

# WEST VIRGINIA LEGISLATURE

## 2023 REGULAR SESSION

Introduced

### Senate Bill 167

FISCAL  
NOTE

By Senator Caputo

[Introduced January 13, 2023; referred  
to the Committee on the Judiciary; and then to the  
Committee on 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 for Public Health to promulgate rules, establish licensing, and  
11 administrative penalties relating to the production, sales, transfer, and transport of  
12 cannabis in authorizing counties; authorizing the Department of Revenue to promulgate  
13 rules and administer tax collections; authorizing localities to regulate manufacturing and  
14 sales locations; authorizing a special excise tax on cannabis; creating a new fund and  
15 dedicating proceeds of the fund; authorizing county local sales tax to be collected and used  
16 for the benefit of county and municipal governments; providing current laws relating to  
17 employment, vehicle operation, underage use, or private property use preserved; and  
18 establishing that the operation of this article is not intended to alter the West Virginia  
19 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 business people, 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, therefore, the matters  
16 addressed by this 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 "Cannabis" means all parts of the plant of the genus cannabis whether growing or not, the  
3 seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture,  
4 salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana  
5 concentrate. Cannabis does not include industrial hemp, nor does it include fiber produced from  
6 the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is  
7 incapable of germination, or the weight of any other ingredient combined with cannabis to prepare  
8 topical or oral administrations, food, drink, or other product;

9 "Cannabis accessories" means any equipment, products, or materials of any kind which  
10 are used, intended for use, or designed for use in planting, propagating, cultivating, growing,  
11 harvesting, composting, manufacturing, compounding, converting, producing, processing,  
12 preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing cannabis,  
13 or for ingesting, inhaling, or otherwise introducing cannabis into the human body;

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

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

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

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

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

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

31 "Department" means the Department of Revenue or its successor agency;

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

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

37 "Unreasonably impracticable" means that the measures necessary to comply with the  
38 requirements of this article require such a high investment of risk, money, time, or any other  
39 resource or asset that the operation of a cannabis establishment is not worthy of being carried out

40 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, in the event a majority of the votes are marked "Yes" all applicable licensees shall be  
 22 permitted for the manufacture and sales of cannabis in the county. In the event a majority of the  
 23 votes are marked "No" the manufacture and sales of cannabis will 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 with  
34 this section.

**§16A-17-6. Regulation of cannabis.**

1 (a) Not later than July 1, 2023, the bureau shall adopt legislative rules necessary for  
2 implementation of this article. The rules may not prohibit the operation of cannabis  
3 establishments, either expressly or through rule, that make their operation unreasonably  
4 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 §16A-17-6(a) of  
27 this code, the bureau may not require a consumer to provide a retail cannabis store with personal  
28 information other than government-issued identification to determine the consumer's age, and a  
29 retail cannabis store may not be required to acquire and record personal information about  
30 consumers other than information typically acquired in a financial transaction conducted at a retail



31 liquor store.

32 (c) A municipality may enact ordinances, not in conflict with this state law or with rules or  
33 enacted pursuant to this article, governing the times of operation, locations, manner and number  
34 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, 2023;

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 county from their statutory and  
9 constitutional 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.