

WEST VIRGINIA LEGISLATURE
2019 FIRST EXTRAORDINARY SESSION

Introduced

Senate Bill 1037

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Introduced May 20, 2019]

1 A BILL to amend and reenact §16A-2-1 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §16A-4-3 of said code; to amend and reenact §16A-6-3 and §16A-6-13 of
3 said code; to amend and reenact §16A-7-4 of said code; to amend and reenact §16A-8-1
4 of said code; to amend and reenact §16A-9-1 of said code; to amend said code by adding
5 thereto two new sections, designated §16A-9-3 and §16A-9-4; to amend and reenact
6 §16A-10-6 of said code; to amend and reenact §16A-11-1 of said code; to amend said
7 code by adding thereto a new section, designated §16A-15-10; and to amend and reenact
8 §16A-16-1 of said code, all relating generally to medical cannabis; defining terms;
9 modifying certain definitions; modifying conditions for issuance of patient certifications;
10 expanding practitioner reporting requirements; defining "resident" for purposes of the act;
11 requiring that state residents own a majority of business entities applying for medical
12 cannabis organization permits; removing regional distribution requirements for growers,
13 processors, and dispensaries; establishing criteria for choosing the locations of dispensary
14 permittees; requiring the Bureau for Public Health to adopt fair and objective evaluation
15 procedures in choosing permittees; requiring numeric scoring of applications; increasing
16 the maximum number of dispensary permits; increasing the number of dispensary permits
17 a person or entity may hold; authorizing persons or entities to hold grower, processor, and
18 dispensary permits; authorizing the bureau to oversee testing of medical cannabis;
19 permitting the Commissioner of Agriculture to perform medical cannabis testing; directing
20 that fees for testing of medical cannabis received by the Commissioner of Agriculture be
21 deposited in the Medical Cannabis Program Fund for disbursement to the Commissioner
22 of Agriculture; authorizing the bureau to contract with persons or entities other than the
23 Commissioner of Agriculture for testing of medical cannabis; removing the requirement
24 that dispensaries have a physician or pharmacist onsite; modifying tax rates and tax
25 procedures related to medical cannabis organizations establishing a 10 percent tax on
26 gross proceeds at the dispensary level; authorizing the electronic filing with the Tax

27 Commissioner; directing tax proceeds to be deposited in the Medical Cannabis Program
 28 Fund; clarifying applicability of the West Virginia Tax Procedure and Administration Act
 29 and the West Virginia Tax Crimes and Penalties Act apply to medical cannabis operations;
 30 extending the authority of the bureau to adopt emergency rules until July 1, 2021; adding
 31 two osteopathic physicians appointed by the West Virginia Osteopathic Association to the
 32 Medical Cannabis Advisory Board; immunizing state officials and employees from causes
 33 of action in their personal capacities for actions taken to implement the act; limiting any
 34 type of recovery to proceeds of available insurance; obligating the state to defend and
 35 indemnify state officials and employees against one type of action brought against them
 36 for implementing the act; authorizing precertification of patients; maintaining restriction
 37 that patient certificates may not be issued until July 1, 2019; and incorporating certain tax
 38 offenses and penalties by reference.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. DEFINITIONS.

§16A-2-1. Definitions.

1 (a) The following words and phrases when used in this chapter shall have the meanings
 2 given to them in this section unless the context clearly indicates otherwise:

3 (1) "Act" means the West Virginia Medical Cannabis Act and the provisions contained in
 4 §60A-1-101 *et seq.* of this code.

5 (2) "Advisory board" means the advisory board established under §16A-11-1 *et seq.* of
 6 this ~~chapter~~ code.

7 (3) "Bureau" means the Bureau for Public Health within the West Virginia Department of
 8 Health and Human Resources.

9 (4) "Caregiver" means the individual designated by a patient or, if the patient is under 18
 10 years of age, an individual authorized under §16A-5-1 *et seq.* of this code, to deliver medical
 11 cannabis.

12 (5) "Certified medical use" means the acquisition, possession, use, or transportation of
13 medical cannabis by a patient, or the acquisition, possession, delivery, transportation, or
14 administration of medical cannabis by a caregiver, for use as part of the treatment of the patient's
15 serious medical condition, as authorized in a certification under this act, including enabling the
16 patient to tolerate treatment for the serious medical condition.

17 (6) "Change in control" means the acquisition by a person or group of persons acting in
18 concert of a controlling interest in an applicant or permittee either all at one time or over the span
19 of a 12-consecutive-month period.

20 (7) "Commissioner" means the Commissioner of the Bureau for Public Health.

21 (8) "Continuing care" means treating a patient ~~for at least six months~~, in the course of
22 which the practitioner has completed a full assessment of the patient's medical history and current
23 medical condition, including an in-person consultation with the patient, and is able to document
24 and make a medical diagnosis based upon the substantive treatment of the patient.

25 (9) "Controlling interest" means:

26 (A) For a publicly traded entity, voting rights that entitle a person to elect or appoint one
27 or more of the members of the board of directors or other governing board or the ownership or
28 beneficial holding of five percent or more of the securities of the publicly traded entity.

