

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2346**

BY DELEGATE HIGGINBOTHAM AND ROWE

[Introduced February 12, 2021; Referred to the  
Committee on Health and Human Resources then the  
Judiciary]

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-3-1 and §16A-3-5 of said code; and to amend and reenact §16A-13-3  
 3 of said code, all relating to the Medical Cannabis Act; adding definitions to “serious medical  
 4 condition”; requiring rules related to use of edible medical cannabis; protecting patients  
 5 from another state with medical cannabis in possession from arrest; and clarifying that  
 6 colleges and private businesses shall be included in medical cannabis research programs.

*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 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, in the course of which the practitioner has  
22 completed a full assessment of the patient's medical history and current medical condition,  
23 including an in-person consultation with the patient, and is able to document and make a medical  
24 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 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 §16-13-1 *et seq.* of this 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 as defined in §16A-13-1 *et seq.* of  
58 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)~~ "Prescription drug monitoring program" means the West Virginia Controlled  
71 Substances Monitoring Program under §60A-9-101 *et seq.* of this code.

72 ~~(27)~~ "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 ~~(28)~~ "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 as defined in §16A-13-1 *et seq.* of this code.

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

82 ~~(30)~~ "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 intractable  
100 pain.

101 (O) Terminally ill.

102 (P) Migraines.

103 (Q) Spasms and cramps.

104 ~~(34)~~ "Terminally ill" means a medical prognosis of life expectancy of approximately one  
105 year or less if the illness runs its normal course.

**ARTICLE 3. MEDICAL CANNABIS PROGRAM.**

**§16A-3-1. Establishment of program.**

1 (a) A medical cannabis program for patients suffering from serious medical conditions is  
2 established. The program shall be implemented and administered by the bureau. The bureau  
3 shall:

4 (1) Issue permits to medical cannabis organizations to authorize them to grow, process or  
5 dispense medical cannabis and ensure their compliance with this act.

6 (2) Register practitioners and ensure their compliance with this act.

7 (3) Have regulatory and enforcement authority over the growing, processing, sale and use  
8 of medical cannabis in this state.

9 (4) Establish and maintain an electronic database to include activities and information  
10 relating to medical cannabis organizations, certifications and identification cards issued,  
11 practitioner registration and electronic tracking of all medical cannabis as required under this act  
12 to include:

13 (A) ~~Ensurance~~ Ensure that medical cannabis is not diverted or otherwise used for unlawful  
14 purposes by a practitioner or medical cannabis organization.

15 (B) Ability to establish the authenticity of identification cards.

16 (C) Recording recommended forms of medical cannabis provided in a certification filed by  
17 the practitioner.

18 (D) Monitoring all growth, transfer, possession, processing, testing and dispensing of  
19 medical cannabis in this state.

20 (E) The tracking system under article seven of this chapter must include information under  
21 §16A-8-1 of this code and any other information required by the bureau to be used by the bureau  
22 and dispensaries to enable a dispensary to lawfully provide medical cannabis. The tracking  
23 system and database shall be capable of providing information in real time. The database shall  
24 be capable of receiving information from a dispensary regarding the disbursement of medical  
25 cannabis to patients and caregivers. This information shall be immediately accessible to the  
26 bureau and other dispensaries to inhibit diversion and ensure compliance with this act.

27 (5) Maintain a directory of patients and caregivers approved to use or assist in the  
28 administration of medical cannabis within the bureau's database.

29 (6) Develop a four-hour training course for physicians regarding the latest scientific  
30 research on medical cannabis, including the risks and benefits of medical cannabis and other  
31 information deemed necessary by the bureau. Successful completion of the course shall be  
32 approved as continuing education credits as determined by:

33 (A) The State Board of Medicine.

34 (B) The State Board of Osteopathic Medicine.

35 (7) Develop a two-hour course for the principals and employees of a medical cannabis  
36 organization who either have direct contact with patients or caregivers or who physically handle  
37 medical cannabis. Employees must successfully complete the course no later than 90 days after  
38 commencing employment. Principals must successfully complete the course prior to commencing  
39 initial operation of the medical cannabis organization. The subject matter of the course shall  
40 include the following:

41 (A) Methods to recognize and report unauthorized activity, including diversion of medical  
42 cannabis for unlawful purposes and falsification of identification cards.

43 (B) Proper handling of medical cannabis and recordkeeping.

44 (C) Any other subject required by the bureau.

45 (8) Develop enforcement procedures, including announced and unannounced inspections  
46 of facilities of the grower/processors and dispensaries and all records of the medical cannabis  
47 organizations.

48 (9) Establish a program to authorize the use of medical cannabis to conduct medical  
49 research relating to the use of medical cannabis to treat serious medical conditions, including the  
50 collection of data and the provision of research grants.

