approve physician applications for certain medical conditions; requiring
12 certain annual reports to the Governor and Legislature; authorizing the commission to
13 license medical cannabis growers and grower agents that meet certain requirements;
14 setting forth certain parameters for licensed growers and grower agents; authorizing the
15 commission to license dispensaries and register dispensary agents; setting forth certain
16 requirements for dispensaries and dispensary agents; authorizing the commission to
17 license medical cannabis processors and register processor agents; authorizing testing
18 laboratories; naming the Marshall University Forensic Science Center as the primary
19 testing laboratory; stating requirements for the commission's registration of independent
20 laboratories; requiring the State Police and commission to enter a memorandum of
21 understanding for criminal records checks and setting forth basic requirements; providing
22 that certain persons licensed, registered and authorized under the act may not be subject
23 to arrest, prosecution or any civil or administrative penalty, including a civil penalty or
24 disciplinary action by a professional licensing board, or be denied any right or privilege,
25 for the medical use of cannabis; creating a new criminal offense of distributing,
26 possessing, manufacturing or using cannabis that has been diverted from an authorized

27 medicinal use; specifically stating conduct related to cannabis that is not protected by the
 28 provisions of the act; authorizing state employees to recover certain counsel fees;
 29 empowering the Governor to suspend implementation of the act if the Governor
 30 determines certain federal action may occur; and requiring promulgation of emergency
 31 rules and the submission of legislative rules for approval by the Legislature.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8A. WEST VIRGINIA MEDICAL CANNABIS ACT.

§16-8A-1. Definitions.

1 As used in this article, the following words have the meanings indicated.

2 (1) “Caregiver” means:

3 (A) A person who has agreed to assist with a qualifying patient’s medical use of cannabis;

4 and

5 (B) For a qualifying patient under the age of eighteen years, a parent or legal guardian.

6 (2) “Certifying physician” means an individual who:

7 (A) Has an active, unrestricted license to practice medicine that was issued by the West
 8 Virginia Board of Medicine or the West Virginia Board of Osteopathic Medicine;

9 (B) Is in good standing with the West Virginia Board of Medicine or the West Virginia Board
 10 of Osteopathic Medicine, whichever is applicable;

11 (C) Has a valid and unencumbered authority to prescribe controlled substances; and

12 (D) Is registered with the commission to make cannabis available to patients for medical
 13 use in accordance with regulations adopted by the commission.

14 (3) “Commission” means the West Virginia Medical Cannabis Commission established

15 under this article.

16 (4) "Dispensary" means an entity licensed under this article that acquires, possesses,
17 processes, transfers, transports, sells, distributes, dispenses, or administers cannabis, products
18 containing cannabis, related supplies, related products containing cannabis including food,
19 tinctures, aerosols, oils, or ointments, or educational materials for use by a qualifying patient or
20 caregiver.

21 (5) "Dispensary agent" means an owner, a member, an employee, a volunteer, an officer,
22 or a director of a dispensary.

23 (6) "Fund" means the West Virginia Medical Cannabis Commission Fund established
24 under this article.

25 (7) "Grower" means an entity licensed under this article that:

26 (A)(i) Cultivates, manufactures, processes, packages, or dispenses medical cannabis; or

27 (ii) Processes medical cannabis products; and

28 (B) Is authorized by the commission to provide cannabis to a qualifying patient, caregiver,
29 processor, dispensary, or independent testing laboratory.

30 (8) "Independent testing laboratory" means a facility, an entity, or a site that offers or
31 performs tests related to the inspection and testing of cannabis and products containing cannabis.

32 (9) "Medical cannabis grower agent" means an owner, an employee, a volunteer, an
33 officer, or a director of a grower.

34 (10) "Processor" means an entity that:

35 (A) Transforms medical cannabis into another product or extract; and

36 (B) Packages and labels medical cannabis.

37 (11) "Processor agent" means an owner, a member, an employee, a volunteer, an officer,
38 or a director of a processor.

39 (12) "Qualifying patient" means an individual who:

40 (A) Has been provided with a written certification by a certifying physician in accordance

41 with a bona fide physician–patient relationship; and

42 (B) If under the age of eighteen years, has a caregiver.