29 (B) For a privately held entity, the ownership of any security in the entity.

30 (10) "Dispensary" means a person, including a natural person, corporation, partnership,
31 association, trust, or other entity, or any combination thereof, which holds a permit issued by the
32 bureau to dispense medical cannabis. The term does not include a health care medical cannabis
33 organization ~~under~~ as defined in §16A-13-1 *et seq.* of this code.

34 (11) "Family or household member" means the same as defined in §48-27-204 of this
35 code.

36 (12) "Financial backer" means an investor, mortgagee, bondholder, note holder, or other
37 source of equity, capital, or other assets, other than a financial institution.

38 (13) "Financial institution" means a bank, a national banking association, a bank and trust
39 company, a trust company, a savings and loan association, a building and loan association, a
40 mutual savings bank, a credit union, or a savings bank.

41 (14) "Form of medical cannabis" means the characteristics of the medical cannabis
42 recommended or limited for a particular patient, including the method of consumption and any
43 particular dosage, strain, variety and quantity, or percentage of medical cannabis or particular
44 active ingredient.

45 (15) "Fund" means the Medical Cannabis Program Fund established in §16A-9-2 of this
46 code.

47 (16) "Grower" means a person, including a natural person, corporation, partnership,
48 association, trust or other entity, or any combination thereof, which holds a permit from the bureau
49 under this act to grow medical cannabis. The term does not include a health care medical
50 cannabis organization as defined in ~~article thirteen~~ §16-13-1 et seq. this chapter code.

51 (17) "Grower/processor" means either a grower or a processor.

52 (18) "Identification card" means a document issued under §16A-5-1 *et seq.* of this code
53 that authorizes access to medical cannabis under this act.

54 (19) "Individual dose" means a single measure of medical cannabis.

55 (20) "Medical cannabis" means cannabis for certified medical use as set forth in this act.

56 (21) "Medical cannabis organization" means a dispensary, grower or processor. The term
57 does not include a health care medical cannabis organization ~~under~~ as defined in §16A-13-1 *et*
58 *seq.* of this code.

59 (22) "Patient" means an individual who:

60 (A) has a serious medical condition;

61 (B) has met the requirements for certification under this act; and

62 (C) is a resident of this state.

63 (23) "Permit" means an authorization issued by the bureau to a medical cannabis
64 organization to conduct activities under this act.

65 (24) "Physician" or "practitioner" means a doctor of allopathic or osteopathic medicine who
66 is fully licensed pursuant to the provisions of either §30-3-1 *et seq.* or §30-14-1 *et seq.* of this
67 code to practice medicine and surgery in this state.

68 (25) "Post-traumatic stress disorder" means a diagnosis made as part of continuing care
69 of a patient by a medical doctor, licensed counselor, or psychologist.

70 ~~(26) "Practitioner" means a physician who is registered with the bureau under article four~~
71 ~~of this chapter.~~

72 ~~(27)~~ (26) "Prescription drug monitoring program" means the West Virginia Controlled
73 Substances Monitoring program under §60A-9-101 *et seq.* of this code.

74 ~~(28)~~ (27) "Principal" means an officer, director, or person who directly owns a beneficial
75 interest in or ownership of the securities of an applicant or permittee, a person who has a
76 controlling interest in an applicant or permittee or who has the ability to elect the majority of the
77 board of directors of an applicant or permittee or otherwise control an applicant or permittee, other
78 than a financial institution.

79 ~~(29)~~ (28) "Processor" means a person, including a natural person, corporation,
80 partnership, association, trust, or other entity, or any combination thereof, which holds a permit
81 from the bureau under this act to process medical cannabis. The term does not include a health
82 care medical cannabis organization ~~under~~ as defined in §16A-13-1 *et seq.* of this chapter code.

83 ~~(30)~~ (29) "Registry" means the registry established by the bureau for practitioners.

84 ~~(34)~~ (30) "Serious medical condition" means any of the following, as has been diagnosed
85 as part of a patient's continuing care:

86 (A) Cancer.

87 (B) Positive status for human immunodeficiency virus or acquired immune deficiency
88 syndrome.

- 89 (C) Amyotrophic lateral sclerosis.
- 90 (D) Parkinson’s disease.
- 91 (E) Multiple sclerosis.
- 92 (F) Damage to the nervous tissue of the spinal cord with objective neurological indication
- 93 of intractable spasticity.
- 94 (G) Epilepsy.
- 95 (H) Neuropathies.
- 96 (I) Huntington’s disease.
- 97 (J) Crohn’s disease.
- 98 (K) Post-traumatic stress disorder.
- 99 (L) Intractable seizures.
- 100 (M) Sickle cell anemia.
- 101 (N) Severe chronic or intractable pain of neuropathic origin or severe chronic or intractable
- 102 pain, ~~in which conventional therapeutic intervention and opiate therapy is contraindicated or has~~
- 103 ~~proved ineffective as determined as part of continuing care~~
- 104 (O) Terminally ill.
- 105 ~~(32)~~(31) “Terminally ill” means a medical prognosis of life expectancy of approximately
- 106 one year or less if the illness runs its normal course.

