

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2851

FISCAL
NOTE

By Delegate Hansen

[Introduced January 20, 2023; Referred to the
Committee on Health and Human Resources then the
Judiciary then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §16A-17-1, §16A-17-2, §16A-17-3, §16A-17-4, §16A-17-5, §16A-17-6, §16A-
3 17-7, §16A-17-8, and §16A-17-9, all relating to legalizing cannabis production, sales, and
4 adult consumption; providing legislative purpose and findings; defining terms; legalizing
5 the possession of one ounce or less of cannabis and cannabis products by adults;
6 authorizing production, sales, transfer, and transport of cannabis upon passing county
7 referendums; providing procedure for county commissions to authorize county referendum
8 on legislation of production and sales; establishing mechanisms for permitting and
9 licensing production and sales facilities by the Bureau for Public Health and localities;
10 authorizing the Bureau of Public Health to propose legislative rules, establish licensing and
11 administrative penalties relating to the production, sales, transfer and transport cannabis in
12 authorizing counties; authorizing the Department of Revenue to promulgate rules and
13 administer tax collections; authorizing localities to regulate manufacturing and sales
14 locations; authorizing a special excise tax on cannabis; creating a new fund and dedicating
15 proceeds of the fund; authorizing county local sales tax to be collected and used for the
16 benefit of county and municipal governments; providing current laws relating to
17 employment, vehicle operation, underage use or private property use preserved; and that
18 the operation of this article is not intended to alter West Virginia Medical Cannabis Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. LEGAL ADULT CONSUMPTION OF CANNABIS.

§16A-17-1. Purpose and findings.

1 (a) In the interest of the efficient use of law-enforcement resources, enhancing revenue for
2 public purposes, and individual freedom, the Legislature finds and declares that the use of
3 cannabis should be legal for persons 21 years of age or older.

4 (b) In the interest of the health and public safety of our citizenry, the Legislature further
5 finds and declares that cannabis should be regulated in a manner similar to alcohol so that:

6 (1) Individuals will have to show proof of age before purchasing cannabis;

7 (2) Selling, distributing, or transferring cannabis to minors and other individuals under the
8 age of 21 remains illegal;

9 (3) Driving under the influence of cannabis remains illegal;

10 (4) Legitimate, taxpaying businesspeople, and not criminal actors, will conduct sales of
11 cannabis; and

12 (5) Cannabis sold in this state will be labeled and subject to additional regulations to
13 ensure that consumers are informed and protected.

14 (c) The Legislature finds and declares that it is necessary to ensure consistency and
15 fairness in the application of this article throughout the state and that the matters addressed by this
16 article are, except as specified herein, matters of statewide concern.

§16a-17-2.

Definitions.

1 As used in this article, unless the context otherwise requires,

2 "Bureau" means the Bureau of Public Health in the Department of Health and Human
3 Resources;

4 "Cannabis" means all parts of the plant of the genus cannabis whether growing or not, the
5 seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture,
6 salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana
7 concentrate. Cannabis does not include industrial hemp, nor does it include fiber produced from
8 the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is
9 incapable of germination, or the weight of any other ingredient combined with cannabis to prepare
10 topical or oral administrations, food, drink, or other product;

11 "Cannabis accessories" means any equipment, products, or materials of any kind which
12 are used, intended for use, or designed for use in planting, propagating, cultivating, growing,
13 harvesting, composting, manufacturing, compounding, converting, producing, processing,
14 preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing cannabis,

15 or for ingesting, inhaling, or otherwise introducing cannabis into the human body;

16 "Cannabis cultivation facility" means an entity licensed to cultivate, prepare, and package
17 cannabis and sell cannabis to retail cannabis stores, to cannabis product manufacturing facilities,
18 and to other cannabis cultivation facilities, but not to consumers;

19 "Cannabis establishment" means a cannabis cultivation facility, a cannabis testing facility,
20 a cannabis product manufacturing facility, or a retail cannabis store;

21 "Cannabis product manufacturing facility" means an entity licensed to purchase cannabis;
22 manufacture, prepare, and package cannabis products; and sell cannabis and cannabis products
23 to other cannabis product manufacturing facilities and to retail cannabis stores, but not to
24 consumers;

25 "Cannabis products" means concentrated cannabis products and cannabis products that
26 are comprised of cannabis and other ingredients and are intended for use or consumption, such
27 as, but not limited to, edible products, ointments, and tinctures;

28 "Cannabis testing facility" means an entity licensed to analyze and certify the safety and
29 potency of cannabis;

30 "Consumer" means a person 21 years of age or older who purchases cannabis or
31 cannabis products for personal use by persons 21 years of age or older, but not for resale to
32 others;