43 (13) “Written certification” means a certification that:

44 (A) Is issued by a certifying physician to a qualifying patient with whom the physician has
45 a bona fide physician–patient relationship; and

46 (B) Includes a written statement certifying that, in the physician’s professional opinion,
47 after having completed an assessment of the patient’s medical history and current medical
48 condition, the patient has a condition:

49 (i) That meets the inclusion criteria and does not meet the exclusion criteria of the certifying
50 physician’s application; and

51 (ii) For which the potential benefits of the medical use of cannabis would likely outweigh
52 the health risks for the patient; and

53 (C) May include a written statement certifying that, in the physician’s professional opinion,
54 a thirty–day supply of medical cannabis would be inadequate to meet the medical needs of the
55 qualifying patient.

§16-8A-2. Creation of Cannabis Commission.

1 (a) There is hereby created the West Virginia Medical Cannabis Commission.

2 (b) The commission is an independent commission that functions within the department.

3 (c) The purpose of the commission is to develop policies, procedures, guidelines, and
4 regulations to implement programs to make medical cannabis available to qualifying patients in a
5 safe and effective manner.

6 (d)(1) The commission shall develop identification cards for qualifying patients and
7 caregivers.

8 (2)(A) The department shall adopt regulations that establish the requirements for
9 identification cards provided by the commission.

10 (B) The regulations adopted under paragraph (A) of this subdivision shall include:

- 11 (i) The information to be included on an identification card;
- 12 (ii) The method through which the commission will distribute identification cards; and
- 13 (iii) The method through which the commission will track identification cards.
- 14 (e) The commission shall develop and maintain a Web site that:
- 15 (1) Provides information on how an individual can obtain medical cannabis in the state;
- 16 and
- 17 (2) Provides contact information for licensed dispensaries.

§16-8A-3. Makeup of commission and fund.

- 1 (a) The commission consists of the following sixteen members:
- 2 (1) The Secretary of the Department of Health and Human Resources, or the secretary's
- 3 designee;
- 4 (2) The Commissioner of the Department of Agriculture, or the commissioner's designee;
- 5 (3) The West Virginia Treasurer, or the Treasurer's designee; and
- 6 (4) The following thirteen members, appointed by the Governor:
- 7 (i) Two members of the public who support the use of cannabis for medical purposes and
- 8 who are or were patients who found relief from the use of medical cannabis;
- 9 (ii) One member designated by the West Virginia Association of Alcoholism and Drug
- 10 Counselors;
- 11 (iii) Three physicians licensed in the state;
- 12 (iv) One nurse practitioner licensed in the state who has experience in hospice care;
- 13 (v) One pharmacist licensed in the state;
- 14 (vi) One scientist who has experience in the science of cannabis;
- 15 (vii) One representative of the West Virginia State Bar;
- 16 (viii) One representative of law enforcement;
- 17 (ix) An attorney who is knowledgeable about medical cannabis laws in the United States;
- 18 and

19 (x) An individual with experience in horticulture, recommended by the Department of
20 Agriculture.

21 (b)(1) The term of a member is four years. However, the Governor shall set the terms of
22 the initial members of the commission by executive order such that three expire after one year,
23 three expire after two years, and three expire after three years in order to stagger the membership
24 terms of the commission.

25 (2) At the end of a commission member's term, the member continues to serve until a
26 successor is appointed and qualified.

27 (3) A member may not serve more than three consecutive full terms.

28 (4) A member who is appointed after a term has begun serves only for the rest of the term
29 and until a successor is appointed and qualifies.

30 (c) The Governor shall designate the chair from among the members of the commission.

31 (d) A majority of the full authorized membership of the commission is a quorum.

32 (e) A member of the commission:

33 (1) May not receive compensation as a member of the commission; but

34 (2) Is entitled to reimbursement for expenses incurred while engaged in the discharge of
35 official duties, not to exceed the amount paid to members of the Legislature.

36 (f) The commission may employ a staff, including contractual staff, in accordance with the
37 funds provided in the annual state budget.

38 (g) The commission may set reasonable fees to cover the costs of operating the
39 commission.

40 (h)(1) There is hereby created in the State Treasury a separate special revenue account,
41 which shall be an interest-bearing account, to be known as the West Virginia Medical Cannabis
42 Commission Fund.

43 (2) The commission shall administer the fund.