ARTICLE 4. PRACTITIONERS.

§16A-4-3. Issuance of certification.

1 (a) *Conditions for issuance.* — A certification to use medical cannabis may be issued by
2 a practitioner to a patient if all of the following requirements are met:

3 (1) The practitioner has been approved by the bureau for inclusion in the registry and has
4 a valid, unexpired, unrevoked, unsuspended license to practice medicine in this state at the time
5 of the issuance of the certification.

6 (2) The practitioner has determined that the patient has a serious medical condition and

7 has included the condition in the patient's health care record.

8 (3) The patient is under the practitioner's continuing care for the serious medical condition.

9 (4) In the practitioner's professional opinion and review of past treatments, the practitioner
10 determines the patient is likely to receive therapeutic or palliative benefit from the use of medical
11 cannabis. ~~and other treatments, including treatments involving opioids, have proven ineffective or~~
12 ~~otherwise are contraindicated~~

13 (5) The practitioner has determined that the patient has no past or current medical
14 condition(s) or medication use that would constitute a contraindication for the use of cannabis.

15 (6) The practitioner has determined that the patient is experiencing serious
16 pathophysiological discomfort, disability, or dysfunction that may be attributable to a serious
17 medical condition and may possibly benefit from cannabis treatment when current medical
18 research exhibits a moderate or higher probability of efficacy; and

19 (7) The practitioner has educated the patient about cannabis and its safe use.

20 (b) *Contents.* — The certification shall include:

21 (1) The patient's name, date of birth, and address.

22 (2) The specific serious medical condition of the patient.

23 (3) A statement by the practitioner that the patient has a serious medical condition and the
24 patient is under the practitioner's continuing care for the serious medical condition.

25 (4) The date of issuance.

26 (5) The name, address, telephone number, and signature of the practitioner.

27 (6) Any requirement or limitation concerning the appropriate form of medical cannabis and
28 limitation on the duration of use, if applicable, including whether the patient is terminally ill.

29 (7) A statement by the practitioner attesting that he or she has performed the requirements
30 contained in subsection (a) of this section on a form to be issued by the West Virginia Department
31 of Health and Human Resources, Bureau for Public Health.

32 (c) *Consultation.* —

33 (1) A practitioner shall review the prescription drug monitoring program prior to:

34 (A) Issuing a certification to determine the controlled substance history of a patient.

35 (B) Recommending a change of amount or form of medical cannabis.

36 (2) The practitioner shall consider and give due consideration to other controlled
37 substances the patient may be taking prior to certifying medical cannabis.

38 (d) *Other access by practitioner.* — A practitioner may access the prescription drug
39 monitoring program to do any of the following:

40 (1) Determine whether a patient may be under treatment with a controlled substance by
41 another physician or other person.

42 (2) Allow the practitioner to review the patient’s controlled substance history as deemed
43 necessary by the practitioner.

44 (3) Provide to the patient, or caregiver, on behalf of the patient if authorized by the patient,
45 a copy of the patient’s controlled substance history.

46 (e) *Duties of practitioner.* — The practitioner shall:

47 (1) Provide the certification to the patient.

48 (2) Provide a copy of the certification to the bureau, which shall place the information in
49 the patient directory within the bureau’s electronic database. The bureau shall permit electronic
50 submission of the certification.

51 (3) File a copy of the certification in the patient’s health care record.

52 (f) *Prohibition.* — A practitioner may not issue a certification for the practitioner’s own use
53 or for the use of a family or household member.

ARTICLE 6. MEDICAL CANNABIS ORGANIZATIONS.

§16A-6-3. Granting of permit.

1 (a) The bureau may grant or deny a permit to a grower, processor, or dispensary. In
2 making a decision under this subsection, the bureau shall determine that:

3 (1) The applicant will maintain effective control of and prevent diversion of medical

4 cannabis.

5 (2) The applicant will comply with all applicable laws of this state.

6 (3) The applicant is a resident of this state as defined in §29-22B-327 of this code or is
7 organized under the law of this state. If the applicant is a business entity, majority ownership in
8 the business entity must be held by a state resident or residents.

9 (4) The applicant is ready, willing, and able to properly carry on the activity for which a
10 permit is sought.

11 (5) The applicant possesses the ability to obtain in an expeditious manner sufficient land,
12 buildings, and equipment to properly grow, process, or dispense medical cannabis.

13 (6) It is in the public interest to grant the permit.

14 (7) The applicant, including the financial backer or principal, is of good moral character
15 and has the financial fitness necessary to operate.

16 (8) The applicant is able to implement and maintain security, tracking, recordkeeping, and
17 surveillance systems relating to the acquisition, possession, growth, manufacture, sale, delivery,
18 transportation, distribution, or the dispensing of medical cannabis as required by the bureau.