33 "Department" means the Department of Tax and Revenue or its successor agency;

34 "Industrial hemp" means the plant of the genus cannabis and any part of such plant,
35 whether growing or not, as authorized pursuant to §19-12D-1 et seq. of this code;

36 "Retail cannabis store" means an entity licensed to purchase cannabis from cannabis
37 cultivation facilities and cannabis and cannabis products from cannabis product manufacturing
38 facilities and to sell cannabis and cannabis products to consumers; and

39 "Unreasonably impracticable" means that the measures necessary to comply with the
40 requirements of this article require such a high investment of risk, money, time, or any other

41 resource or asset that the operation of a cannabis establishment is not worthy of being carried out
42 in practice by a reasonably prudent businessperson.

§16A-17-3. Personal use of cannabis.

1 Notwithstanding any other provision of the code, the following acts are not unlawful and are
2 not an offense under state law or a basis for seizure or forfeiture of assets under state law for
3 persons 21 years of age or older:

4 (1) Possession of one ounce or less of cannabis;

5 (2) Consumption of cannabis: *Provided*, That this article does not permit consumption that
6 is conducted openly and publicly or in a manner that endangers others, and for state and local
7 governments to prohibit use on government owned property;

8 (3) Following the authorization by a county referendum authorized by §16A-17-4 of this
9 code, manufacturing, displaying, purchasing, transporting or sales of up to one ounce of cannabis
10 in an approved county to persons 21 years or older; or

11 (4) Assisting another person who is 21 years of age or older in any of the acts described in
12 this section.

§16A-17-4. County option election on allowing production and sales of cannabis.

1 The county commission of any county may conduct a county option election on the
2 question of whether the manufacture and sale to persons 21 years of age or older is allowed in the
3 county as provided in this article, upon approval as provided in this section. The option election on
4 this question may be placed on the ballot in each county at any primary or general election. The
5 county commission of the county shall give notice to the public of the election by publication of the
6 notice as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of
7 this code, and the publication area for publication is the county in which the election is to be held.
8 The date of the last publication of the notice shall fall on a date within the period of the 14
9 consecutive days next preceding the election. On the local option election ballot shall be printed
10 the following: "Shall the production and sale of cannabis for consumption by persons 21 years or

11 older be lawful in this county?

12 If approved by the voters this would authorize licenses to be issued for the regulated
13 manufacture and sales of cannabis in the county for lawful consumption to persons 21 years or
14 older, and the collection for a special sales tax of five percent for the benefit of the county and its
15 municipalities on all retail cannabis sales".

16 Yes No

17 (Place a cross mark in the square opposite your choice.)

18 The ballots shall be counted, returns made and canvassed as in general elections and the
19 results certified by the commissioners of election to the county commission. The county
20 commission shall, without delay, certify the result of the election. Upon receipt of the results of the
21 election, if a majority of the votes are marked "Yes" all applicable licensees shall be permitted for
22 the manufacture and sales of cannabis in the county. If a majority of the votes are marked "No" the
23 manufacture and sales of cannabis shall remain unlawful.

§16A-17-5. Lawful operation of cannabis-related facilities.

1 Notwithstanding any other provision of law, the following acts are not unlawful and are not
2 an offense under state law or a basis for seizure or forfeiture of assets under state law for persons
3 21 years of age or older to possess one ounce or less.

4 In counties where the voters have by referendum so authorized:

5 (1) Manufacture, possession, or purchase of cannabis accessories or the sale of cannabis
6 accessories to a person who is 21 years of age or older;

7 (2) Possessing, displaying, or transporting cannabis or cannabis products; purchase of
8 cannabis from a cannabis cultivation facility; purchase of cannabis or cannabis products from a
9 cannabis product manufacturing facility; or sale of cannabis or cannabis products to consumers, if
10 the person conducting the activities described in this paragraph has obtained a current, valid
11 license to operate a retail cannabis store or is acting in his or her capacity as an owner, employee,
12 or agent of a licensed retail cannabis store;

13 (3) Cultivating, harvesting, processing, packaging, transporting, displaying, or possessing
 14 cannabis; delivery or transfer of cannabis to a cannabis testing facility; selling cannabis to a
 15 cannabis cultivation facility, a cannabis product manufacturing facility, or a retail cannabis store; or
 16 the purchase of cannabis from a cannabis cultivation facility, if the person conducting the activities
 17 described in this paragraph has obtained a current, valid license to operate a cannabis cultivation
 18 facility or is acting in his or her capacity as an owner, employee, or agent of a licensed cannabis
 19 cultivation facility;