44 (3) Any balance remaining in the fund at the end of any state fiscal year reverts to the

45 General Revenue Fund.

46 (4) The fund shall be subject to an audit by the West Virginia Legislative Auditor’s Office.

47 (5) The Treasurer shall pay out money from the fund as directed by the commission.

48 (6) The fund consists of:

49 (A) Any money appropriated by the Legislature to the fund;

50 (B) Any other money from any other source accepted for the benefit of the fund, in
51 accordance with any conditions adopted by the commission for the acceptance of donations or
52 gifts to the fund; and

53 (C) Any fees collected by the commission under this article.

§16-8A-4. Certifying physician’s registration.

1 (a) The commission shall register as a certifying physician an individual who:

2 (1) Meets the requirements of this article; and

3 (2) Submits application materials that meet the requirements of this article.

4 (b) To be registered as a certifying physician, a physician shall submit a proposal to the
5 commission that includes:

6 (1) The reasons for including a patient under the care of the physician for the purposes of
7 this article, including the patient’s qualifying medical conditions;

8 (2) An attestation that a standard patient evaluation will be completed, including a history,
9 a physical examination, a review of symptoms, and other pertinent medical information; and

10 (3) The physician’s plan for the ongoing assessment and follow–up care of a patient and
11 for collecting and analyzing data.

12 (c) The commission may not require an individual to meet requirements in addition to the
13 requirements listed in subsections (a) and (b) of this section to be registered as a certifying
14 physician.

15 (d)(1) The commission is encouraged to approve physician applications for the following
16 medical conditions:

17 (A) A chronic or debilitating disease or medical condition that results in a patient being
18 admitted into hospice or receiving palliative care; or

19 (B) A chronic or debilitating disease or medical condition or the treatment of a chronic or
20 debilitating disease or medical condition that produces:

21 (i) Cachexia, anorexia, or wasting syndrome;

22 (ii) Severe or chronic pain that does not find effective relief through standard pain
23 medication;

24 (iii) Severe nausea;

25 (iv) Seizures; or

26 (v) Severe or persistent muscle spasms.

27 (2) The commission may not limit treatment of a particular medical condition to one class
28 of physicians.

29 (e) The commission may approve applications that include any other condition that is
30 severe and for which other medical treatments have been ineffective if the symptoms reasonably
31 can be expected to be relieved by the medical use of cannabis.

32 (f)(1) A certifying physician or the spouse of a certifying physician may not receive any
33 gifts from or have an ownership interest in a medical cannabis grower, a processor, or a
34 dispensary.

35 (2) A certifying physician may receive compensation from a medical cannabis grower, a
36 processor, or dispensary if the certifying physician:

37 (A) Obtains the approval of the commission before receiving the compensation; and

38 (B) Discloses the amount of compensation received from the medical cannabis grower,
39 processor, or dispensary to the commission.

40 (g)(1) A qualifying patient may be a patient of the certifying physician or may be referred
41 to the certifying physician.

42 (2) A certifying physician shall provide each written certification to the commission.

43 (3) On receipt of a written certification provided under subdivision (2) of this subsection,
44 the commission shall issue an identification card to each qualifying patient or caregiver named in
45 the written certification.

46 (4) A certifying physician may discuss medical cannabis with a patient.

47 (5)(A) Except as provided in paragraph (B) of this subdivision, a qualifying patient or
48 caregiver may obtain medical cannabis only from a medical cannabis grower licensed by the
49 commission or a dispensary licensed by the commission.

50 (B) A qualifying patient under the age of eighteen years may obtain medical cannabis only
51 through the qualifying patient’s caregiver.

52 (6)(A) A caregiver may serve no more than five qualifying patients at any time.

53 (B) A qualifying patient may have no more than two caregivers.

54 (h)(1) A certifying physician may register biennially.

55 (2) The commission shall grant or deny a renewal of a registration for approval based on
56 the physician’s performance in complying with regulations adopted by the commission.

§16-8A-5. Reporting requirement.

1 On or before January 31 each year, the commission shall report to the Governor and the
2 Joint Committee on Government and Finance on physicians certified under this article.

§16-8A-6. Medical cannabis growers and grower agents.