19 (9) The applicant satisfies any other conditions as determined by the bureau.

20 (b) *Nontransferability.* — A permit issued under this chapter shall be nontransferable.

21 (c) *Privilege.* — The issuance or renewal of a permit shall be a revocable privilege.

22 ~~(d) *Regions.* — The bureau shall establish a minimum of three regions within this state for~~
23 ~~the purpose of granting permits to grower/processors and dispensaries and enforcing this act.~~
24 ~~The bureau shall approve permits for growers, processors and dispensaries in a manner which~~
25 ~~will provide an adequate amount of medical cannabis to patients and caregivers in all areas of~~
26 ~~this state. The bureau shall consider the following when issuing a permit~~

27 (d) *Dispensary location.* — The bureau shall consider the following when issuing a
28 dispensary permit:

29 (1) Geographic location;

- 30 ~~(1)~~ (2) Regional population;
- 31 ~~(2)~~ (3) The number of patients suffering from serious medical conditions;
- 32 ~~(3)~~ (4) The types of serious medical conditions;
- 33 ~~(4)~~ (5) Access to public transportation;
- 34 ~~(5)~~ (6) Approval by local health departments;
- 35 ~~(6)~~ (7) Whether the county has disallowed the location of a grower, processor or
- 36 dispensary; and
- 37 ~~(7)~~ (8) Any other factor the bureau deems relevant.

38 (e) Application procedure. — The bureau shall establish a procedure for the fair and
 39 objective evaluation of all applications for all medical cannabis organization permits. Such
 40 evaluations shall score each applicant numerically according to standards set forth in this chapter.

§16A-6-13. Limitations on permits.

- 1 (a) The following limitations apply to approval of permits for growers, processors, and
- 2 dispensaries, subject to the limitations in subsection (b) of this section:
- 3 (1) The bureau may not issue permits to more than 10 growers: *Provided*, That each
- 4 grower may have up to two locations per permit.
- 5 (2) The bureau may not issue permits to more than 10 processors.
- 6 (3) The bureau may not issue permits to more than ~~thirty~~ 100 dispensaries. ~~with no more~~
- 7 ~~than five in any region~~
- 8 (4) The bureau may not issue more than ~~two~~ 10 individual dispensary permits to one
- 9 person.
- 10 (5) The bureau may not issue more than one individual grower permit to one person.
- 11 (6) The bureau may not issue more than one individual processor permit to one person.
- 12 (7) A dispensary may only obtain medical cannabis from a grower or processor holding a
- 13 valid permit under this act.
- 14 (8) A grower or processor may only provide medical cannabis to a dispensary holding a

15 valid permit under this act.

16 (9) ~~A grower or a processor may not be a dispensary~~ A person may hold a grower permit,
17 a processor permit, and a dispensary permit, or any combination thereof, concurrently.

18 (b) Before a permit may be issued, the bureau shall obtain the following:

19 (1) A written approval from the board of health for the county in which the permit is to be
20 located and operate business.

21 (2) A written statement from the county commission for the county in which the permit is
22 to be located and conduct business that the county has not voted, pursuant to §16A-7-6 of this
23 code, to disapprove a medical cannabis organization to be located or operate within the county.

ARTICLE 7. MEDICAL CANNABIS CONTROLS.

§16A-7-4. Laboratory.

1 (a) A grower and processor shall contract with an independent laboratory to test the
2 medical cannabis produced by the grower or processor. The bureau shall approve the laboratory
3 and require that the laboratory report testing results in a manner as the bureau shall determine,
4 including requiring a test at harvest and a test at final processing. The possession by a laboratory
5 of medical cannabis shall be a lawful use.

6 (b) All medical cannabis produced pursuant to this chapter shall be subject to testing as
7 directed by the bureau.

8 (c) The bureau shall ensure that there is sufficient testing capacity to meet patient demand.

9 (d) All laboratories providing testing pursuant to this section shall be certified to do so by
10 the Office of Laboratory Services.

11 (e) Should the Commissioner of Agriculture elect to provide testing as required by this
12 section, any fees due the Commissioner of Agriculture shall be deposited in the Medical Cannabis
13 Program Fund established in §16A-9-2 of this code. Notwithstanding any provision of §16A-9-2
14 of this code to the contrary, the entirety of any fees received pursuant to this section for laboratory

15 testing of medical cannabis provided by the Commissioner of Agriculture shall be remitted to the
16 Commissioner of Agriculture by the bureau on a monthly basis.

ARTICLE 8. DISPENSARIES.

§16A-8-1. Dispensing to patients and caregivers.

1 (a) *General rule.* — A dispensary that has been issued a permit under §16A-6-1 *et seq.* of
2 this code may lawfully dispense medical cannabis to a patient or caregiver upon presentation to
3 the dispensary of a valid identification card for that patient or caregiver. The dispensary shall
4 provide to the patient or caregiver a receipt, as appropriate. The receipt shall include all of the
5 following:

6 (1) The name, address and any identification number assigned to the dispensary by the
7 bureau.