20 (4) Packaging, processing, transporting, manufacturing, displaying, or possessing
 21 cannabis or cannabis products; delivery or transfer of cannabis or cannabis products to a cannabis
 22 testing facility; selling cannabis or cannabis products to a retail cannabis store or a cannabis
 23 product manufacturing facility; the purchase of cannabis from a cannabis cultivation facility; or the
 24 purchase of cannabis or cannabis products from a cannabis product manufacturing facility, if the
 25 person conducting the activities described in this paragraph has obtained a current, valid license
 26 to operate a cannabis product manufacturing facility or is acting in his or her capacity as an owner,
 27 employee, or agent of a licensed cannabis product manufacturing facility;

28 (5) Possessing, cultivating, processing, repackaging, storing, transporting, displaying,
 29 transferring, or delivering cannabis or cannabis products if the person has obtained a current, valid
 30 license to operate a cannabis testing facility or is acting in his or her capacity as an owner,
 31 employee, or agent of a licensed cannabis testing facility; or

32 (6) Leasing or otherwise allowing the use of property owned, occupied, or controlled by any
 33 person, corporation or other entity for any of the activities conducted lawfully in accordance this
 34 section.

§16A-17-6. Regulation of cannabis.

1 (a) Not later than July 1, 2024, the bureau shall propose rules for legislative approval in
 2 accordance with the provisions of §29A-3-1 et seq. of this code necessary for implementation of
 3 this article. The rules may not prohibit the operation of cannabis establishments, either expressly

4 or through rule, that make their operation unreasonably impracticable, and shall include:

5 (1) Procedures for the issuance, renewal, suspension, and revocation of a license to
6 operate a cannabis establishment;

7 (2) A schedule of application, licensing, and renewal fees: *Provided*, That application fees
8 may not exceed \$5,000, with this upper limit adjusted annually for inflation, unless the bureau
9 determines a greater fee is necessary to carry out its responsibilities under this article: *Provided*,
10 *however*, That an entity that is licensed under this article to cultivate or sell cannabis or to
11 manufacture cannabis products for medical purposes at the time this article takes effect and that
12 chooses to apply for a separate cannabis establishment license may not be required to pay an
13 application fee greater than \$500 to apply for a license to operate a cannabis establishment in
14 accordance with the provisions of this article;

15 (3) Qualifications for licensure that are directly and demonstrably related to the operation of
16 a cannabis establishment;

17 (4) Security requirements for cannabis establishments;

18 (5) Requirements to prevent the sale or diversion of cannabis and cannabis products to
19 persons under the age of 21;

20 (6) Labeling requirements for cannabis and cannabis products sold or distributed by a
21 cannabis establishment;

22 (7) Health and safety regulations and standards for the manufacture of cannabis products
23 and the cultivation of cannabis;

24 (8) Restrictions on the advertising and display of cannabis and cannabis products; and

25 (9) Civil penalties for the failure to comply with rules made pursuant to this article.

26 (b) In order to ensure that individual privacy is protected, notwithstanding subsection (a) of
27 this section, the bureau may not require a consumer to provide a retail cannabis store with
28 personal information other than government-issued identification to determine the consumer's
29 age, and a retail cannabis store may not be required to acquire and record personal information

30 about consumers other than information typically acquired in a financial transaction conducted at a
31 retail liquor store.

32 (c) A municipality may enact ordinances, not in conflict with this state law or with legislative
33 rules enacted pursuant to this article, governing the times of operation, locations, manner, and
34 number of cannabis establishment operations.

35 (d) Each application for an annual license to operate a cannabis establishment shall be
36 submitted to the bureau. The bureau shall:

37 (1) Begin accepting and processing applications by October 1, 2024;

38 (2) Immediately forward a copy of each application and half of the license application fee to
39 the county and municipality in which the applicant desires to operate the cannabis establishment;

40 (3) Issue an annual license to the applicant between 45 and 90 days after receipt of an
41 application unless the bureau has not received the fee or the bureau is notified by the relevant
42 municipality that the applicant is not in compliance with its ordinances in effect at the time of
43 application: *Provided*, That where a municipality has enacted a numerical limit on the number of
44 cannabis establishments and a greater number of applicants seek licenses, the bureau shall solicit
45 and consider input from the municipality as to its' preference or preferences for licensure; and

46 (4) Upon denial of an application, notify the applicant in writing of the specific reason for its
47 denial.

§16A-17-7. Cannabis excise tax and sales tax, distribution.

1 (a) There shall be an excise tax to be levied upon cannabis sold or otherwise transferred by
2 a cannabis cultivation facility to a cannabis product manufacturing facility or to a retail cannabis
3 store at a rate of 15 percent of the sales price. The excise tax shall be deposited in the Cannabis
4 Transfer Tax Fund created in this section and allocated pursuant to the provisions of this section.