1 (a) (1) The commission shall license medical cannabis growers that meet all requirements
2 established by the commission to operate in the state to provide cannabis to:

3 (A) Processors licensed by the commission under this article;

4 (B) Dispensaries licensed by the commission under this article;

5 (C) Qualifying patients and caregivers; and

6 (D) Independent testing laboratories registered with the commission under this article.

7 (2)(A) Except as provided in paragraph (B) of this subdivision, the commission may
8 license no more than fifteen medical cannabis growers.

9 (B) Beginning June 1, 2019, the commission may issue the number of licenses necessary
10 to meet the demand for medical cannabis by qualifying patients and caregivers issued
11 identification cards under this article in an affordable, accessible, secure, and efficient manner.

12 (C) The commission shall establish an application review process for granting medical
13 cannabis grower licenses in which applications are reviewed, evaluated, and ranked based on
14 criteria established by the commission.

15 (D) The commission may not issue more than one medical cannabis grower license to
16 each applicant.

17 (E) A grower shall pay an application fee in an amount to be determined by the commission
18 consistent with this article.

19 (3) The commission shall set standards for licensure as a medical cannabis grower to
20 ensure public safety and safe access to medical cannabis, which may include a requirement for
21 the posting of security.

22 (4) Each medical cannabis grower agent shall:

23 (A) Be registered with the commission before the agent may volunteer or work for a
24 licensed grower; and

25 (B) Obtain state and national criminal history records check in accordance with section
26 twelve of this article.

27 (5)(A) A licensed grower shall apply to the commission for a registration card for each
28 grower agent by submitting the name, address, and date of birth of the agent.

29 (B) Within one business day after a grower agent ceases to be associated with a grower,
30 the grower shall notify the commission and return the grower agent's registration card to the
31 commission. On receipt of the notice, the commission shall immediately revoke the registration
32 card of the grower agent and, if the registration card was not returned to the commission, notify
33 the Superintendent of the West Virginia State Police.

34 (C) The commission may not register a person who has been convicted of a felony drug

35 offense as a grower agent.

36 (6)(A) A medical cannabis grower license is valid for four years on initial licensure.

37 (B) A medical cannabis grower license is valid for two years on renewal.

38 (7) An application to operate as a medical cannabis grower may be submitted in paper or
 39 electronic form.

40 (8)(A) The commission shall encourage licensing medical cannabis growers that grow
 41 strains of cannabis, including strains with high cannabidiol content, with demonstrated success in
 42 alleviating symptoms of specific diseases or conditions.

43 (B) The commission shall encourage licensing medical cannabis growers that prepare
 44 medical cannabis in a range of routes of administration.

45 (9)(A) The commission shall:

46 (i) Actively seek to achieve geographic diversity when licensing medical cannabis growers;

47 and

48 (ii) Encourage applicants who qualify as a minority-owned business, as that term is defined
 49 in section fifty-nine, article three, chapter five-a of this code.

50 (B) Beginning June 1, 2019, a grower licensed under this article to operate as a medical
 51 cannabis grower shall report annually to the commission on the minority owners and employees
 52 of the grower.

53 (10) An entity seeking licensure as a medical cannabis grower shall meet local zoning and
 54 planning requirements.

55 (b) An entity licensed to grow medical cannabis under this section may provide cannabis
 56 only to:

57 (1) Processors licensed by the commission under this article;

58 (2) Dispensaries licensed by the commission under this article;

59 (3) Qualified patients;

60 (4) Caregivers; and

61 (5) Independent testing laboratories registered with the commission under this article.

62 (c)(1) An entity licensed to grow cannabis under this section may dispense cannabis from
 63 a facility of a grower licensed as a dispensary.

64 (2) A qualifying patient or caregiver may obtain medical cannabis from a facility of a grower
 65 licensed as a dispensary.

66 (3) An entity licensed to grow medical cannabis under this section may grow and process
 67 medical cannabis on the same premises.

68 (d) An entity licensed to grow medical cannabis under this section shall ensure that safety
 69 precautions established by the commission are followed by any facility operated by the grower.

70 (e) The commission shall establish requirements for security and the manufacturing
 71 process that a grower must meet to obtain a license under this section, including a requirement
 72 for a product-tracking system.

73 (f) The commission may inspect a grower licensed under this section to ensure compliance
 74 with this article.