8 (2) The name and address of the patient and caregiver.

9 (3) The date the medical cannabis was dispensed.

10 (4) Any requirement or limitation by the practitioner as to the form of medical cannabis for
11 the patient.

12 (5) The form and the quantity of medical cannabis dispensed.

13 ~~(b) Requirements. — A dispensary shall have a physician or a pharmacist onsite at all~~
14 ~~times during the hours the dispensary is open to receive patients and caregivers. A physician or~~
15 ~~a pharmacist shall, prior to assuming duties under this paragraph, successfully complete the~~
16 ~~course established in subsection (a), section one, article three of this chapter. A physician may~~
17 ~~not issue a certification to authorize patients to receive medical cannabis or otherwise treat~~
18 ~~patients at the dispensary~~

19 (e) (b) Filing with bureau. — Prior to dispensing medical cannabis to a patient or caregiver,
20 the dispensary shall file the receipt information with the bureau utilizing the electronic tracking
21 system. When filing receipts under this subsection, the dispensary shall dispose of any
22 electronically recorded certification information as provided by rule.

23 ~~(d)~~ (c) *Limitations.* — No dispensary may dispense to a patient or caregiver:

24 (1) A quantity of medical cannabis greater than that which the patient or caregiver is
25 permitted to possess under the certification; or

26 (2) A form of medical cannabis prohibited by this act.

27 ~~(e)~~ (d) *Supply.* — When dispensing medical cannabis to a patient or caregiver, the
28 dispensary may not dispense an amount greater than a 30-day supply until the patient has
29 exhausted all but a seven-day supply provided pursuant to §16A-4-5 of this code.

30 ~~(f)~~ (e) *Verification.* — Prior to dispensing medical cannabis to a patient or caregiver, the
31 dispensary shall verify the information in subsections (d) and (f) of this section by consulting the
32 electronic tracking system included in the bureau's electronic database established under §16A-
33 3-1 of this code and the dispensary tracking system under §16A-7-1 of this code.

34 ~~(g)~~ (f) *Form of medical cannabis.* — Medical cannabis dispensed to a patient or caregiver
35 by a dispensary shall conform to any requirement or limitation set by the practitioner as to the
36 form of medical cannabis for the patient.

37 ~~(h)~~ (g) *Safety insert.* — When a dispensary dispenses medical cannabis to a patient or
38 caregiver, the dispensary shall provide to that patient or caregiver, as appropriate, a safety insert.
39 The insert shall be developed and approved by the bureau. The insert shall provide the following
40 information:

41 (1) Lawful methods for administering medical cannabis in individual doses.

42 (2) Any potential dangers stemming from the use of medical cannabis.

43 (3) How to recognize what may be problematic usage of medical cannabis and how to
44 obtain appropriate services or treatment for problematic usage.

45 (4) How to prevent or deter the misuse of medical cannabis by minors or others.

46 (5) Any other information as determined by the bureau.

47 ~~(i)~~ (h) *Sealed and labeled package.* — Medical cannabis shall be dispensed by a
48 dispensary to a patient or caregiver in a sealed, properly labeled, and child-resistant package.

49 The labeling shall contain the following:

50 (1) The information required to be included in the receipt provided to the patient or
51 caregiver, as appropriate, by the dispensary.

52 (2) The packaging date.

53 (3) Any applicable date by which the medical cannabis should be used.

54 (4) A warning stating:

55 "This product is for medicinal use only. Women should not consume during pregnancy or
56 while breastfeeding except on the advice of the practitioner who issued the certification and, in
57 the case of breastfeeding, the infant's pediatrician. This product might impair the ability to drive
58 or operate heavy machinery. Keep out of reach of children."

59 (5) The amount of individual doses contained within the package and the species and
60 percentage of tetrahydrocannabinol and cannabidiol.

61 (6) A warning that the medical cannabis must be kept in the original container in which it
62 was dispensed.

63 (7) A warning that unauthorized use is unlawful and will subject the person to criminal
64 penalties.

65 (8) Any other information required by the bureau.

ARTICLE 9. TAX ON MEDICAL CANNABIS.

§16A-9-1. Tax on medical cannabis.

1 ~~(a) Tax imposed. — A tax is imposed on the gross receipts of a grower/processor received~~
2 ~~from the sale of medical cannabis by a grower/processor to a dispensary, to be paid by the~~
3 ~~grower/processor, at the rate of ten percent. The tax shall be charged against and be paid by the~~
4 ~~grower/processor and shall not be added as a separate charge or line item on any sales slip,~~
5 ~~invoice, receipt or other statement or memorandum of the price paid by a dispensary, patient or~~
6 ~~caregiver.~~

7 ~~(b) Payment of tax and reports. — A grower/processor shall make quarterly payments~~

8 ~~under this section for each calendar quarter at the rate prescribed in subsection (a) on the gross~~
9 ~~receipts for the calendar quarter. The tax shall be due and payable on the 20th day of January,~~
10 ~~April, July and October for the preceding calendar quarter on a form prescribed by the Department~~
11 ~~of Revenue~~

12 (a) Tax imposed. -- For the privilege of engaging or continuing within this state in the
13 business of a dispensary of medical cannabis, as defined in §16A-2-1 of this code, there is hereby
14 levied upon and collected from every person exercising the privilege a privilege tax.