5 (b) There is created a special fund in the State Treasury which shall be designated and
6 known as the "Cannabis Transfer Tax Fund." All revenues received from licensees pursuant to
7 §16A-17-7(a) of this code shall be deposited with the State Treasurer and placed in the Cannabis

8 Transfer Tax Fund. The fund shall be an interest-bearing account with interest to be credited to and
9 deposited in the fund. The department shall establish procedures for the collection of all taxes
10 levied and may promulgate legislative rules, pursuant to §29A-3-1 et seq. of this code, necessary
11 to administer collection and enforcement of tax collections, on a monthly basis, as follows:

12 (1) Fifty percent of the revenue shall be deposited into the Public Employees Insurance
13 Agency Stability Fund and expended pursuant to §11B-2-32 of this code;

14 (2) Twenty-five percent shall be deposited into the Fight Substance Abuse Fund created by
15 §60A-9-8 of this code;

16 (3) Twelve and one-half percent shall be allocated to the Division of Justice and
17 Community Services and expended pursuant to §15-9A-3 of this code for grants to state and local
18 law-enforcement agencies for training in and promotion of community relations, training on
19 identification of driving under the influence of cannabis, and other training and programs
20 promoting effective drug law-enforcement activities;

21 (4) Twelve and one-half percent shall be allocated to the General Fund of the state for the
22 purpose of state employee pay raises; and

23 (5) All proceeds from license fees and any administrative penalties shall be allocated to the
24 Department of Health and Human Resources.

25 (c) A local sales tax shall be assessed on all cannabis derived products of six percent and
26 shall be collected at the point of sale by the licensed retail cannabis store. The county shall receive
27 all proceeds of the local sales tax within 30 days of collection, and the tax shall be distributed as
28 follows:

29 (1) The county shall retain 50 percent of the tax; and

30 (2) The municipalities of the county shall receive 50 percent of the tax, to be divided among
31 the municipalities on a per capita basis as determined by the most recent decennial United States
32 census of population.

33 (d) Sales of cannabis derived products authorized for sale pursuant to this article are not

34 otherwise subject to the consumers sales and service tax as provided in §11-15-1 et seq. and §11-
35 15B-1 et seq. of this code, or any other state taxes not provided pursuant to this section: *Provided,*
36 That the calculation of the fractional percentage of the tax for parts of a dollar shall be determined
37 by §11-15-3 of this code.

§16A-17-8. Employers, driving, minors and control of property.

1 (a) Nothing in this article is intended to require an employer to permit or accommodate the
2 use, consumption, possession, transfer, display, transportation, sale, or growing of cannabis in the
3 workplace or to affect the ability of employers to have policies restricting the use of cannabis by
4 employees.

5 (b) Nothing in this article is intended to allow driving under the influence of cannabis or
6 driving while impaired by cannabis or to supersede statutory laws related to driving under the
7 influence of cannabis or driving while impaired by cannabis, nor shall this article prevent the state
8 from enacting and imposing penalties for driving under the influence of or while impaired by
9 cannabis.

10 (c) Nothing in this article is intended to permit the transfer of cannabis, with or without
11 remuneration, to a person under the age of 21 or to allow a person under the age of 21 to
12 purchase, possess, use, transport, grow, or consume cannabis.

13 (d) Nothing in this article prohibits a person, employer, school, hospital, detention facility,
14 corporation, or any other entity who occupies, owns, or controls a property from prohibiting or
15 otherwise regulating the possession, consumption, use, display, transfer, distribution, sale,
16 transportation, or growing of cannabis on or in that property.

§16A-17-9. Medical cannabis provisions unaffected.

1 Nothing in this article:

2 (1) Limits any privileges or rights of a medical cannabis patient, primary caregiver, or
3 licensed entity as provided by this chapter;

4 (2) Permits a medical cannabis center to distribute cannabis to a person who is not a

5 medical cannabis patient;

6 (3) Permits a medical cannabis center licensed pursuant to this article to operate on the
7 same premises as a retail cannabis store; or

8 (4) Discharges the bureau or the department or the from their statutory and constitutional
9 duties to regulate medical cannabis pursuant to this chapter.

NOTE: The purpose of this bill is to legalize the personal use and possession of cannabis by adults; providing for a county option election to allow for the production and sales in that county; providing for regulation by the Bureau of Health; authorizing an excise and local sales tax on cannabis; prohibiting underage use; and preserving current laws relating to allowing employers and property owners to prohibit use or possession.

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