75 (g) The commission may impose penalties or rescind the license of a grower that does not
 76 meet the standards for licensure set by the commission.

§16-8A-7. Dispensaries.

1 (a) A dispensary shall be licensed by the commission.

2 (b) To be licensed as a dispensary, an applicant shall submit to the commission:

3 (1) An application fee in an amount to be determined by the commission consistent with
 4 this article; and

5 (2) An application that includes:

6 (A) The legal name and physical address of the proposed dispensary;

7 (B) The name, address, and date of birth of each principal officer and each director, none
 8 of whom may have served as a principal officer or director for a dispensary that has had its license
 9 revoked; and

10 (C) Operating procedures that the dispensary will use, consistent with commission
11 regulations for oversight, including storage of cannabis and products containing cannabis only in
12 enclosed and locked facilities.

13 (c) The commission shall:

14 (1) Establish an application review process for granting dispensary licenses in which
15 applications are reviewed, evaluated, and ranked based on criteria established by the
16 commission; and

17 (2) Actively seek to achieve geographic diversity when licensing dispensaries.

18 (d)(1) A dispensary license is valid for four years on initial licensure.

19 (2) A dispensary license is valid for two years on renewal.

20 (e) A dispensary licensed under this section or a dispensary agent registered under
21 section eight of this article may not be penalized or arrested under state law for acquiring,
22 possessing, processing, transferring, transporting, selling, distributing, or dispensing cannabis,
23 products containing cannabis, related supplies, or educational materials for use by a qualifying
24 patient or a caregiver.

25 (f) The commission shall establish requirements for security and product handling
26 procedures that a dispensary must meet to obtain a license under this section, including a
27 requirement for a product-tracking system.

28 (g) The commission may inspect a dispensary licensed under this section to ensure
29 compliance with this article.

30 (h) The commission may impose penalties or rescind the license of a dispensary that does
31 not meet the standards for licensure set by the commission.

32 (i)(1) Each dispensary licensed under this section shall submit to the commission a
33 quarterly report.

34 (2) The quarterly report shall include:

35 (A) The number of patients served;

- 36 (B) The county of residence of each patient served;
- 37 (C) The medical condition for which medical cannabis was recommended;
- 38 (D) The type and amount of medical cannabis dispensed; and
- 39 (E) If available, a summary of clinical outcomes, including adverse events and any cases
- 40 of suspected diversion.

41 (3) The quarterly report may not include any personal information that identifies a patient.

§16-8A-8. Dispensary agents.

- 1 (a) A dispensary agent shall:
- 2 (1) Be at least twenty-one years old;
- 3 (2) Be registered with the commission before the agent may volunteer or work for a
- 4 dispensary; and

5 (3) Obtain state and national criminal history records check in accordance with section

6 twelve of this article.

7 (b) A dispensary shall apply to the commission for a registration card for each dispensary

8 agent by submitting the name, address, and date of birth of the agent.

9 (c)(1) Within one business day after a dispensary agent ceases to be associated with a

10 dispensary, the dispensary shall:

- 11 (A) Notify the commission; and
- 12 (B) Return the dispensary agent's registration card to the commission.

13 (2) On receipt of a notice described in subdivision (1) of this subsection, the commission

14 shall:

- 15 (A) Immediately revoke the registration card of the dispensary agent; and
- 16 (B) If the registration card was not returned to the commission, notify the Superintendent
- 17 of the West Virginia State Police.

18 (d) The commission may not register an individual who has been convicted of a felony

19 drug offense as a dispensary agent.

§16-8A-9. Processors.