15 (b) Rate and measure of tax. — The rate of tax imposed by this section shall be 10 percent
16 of the gross receipts the dispensary receives or accrues during the reporting period, depending
17 upon its method of accounting for federal income tax purposes, from the sale of medical cannabis
18 to a patient or to a caregiver. The tax imposed by this section shall not be added by the dispensary
19 as a separate charge or line item on any sales slip, invoice, receipt, other statement, or
20 memorandum of the price paid by a patient, or caregiver.

21 (c) Definitions. — For purposes of this article:

22 (1) "Gross receipts" means and includes the gross receipts, however denominated,
23 derived from the sale, distribution, or transfer of medical cannabis, without any deduction on
24 account of the cost of property sold; the cost of materials used to grow, process, or sell the medical
25 cannabis; labor costs, taxes, royalties paid in cash or in kind, or otherwise; interest or discount
26 paid; or any other expense, however denominated.

27 (2) "Person" includes any natural person, corporation, partnership, limited liability
28 company, or other business entity as those terms are defined in §11-1-1 et seq. of this code.

29 ~~(b) (d) Payment of tax and reports.~~ — ~~A grower/processor~~ Every person subject to the tax
30 imposed by this section shall make quarterly payments under this section for each calendar
31 quarter at the rate prescribed in subsection ~~(a)~~ (b) of this section on the gross receipts received
32 or accrued for the calendar quarter, depending upon the person's method of accounting for federal
33 income tax purposes. The tax shall be due and payable on the 20th day of January, April, July

34 and October for the preceding calendar quarter. ~~on a form prescribed by the Department of~~
35 ~~Revenue~~ When the payment of tax is due, the person shall file a tax return in a form prescribed
36 by the Tax Commissioner. The Tax Commissioner may require such forms, schedules, and
37 returns and impose such filing and remittance requirements as may be necessary or convenient
38 for the efficient administration of taxes imposed by this section.

39 (e) *Electronic filing and payment.* – The taxes imposed by this section shall be paid to the
40 Tax Commissioner by electronic funds transfer, unless electronic payment is prohibited by state
41 or federal law. Tax returns required by this section shall be filed electronically with the Tax
42 Commissioner.

43 (f) *Liability for reporting and payment of tax.* -- If any dispensary does not renew its permit,
44 gives up its permit, loses its permit to operate a dispensary, or otherwise ceases business, then
45 any tax, additions to tax, penalties and interest imposed by this article and by §11-10-1 *et seq.* of
46 this code shall become due and payable immediately and the dispensary shall make a final return
47 or returns and pay any tax which is due within thirty days after not renewing its permit, giving up
48 its permit, losing its permit to operate a dispensary, or otherwise ceasing business. The unpaid
49 amount of any tax is a lien upon the property of the dispensary and of its owners.

50 ~~(e)~~ (g) *Deposits of proceeds.* – All money received from the tax imposed under subsection
51 ~~(a)~~ this section, including any interest and additions to tax paid under §11-10-1 *et seq.*, less the
52 amount of any refunds, shall be deposited into the fund Medical Cannabis Program Fund.

53 ~~(d)~~ (h) *Exemption.* – ~~Medical~~ Sales of medical cannabis shall not be subject to a sales
54 ~~tax~~ the taxes imposed by §11-15-1 *et seq.* and §11-15A-1 *et seq.* of this code, if gross receipts
55 from the sale thereof are included in the measure of tax under this section and the tax has been
56 paid as provided in this section. Additionally, sales of medical cannabis shall not be subject to a
57 special district excise tax imposed by a county or municipality pursuant to this code, or to a county
58 or municipal sales tax.

59 ~~(e)~~ (i) *Information.* – A grower/processor that sells medical cannabis shall provide to the

60 ~~Department of Revenue information required by the bureau~~

61 (1) Persons subject to the tax imposed by this section shall provide to the Tax
 62 Commissioner any information the Tax Commissioner may require to administer, collect, and
 63 enforce the tax imposed by this section.

64 (2) Notwithstanding any provision of §11-10-1 et seq. of this code or of this article to the
 65 contrary, the Tax Commissioner, the bureau, and the Secretary of Health and Human Resources
 66 may enter into written agreements pursuant to which the Tax Commissioner will disclose to
 67 designated employees of the bureau and the Secretary of Health and Human Resources, whether
 68 a particular grower, processor, or dispensary is in good standing with the Tax Commissioner, and
 69 the bureau and the Secretary will disclose to designated employees of the Tax Commissioner
 70 information a grower, processor, or dispensary provides to the bureau and the Secretary pursuant
 71 to this code. Tax information disclosed pursuant to a written agreement shall remain confidential
 72 in the hands of the receiver and shall not be disclosable under §29B-1-1 et seq. of this code. To
 73 the extent feasible, this information should be shared or exchanged electronically

74 (j) Rules. -- The Tax Commissioner may promulgate, in accordance with the provisions of
 75 §29A-3-1 et seq. of this code, such procedural, interpretive, or legislative rules, including
 76 emergency rules, as the Tax Commissioner may deem necessary or convenient for the efficient
 77 administration of taxes imposed by this §16A-9-1 of this code.

