

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**House Bill 2079**

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[Originating in the Committee on Health and Human  
Resources; Reported on February 20, 2019.]



1 A BILL to amend and reenact §16A-4-3 of the Code of West Virginia, 1931, as amended; to amend  
2 and reenact §16A-6-13 of said code; and to amend and reenact §16A-16-1 of said code,  
3 all relating to medical cannabis; adding requirements for practitioners to issue a  
4 certification; adding a requirement that practitioners provide an attestation; increasing the  
5 number of permits that the bureau may issue for growers, processors and dispensaries of  
6 medical cannabis; permitting a grower to be a processor and a processor to be a grower;  
7 allowing growers and processors to be dispensaries; permitting dispensaries to be  
8 growers and processors and authorizing the bureau to implement a process for pre-  
9 registration.

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

**§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 chapter sixty-a of this code.

5 (2) "Advisory board" means the advisory board established under article eleven of this  
6 chapter.

7 (3) "Bureau" mean 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  
10 eighteen years of age, an individual under article five, to deliver medical cannabis.

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

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

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

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

24 (9) "Controlling interest" means:

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

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

29 (10) "Dispensary" means a person, including a natural person, corporation, partnership,  
30 association, trust or other entity, or any combination thereof, which holds a permit issued by the  
31 bureau to dispense medical cannabis. The term does not include a health care medical cannabis  
32 organization under article thirteen of this chapter.

33 (11) "Family or household member" means the same as defined in section two hundred  
34 four, article twenty-seven, chapter forty-eight of this code.

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

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

40 (14) "Form of medical cannabis" means the characteristics of the medical cannabis  
41 recommended or limited for a particular patient, including the method of consumption and any

42 particular dosage, strain, variety and quantity or percentage of medical cannabis or particular  
43 active ingredient.

44 (15) "Fund" means the Medical Cannabis Program Fund established in section two, article  
45 nine of this chapter.

46 (16) "Grower" means a person, including a natural person, corporation, partnership,  
47 association, trust or other entity, or any combination thereof, which holds a permit from the bureau  
48 under this act to grow medical cannabis. The term does not include a health care medical  
49 cannabis organization under article thirteen of this chapter.

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

51 (18) "Identification card" means a document issued under article five of this chapter that  
52 authorizes access to medical cannabis under this act.

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

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

55 (21) "Medical cannabis organization" means a dispensary, grower or processor. The term  
56 does not include a health care medical cannabis organization under article thirteen of this chapter.

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

58 (A) has a serious medical condition;

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

60 (C) is a resident of this state.

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

63 (24) "Physician" means a doctor of allopathic or osteopathic medicine who is fully licensed  
64 pursuant to the provisions of either article three or article fourteen, chapter thirty of this code to  
65 practice medicine and surgery in this state.

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

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

70 (27) "Prescription drug monitoring program" means the West Virginia Controlled  
71 Substances Monitoring program under article nine, chapter sixty-a of this code.

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

77 (29) "Processor" means a person, including a natural person, corporation, partnership,  
78 association, trust or other entity, or any combination thereof, which holds a permit from the bureau  
79 under this act to process medical cannabis. The term does not include a health care medical  
80 cannabis organization under article thirteen of this chapter.

81 (30) "Registry" means the registry established by the bureau for practitioners.

82 (31) "Serious medical condition" means any of the following, as has been diagnosed as  
83 part of a patient's continuing care:

84 (A) Cancer.

85 (B) Positive status for human immunodeficiency virus or acquired immune deficiency  
86 syndrome.

87 (C) Amyotrophic lateral sclerosis.

88 (D) Parkinson's disease.

89 (E) Multiple sclerosis.

90 (F) Damage to the nervous tissue of the spinal cord with objective neurological indication  
91 of intractable spasticity.

92 (G) Epilepsy.

93 (H) Neuropathies.

94 (I) Huntington’s disease.

95 (J) Crohn’s disease.

96 (K) Post-traumatic stress disorder.

97 (L) Intractable seizures.

98 (M) Sickle cell anemia.

99 (N) Severe chronic or intractable pain of neuropathic origin or severe chronic or  
100 intractable pain in which conventional therapeutic intervention and opiate therapy is  
101 contraindicated or has proved ineffective as determined as part of continuing care.

102 (O) Terminally ill.

103 (32) “Terminally ill” means a medical prognosis of life expectancy of approximately one  
104 year or less if the illness runs its normal course.

#### **ARTICLE 4. PRACTITIONERS.**

##### **§16A-4-3. Issuance of certification.**

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

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

110 (2) The practitioner has determined that the patient has a serious medical condition and  
111 has included the condition in the patient’s health care record.

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

113 (4) In the practitioner’s professional opinion and review of past treatments, the practitioner  
114 determines the patient is likely to receive therapeutic or palliative benefit from the use of medical  
115 cannabis, and other treatments, including treatments involving opioids, have proven ineffective or  
116 otherwise are contraindicated.

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

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

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

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

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

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

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

129 (4) The date of issuance.

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

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

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

136 (c) *Consultation.* — (1) A practitioner shall review the prescription drug monitoring program  
137 prior to:

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

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

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



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

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

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

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

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

151 (1) Provide the certification to the patient.

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

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

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

## **ARTICLE 6. MEDICAL CANNABIS ORGANIZATIONS.**

### **§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 ten 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 ten processors.

6 (3) The bureau may not issue permits to more than thirty 165 dispensaries. ~~with no more~~  
7 ~~than five in any region~~

8 (4) The bureau may not issue more than ~~two~~ ten 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 grower may be a processor, and  
17 a processor may be a grower. Growers and processors may be dispensaries. Dispensaries may  
18 be growers and processors.

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

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

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

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

1 (a) *General rule.* — A dispensary that has been issued a permit under article six of this  
2 chapter 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 (c) *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) *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) *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 section five, article four of this chapter.

30 (f) *Verification.* — Prior to dispensing medical cannabis to a patient or caregiver, the  
31 dispensary shall verify the information in subsections (e) and (g) of this section by consulting the  
32 electronic tracking system included in the bureau's electronic database established under section  
33 one, article three of this chapter and the dispensary tracking system under section one, article  
34 seven of this chapter.

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

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

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

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

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

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

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

48           (i) *Sealed and labeled package.* — Medical cannabis shall be dispensed by a dispensary  
49 to a patient or caregiver in a sealed, properly labeled and child-resistant package. The labeling  
50 shall contain the following:

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

53           (2) The packaging date.

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

55           (4) A warning stating:

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

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

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

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

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

**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 article twelve of this chapter, and any other criminal provisions or  
4 penalties contained in this act, shall not be effective until ninety days from passage of Senate Bill  
5 386 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  
8 to 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 and may not be issued an  
15 identification card necessary to obtain and use medical cannabis as authorized by this act until  
16 July 1, 2019.

NOTE: The purpose of this bill concerns 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 a grower to be a processor and a processor to be a grower. The bill allows growers and processors to be dispensaries. The bill and permits dispensaries to be growers and processors.

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