- 1 (a) A processor shall be licensed by the commission.
- 2 (b) To be licensed as a processor, an applicant shall submit to the commission:
- 3 (1) An application fee in an amount to be determined by the commission in accordance
4 with this article; and
- 5 (2) An application that includes:
- 6 (A) The legal name and physical address of the proposed processor;
- 7 (B) The name, address, and date of birth of each principal officer and director, none of
8 whom may have served as a principal officer or director for a licensee under this article that has
9 had its license revoked; and
- 10 (C) Operating procedures that the processor will use, consistent with commission
11 regulations for oversight, including storage of cannabis, extracts, and products containing
12 cannabis only in enclosed and locked facilities.
- 13 (c) The commission shall establish an application review process for granting processor
14 licenses in which applications are reviewed, evaluated, and ranked based on criteria established
15 by the commission.
- 16 (d)(1) A processor license is valid for four years on initial licensure.
- 17 (2) A processor license is valid for two years on renewal.
- 18 (e) A processor licensed under this section or a processor agent registered section ten of
19 this article may not be penalized or arrested under state law for acquiring, possessing, processing,
20 transferring, transporting, selling, distributing, or dispensing cannabis, products containing
21 cannabis, related supplies, or educational materials for use by a licensee under this article or a
22 qualifying patient or a caregiver.
- 23 (f) The commission shall establish requirements for security and product handling
24 procedures that a processor must meet to obtain a license under this section, including a
25 requirement for a product-tracking system.

26 (g) The commission may inspect a processor licensed under this section to ensure
27 compliance with this article.

28 (h) The commission may impose penalties or rescind the license of a processor that does
29 not meet the standards for licensure set by the commission.

§16-8A-10. Processor Agents.

1 (a) A processor agent shall:

2 (1) Be at least twenty-one years old;

3 (2) Be registered with the commission before the agent may volunteer or work for a
4 processor; and

5 (3) Obtain state and national criminal history records check in accordance with section
6 twelve of this article.

7 (b) A processor agent shall apply to the commission for a registration card for each
8 processor agent by submitting the name, address, and date of birth of the agent.

9 (c)(1) Within one business day after a processor agent ceases to be associated with a
10 processor, the processor shall:

11 (A) Notify the commission; and

12 (B) Return the processor agent's registration card to the commission.

13 (2) On receipt of a notice described in subdivision (1) of this subsection, the commission
14 shall:

15 (A) Immediately revoke the registration card of the processor agent; and

16 (B) If the registration card was not returned to the commission, notify the Superintendent
17 of the West Virginia State Police.

18 (d) The commission may not register an individual who has been convicted of a felony
19 drug offense as a processor agent.

§16-8A-11. Independent Laboratories.

1 (a) The commission shall register, a public criminal justice agency as the primary testing

2 laboratory to test cannabis and products containing cannabis that are to be sold in the state.

3 (b) The commission may register additional private independent testing laboratories to test
4 cannabis and products containing cannabis that are to be sold in the state.

5 (c) To be registered as an independent testing laboratory, a laboratory shall:

6 (1) Meet the application requirements established by the commission;

7 (2) Pay any applicable fee required by the commission; and

8 (3) Meet the standards and requirements for accreditation, inspection, and testing
9 established by the commission.

10 (d) The commission shall adopt regulations that establish:

11 (1) The standards and requirements to be met by an independent laboratory to obtain a
12 registration;

13 (2) The standards of care to be followed by all testing laboratories;

14 (3) The initial and renewal terms for an independent laboratory registration and the
15 renewal procedure; and

16 (4) The bases and processes for denial, revocation, and suspension of a registration of an
17 independent testing laboratory.

18 (d) The commission may inspect any independent testing laboratory registered under this
19 section to ensure compliance with this article.

§16-8A-12. Criminal records check.

1 (a) The commission and the State Police shall enter into a memorandum of understanding
2 regarding criminal records checks that include, at a minimum, the following:

3 (1) Any applicant is required to submit to the State Police all information necessary to
4 complete a nationwide background check consisting of inquiries of the National Instant Criminal
5 Background Check System, the West Virginia criminal history record responses and the National
6 Interstate Identification Index;

7 (2) The applicant is required to pay all fees associated with the background checks;

8 (3) The State Police shall complete the background checks promptly upon receipt of all
9 necessary information and fees.

10 (4) The State Police shall forward to the commission and to the applicant the criminal
11 history record information of the applicant forthwith.

12 (b) Information obtained from the background checks required under this section shall be:

13 (1) Confidential and may not be disseminated other than as authorized in this section; and

14 (2) Used only for the registration purpose authorized by this article.

15 (c) The subject of a criminal history records check under this section may appeal the
16 contents of the printed statement issued, as authorized by relevant criminal history database.

§16-8A-13. Penalties.