§16A-9-3. Tax on medical cannabis crimes and penalties.

1 Notwithstanding any provision in §11-9-1 et seq. of this code to the contrary, each and
 2 every provision of the “West Virginia Tax Crimes and Penalties Act” set forth in §11-9-1 et seq. of
 3 this code shall apply to the tax imposed by §16A-9-1 et seq. of this code with like effect as if said
 4 act were applicable only to the tax imposed by §16A-9-1 et seq. of this code and were set forth in
 5 extenso in §16A-9-1 et seq. of this code.

§16A-9-4. Procedure and administration of the tax on medical cannabis.

1 Notwithstanding any provision of §11-10-1 et seq. of this code or any other provision of

2 this code to the contrary, each and every provision of the “West Virginia Tax Procedure and
3 Administration Act” set forth in §11-10-1 et seq. of this code, shall apply to the tax imposed by
4 §16A-9-1 et seq. with like effect as if the said West Virginia Tax Procedure and Administration Act
5 were applicable only to the tax imposed by §16A-9-1 et seq. of this code and were set forth in
6 extenso in §16A-9-1 et seq. of this code.

ARTICLE 10. ADMINISTRATION.

§16A-10-6. Emergency rules.

1 (a) *Promulgation.* — In order to facilitate the prompt implementation of this act, the bureau
2 may promulgate emergency rules that shall expire not later than two years following the
3 publication of the emergency rule.

4 (b) *Expiration.* — The bureau’s authority to adopt emergency rules under subsection (a)
5 of this section shall expire ~~two years after the effective date of this section~~ July 1, 2021. Rules
6 adopted after this period shall be promulgated as provided by law.

7 (c) *Publication.* — The bureau shall begin publishing emergency rules in the State Register
8 no later than six months after the effective date of this section.

ARTICLE 11. MEDICAL CANNABIS ADVISORY BOARD.

§16A-11-1. Advisory board.

1 (a) The Medical Cannabis Advisory Board is established within the bureau. The advisory
2 board shall consist of the following members:

3 (1) The commissioner or a designee.

4 (2) The Superintendent of the West Virginia State Police or a designee.

5 (3) Four physicians licensed to practice in the state to be appointed by the State Medical
6 Association with one from each of the following specialized medicine:

7 (A) Family Practice/Neurologist/General Practitioner.

8 (B) Pain Management.

9 (C) Oncologist/Palliative Care.

10 (D) Psychiatrist.

11 (4) Two physicians who are licensed pursuant to §30-14-1 et seq. of this code appointed
12 by the West Virginia Osteopathic Association.

13 ~~(4)~~ (5) One pharmacist licensed to practice in the state, to be designated by the Board of
14 Pharmacy.

15 ~~(5)~~ (6) One pharmacologist who has experience in the science of cannabis and a
16 knowledge of the uses, effects, and modes of actions of drugs, to be appointed by the Governor.

17 ~~(6)~~ (7) One member who is a horticulturalist, to be designated by the West Virginia
18 Commissioner of Agriculture.

19 ~~(7)~~ (8) One member designated by the West Virginia Association of Alcoholism and Drug
20 Counselors.

21 ~~(8)~~ (9) An attorney licensed in the state who is knowledgeable about medical cannabis
22 laws.

23 ~~(9)~~ (10) One member appointed by the West Virginia Prosecuting Attorneys Institute.

24 ~~(10)~~ (11) One member appointed by the Governor, who shall be a patient, a family or
25 household member of a patient or a patient advocate.

26 (b) *Terms.* — Except as provided under subsection (g) of this section, the members shall
27 serve a term of four years or until a successor has been appointed and qualified, but no longer
28 than six months beyond the four-year period.

29 (c) *Chair.* — The commissioner, or a designee, shall serve as chair of the advisory board.

30 (d) *Voting; quorum.* — A majority of the members shall constitute a quorum for the purpose
31 of organizing the advisory board, conducting its business and fulfilling its duties. A vote of the
32 majority of the members present shall be sufficient for all actions of the advisory board unless the
33 bylaws require a greater number.

34 (e) *Attendance.* — A member of the advisory board who fails to attend three consecutive

35 meetings shall be deemed vacant, unless the commissioner, upon written request from the
36 member, finds that the member should be excused from a meeting for good cause. A member
37 who cannot be physically present may attend meetings via electronic means, including video
38 conference.

39 (f) *Governance.* — The advisory board shall have the power to prescribe, amend and
40 repeal bylaws governing the manner in which the business of the advisory board is conducted
41 and the manner in which the duties granted to it are fulfilled. The advisory board may delegate
42 supervision of the administration of advisory board activities to an administrative commissioner
43 and other employees of the bureau as the commissioner shall appoint.