51 (10) Establish and maintain public outreach programs about the medical cannabis  
52 program, including:

53 (A) A dedicated telephone number for patients, caregivers and members of the public to  
54 obtain basic information about the dispensing of medical cannabis under this act.

55 (B) A publicly accessible Internet website with similar information.

56 (11) Collaborate as necessary with other state agencies or contract with third parties as  
57 necessary to carry out the provisions of this act.

58 (12) Determine the number and type of medical cannabis products to be produced by a  
59 grower/processor and dispensed by a dispensary.

60 (13) Develop recordkeeping requirements for all books, papers, any electronic database  
61 or tracking system data and other information of a medical cannabis organization. Information  
62 shall be retained for a minimum period of four years unless otherwise provided by the bureau.

63 (14) Restrict the advertising and marketing of medical cannabis, which shall be consistent  
64 with the Federal rules and regulations governing prescription drug advertising and marketing.

65 (b) The bureau shall propose rules for legislative promulgation pursuant to the provisions  
66 of §29A-3-1 *et seq.* of this code as may be necessary to carry out and implement the provisions



67 of this act. The bureau ~~shall also have the power to~~ may propose and promulgate emergency  
68 rules as may be necessary to carry out and implement the provisions of this act.

69 (c) Rules proposed and promulgated necessary to carry out and implement the provisions  
70 of this act shall include:

71 (1) Specific identification of edible medical cannabis and safe quantities of medical  
72 cannabis that may be used in edible medical cannabis products;

73 (2) Requirements that sales of edible medical cannabis products fully inform patients or  
74 caregivers of specific safe amounts of medical cannabis that may be used in recipes, with  
75 warnings of adverse health effects that may occur if directions are not followed; and

76 (3) Required distribution of written explanations, to patients and caregivers who prefer to  
77 incorporate medical cannabis into edible form, of the percentage of tetrahydrocannabinol and  
78 cannabinol contained in the product and how using the product in an edible form may affect the  
79 patient.

**§16A-3-5. Reciprocity for terminally ill cancer patients.**

1 (a) The bureau may enter into reciprocity agreements with any states that have  
2 comparable requirements for the use and lawful purchase of medical cannabis in a manner  
3 consistent with the provisions of this article to allow terminally ill cancer patients to purchase  
4 medical cannabis in another state.

5 (b) Persons, who are residents and patients of another state, who possess an identification  
6 card issued by that state and are in possession of medical cannabis while in West Virginia, have  
7 the same protections from arrest as West Virginia resident patients.

**ARTICLE 13. RESEARCH PROGRAM.**

**§16A-13-3. Medical cannabis research program administration.**

1 (a) The bureau may establish a research study for each serious medical condition. The  
2 bureau ~~may~~ shall engage universities, colleges and private businesses within this state to  
3 participate in the collection, collation, analysis, and conclusive findings of the research studies.

4 The bureau shall, by rule, establish the procedure to be used by health care medical cannabis  
5 organizations with respect to:

6 (1) Real time inventory tracking.

7 (2) Real time tracking of the medical cannabis dispensed.

8 (3) Recall of defective medical cannabis.

9 (b) *Request for distributions.* — The bureau shall establish a form and procedure for  
10 universities, colleges and private businesses selected to participate in a research study to request  
11 distributions from the fund to conduct research on medical cannabis, including administrative  
12 costs. These distributions shall also be used to pay for the cost of the medical cannabis so that it  
13 is not borne by the patient participating in the research study. The forms shall include, at a  
14 minimum, the following:

15 (1) The form or forms of medical cannabis to be studied.

16 (2) The serious medical condition to be studied.

17 (c) *Research reports.* —

18 (1) A vertically integrated health system shall report on the effectiveness of the use of  
19 medical cannabis for the treatment of the serious medical condition studied and all  
20 counterindications and noted side effects.

21 (2) The bureau shall notify the vertically integrated health system and the university  
22 participating in the research study of the data which is required to meet the United States Food  
23 and Drug Administration's and the United States Drug Enforcement Administration's approval for  
24 the research study.

25 (3) The first report, including the data required under subdivision (2) of this section, shall  
26 be submitted to the bureau and made publicly available within 180 days of the initiation of a  
27 research study for a specific serious medical condition.

28 (4) An annual report of the data required under subdivision (2) shall be submitted to the  
29 bureau beginning one year after the initiation of a research study for a specific serious medical

30 condition and each year thereafter.

NOTE: The purpose of this bill is to amend certain provisions of the Medical Cannabis Act. The bill adds definitions to "serious medical condition". The bill requires rules promulgated relating to use of edible medical cannabis. It protects patients from another state with medical cannabis in possession from arrest. The bill clarifies that colleges and private businesses shall be included in medical cannabis research programs.

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