1 (a) Any of the following persons acting in accordance with the provisions of this article may
2 not be subject to arrest, prosecution, or any civil or administrative penalty, including a civil penalty
3 or disciplinary action by a professional licensing board, or be denied any right or privilege, for the
4 medical use of cannabis:

5 (1) A qualifying patient:

6 (A) In possession of an amount of medical cannabis determined by the commission to
7 constitute a thirty-day supply; or

8 (B) In possession of an amount of medical cannabis that is greater than a thirty-day supply
9 if the qualifying patient's certifying physician stated in the written certification that a thirty-day
10 supply would be inadequate to meet the medical needs of the qualifying patient;

11 (2) A grower licensed under section six of this article or a grower agent registered under
12 section six of this article;

13 (3) A certifying physician;

14 (4) A caregiver;

15 (5) A dispensary licensed under section seven of this article or a dispensary agent
16 registered under section eight of this article;

17 (6) A processor licensed under section nine of this article or a processor agent registered
18 under section ten of this article; or

19 (7) A hospital, medical facility, or hospice program where a qualifying patient is receiving
20 treatment.

21 (b)(1) A person may not distribute, possess, manufacture, or use cannabis that has been
22 diverted from a qualifying patient, a caregiver, a licensed grower, or a licensed dispensary.

23 (2) A person who violates this subsection is guilty of a felony and, on conviction is subject
24 to confinement not exceeding five years or a fine not exceeding \$10,000, or both fined and
25 confined.

26 (3) The penalty under this section is in addition to any penalties that a person may be
27 subject to for manufacture, possession, or distribution of marijuana under this code.

§16-8A-14. Conduct not protected.

1 (a) This article may not be construed to authorize any individual to engage in, and does
2 not prevent the imposition of any civil, criminal, or other penalties for, the following:

3 (1) Undertaking any task under the influence of marijuana or cannabis, when doing so
4 would constitute negligence or professional malpractice;

5 (2) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft,
6 or boat while under the influence of marijuana or cannabis;

7 (3) Smoking marijuana or cannabis in any public place;

8 (4) Smoking marijuana or cannabis in a motor vehicle; or

9 (5) Except as provided in subsection (b) of this section, smoking marijuana or cannabis
10 on a private property that:

11 (A)(i) Is rented from a landlord; and

12 (ii) Is subject to a policy that prohibits the smoking of marijuana or cannabis on the
13 property; or

14 (B) Is subject to a policy that prohibits the smoking of marijuana or cannabis on the

15 property of an attached dwelling adopted by the council of unit owners, as defined in chapter
16 thirty-six-a of this code, or the executive board of a unit owners association, as defined in chapter
17 thirty-six-b of this code.

18 (b) The provisions of subdivision (5), subsection (a) of this section do not apply to
19 vaporizing cannabis.

20 (c) This article may not be construed to provide immunity to a person who violates the
21 provisions of this article from criminal prosecution for a violation of any law prohibiting or regulating
22 the use, possession, dispensing, distribution, or promotion of controlled dangerous substances,
23 dangerous drugs, detrimental drugs, or harmful drugs, or any conspiracy or attempt to commit
24 any of those offenses.

25 (d) This article may not be construed to require a hospital, medical facility, or hospice
26 program to report to the commission any disciplinary action taken by the hospital, medical facility,
27 or hospice program against a certifying physician, including the revocation of privileges, after the
28 registration of the certifying physician by the commission.

29 (e) This article may not be construed to prohibit a person from being concurrently licensed
30 by the commission as a grower, a dispensary, or a processor.

§16-8A-15. State employee actions and federal law.

1 (a) Notwithstanding any provision of this code to the contrary, a state employee who incurs
2 counsel fees in connection with a federal criminal investigation or prosecution solely related to
3 the employee's good faith discharge of public responsibilities under this article is eligible for
4 reimbursement of counsel fees.

5 (b) The Governor may suspend implementation of this article upon making a formal
6 determination that there is a reasonable chance of federal prosecution of state employees for
7 involvement with implementation of this article.

§16-8A-16. Rulemaking.

1 On or before September 15, 2018, the commission shall promulgate emergency rules

- 2 pursuant to the provisions of section fifteen, article three, chapter twenty-nine of this code to
3 implement the provisions of this article and shall subsequently propose rules for legislative
4 approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

NOTE: The purpose of this bill is to authorize medicinal cannabis in West Virginia.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.