44 (g) *Initial terms.* — The initial terms of members appointed under subsection (a) of this
45 section shall be for terms of one, two, three, or four years, the particular term of each member to
46 be designated by the commissioner at the time of appointment. All other members shall serve for
47 a term of four years.

48 (h) *Vacancy.* — In the event that any member appointed under subsection (a) of this
49 section shall die or resign or otherwise become disqualified during the member's term of office, a
50 successor shall be appointed in the same way and with the same qualifications as set forth in this
51 section and shall hold office for the unexpired term. An appointed member of the advisory board
52 shall be eligible for reappointment.

53 (i) *Expenses.* — A member shall receive the amount of reasonable travel, hotel, and other
54 necessary expenses incurred in the performance of the duties of the member in accordance with
55 state rules but shall receive no other compensation for the member's service on the board.

56 (j) *Duties.* — The advisory board shall have the following duties:

57 (1) To examine and analyze the statutory and regulatory law relating to medical cannabis
58 within this state.

59 (2) To examine and analyze the law and events in other states and the nation with respect
60 to medical cannabis.

61 (3) To accept and review written comments from individuals and organizations about
62 medical cannabis.

63 (4) To issue, two years after the effective date of this section, a written report to the
64 Governor, the Senate, and the House of Delegates.

65 (5) The written report under subdivision (4) shall include recommendations and findings
66 as to the following:

67 (A) Whether to change the types of medical professionals who can issue certifications to
68 patients.

69 (B) Whether to change, add, or reduce the types of medical conditions which qualify as
70 serious medical conditions under this act.

71 (C) Whether to change the form of medical cannabis permitted under this act.

72 (D) Whether to change, add, or reduce the number of growers, processors or
73 dispensaries.

74 (E) How to ensure affordable patient access to medical cannabis.

75 (F) Whether to permit medical cannabis to be dispensed in dry leaf or plant form, for
76 administration by vaporization.

77 (6) The final written report under this section shall be adopted at a public meeting.

ARTICLE 15. MISCELLANEOUS PROVISIONS.

§16A-15-10. State employee actions and federal law.

1 (a) No cause of action exists against the state officers and employees in their personal
2 capacities, while acting within the scope of duties contemplated by §16A-1-1 et seq. of this code.
3 Any recovery for claims or actions arising from this section is limited solely to the proceeds of
4 available insurance coverage.

5 (b) To the extent permitted by law, the State of West Virginia shall defend state officers
6 and employees involved in implementing the provisions of §16A-1-1 et seq. of this code against
7 any claims, charges, liabilities, or expenses and shall indemnify and hold harmless state officers

8 and employees involved in implementing the provisions of §16A-1-1 et seq. of this code provided
9 they acted within the scope of their duties or employment in accordance with the act, including
10 without limitation, defense in any state, federal, or local court and payment of the amount of any
11 judgment obtained, damages, legal fees, expenses, and any other expenses incurred.

ARTICLE 16. EFFECTIVE DATE.

§16A-16-1. Effective date.

1 (a) Unless excepted in subsection (b) or (c), the provisions of this act shall be effective
2 upon passage.

3 (b) The provisions of §16A-12-1 et seq. of this code, and any other criminal provisions or
4 penalties contained in this act, shall not be effective until 90 days from passage of Senate Bill 386
5 during the 2017 regular session.

6 (c) Notwithstanding any provision of this chapter to the contrary, no identification cards
7 may be issued to patients until July 1, 2019. The Bureau may take sufficient steps through rule to
8 implement the preliminary provisions in preparation for implementation of the provisions of this
9 act.

10 (d) Notwithstanding the prohibition contained in subsection (c) on the issuance of
11 identification cards until July 1, 2019, the bureau may implement a process for the pre-registration
12 of patients with a serious medical condition who have been issued a certification approved by the
13 bureau and to a caregiver designated by the patient: *Provided*, That a patient who is pre-
14 registered must nevertheless comply with the provisions of §16A-5-1 of this code and may not be
15 issued an identification card necessary to obtain and use medical cannabis as authorized by this
16 act until July 1, 2019.

NOTE: The purpose of this bill is to modify the limitations on permits for growers, processors and dispensaries of medical cannabis. The bill increases the number of permits that the bureau may issue for growers, processors and dispensaries of medical cannabis. The bill permits growers, processors and dispensaries to be the same person or entity. The bill defines and modifies terms; modifies conditions for issuance of patient certifications;

and requires that one or more state residents own a majority of a medical cannabis business entity. The bill imposes an excise tax on dispensaries of medical cannabis measured by the gross receipts from such sales, and provides for the administration, collection and enforcement of the tax. In addition to exempting sales of medical cannabis from sales tax, the bill exempts sales from district excises taxes imposed by a county or municipality and from local sales taxes. The bill provides for the state to defend and indemnify state officials and employees acting within the scope of their employment when implementing the act.

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