WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5488

By Delegates Howell, Willis, Fehrenbacher, Kump, Martin, Horst, Petitto, and Campbell

[Introduced February 06, 2024; Referred to the Committee on the Judiciary]

A BILL to amend and reenact §16A-5-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §16A-8-3 of said Code; and to amend and reenact §61-7-7 of said Code, all relating to giving notice to medical marijuana patients of the Gun Control Act of 1968's prohibition against users of controlled substances, specifically marijuana, from shipping, transporting, receiving, or possessing a firearm or ammunition.

Be it enacted by the Legislature of West Virginia:

Chapter 16A. Medical Cannabis Act.

Article 5. Patients.

§16A-5-1. Identification cards.

(a)  *Issuance*. — The bureau may issue an identification card to a patient who has a certification approved by the bureau and to a caregiver designated by the patient. An identification card issued to a patient shall authorize the patient to obtain and use medical cannabis as authorized by this act. An identification card issued to a caregiver shall authorize the caregiver to obtain medical cannabis on behalf of the patient.

(b)  *Procedure for issuance*. — The bureau shall develop and implement procedures for:

(1)  Review and approval of applications for identification cards.

(2)  Issuance of identification cards to patients and caregivers.

(3)  Review of the certification submitted by the practitioner and the patient.

(c)  *Application*. — A patient or a caregiver may apply, in a form and manner prescribed by the bureau, for issuance or renewal of an identification card. A caregiver must submit a separate application for issuance or renewal. Each application must include:

(1)  The name, address and date of birth of the patient.

(2)  The name, address and date of birth of a caregiver.

(3)  The certification issued by the practitioner.

(4)  The name, address and telephone number of the practitioner and documentation from the practitioner that all of the requirements of subsection (a), section three, article four of this chapter have been met.

(5)  A $50 processing fee. The bureau may waive or reduce the fee if the applicant demonstrates financial hardship.

(6)  The signature of the applicant and date signed~~.~~ and a separate signature acknowledging that the qualifying patient or the patient's representative has read and understands the following notice:

(A) Each application for a registry identification card and each application for a card renewal must include a notice that:

(i) The Gun Control Act of 1968, 18 U.S.C. §922 prohibits any person who is an unlawful user of or addicted to any controlled substance, as defined by the Controlled Substances Act of 1970, 21 U.S.C. §801, *et seq*. from shipping, transporting, receiving, or possessing a firearm or ammunition.

(ii) Until marijuana is legalized under federal law, an individual who is a current user of marijuana is, under federal law, an unlawful user of a controlled substance; and

(iii) Federal law does not exempt the use of marijuana for medicinal purposes.

(7)  Other information required by the bureau.

(d)  *Forms*. — Application and renewal forms shall be available on the bureau’s publicly accessible Internet website. Forms will include the notice described in §16A-5-1(c)(6) on a separate page and require a separate signature acknowledging the requirements contained therein.

(e)  *Expiration*. — An identification card of a patient or caregiver shall expire within one year from the date of issuance, upon the death of the patient, or as otherwise provided in this section.

(f)  *Separate cards to be issued*. — The bureau shall issue separate identification cards for patients and caregivers as soon as reasonably practicable after receiving completed applications, unless it determines that an application is incomplete or factually inaccurate, in which case it shall promptly notify the applicant.

(g)  *Change in name or address*. — A patient or caregiver who has been issued an identification card shall notify the bureau within ten days of any change of name or address. In addition, the patient shall notify the bureau within ten days if the patient no longer has the serious medical condition noted on the certification.

(h)  *Lost or defaced card*. — In the event of a lost, stolen, destroyed or illegible identification card, the patient or caregiver shall apply to the bureau within ten business days of discovery of the loss or defacement of the card for a replacement card. The application for a replacement card shall be on a form furnished by the bureau and accompanied by a $25 fee. The bureau may establish higher fees for issuance of second and subsequent replacement identification cards. The bureau may waive or reduce the fee in cases of demonstrated financial hardship. The bureau shall issue a replacement identification card as soon as practicable. A patient or caregiver may not obtain medical cannabis until the bureau issues the replacement card.

Article 8. Dispensaries.

§16A-8-3. Posting.

A dispensary shall post a copy of its permit in a location within its facility in a manner that is easily observable by patients, caregivers, law enforcement officers and agents of the bureau. Additionally, the dispensary must post, in a conspicuous and easily observable location, the notice contained in §16A-5-1(c)(6) in a font that is easily readable from a distance and of no less than 48 pt. size.

Chapter 61. Crimes and their punishment.

Article 7. Dangerous Weapons.

§61-7-7. Persons prohibited from shipping, transporting, receiving, or possessing firearms; classifications; right of nonprohibited persons over twenty-one years of age to carry concealed deadly weapons; offenses and penalties; reinstatement of rights to possess; offenses; penalties.

(a) Except as provided in this section, no person shall ship, receive, transport, or possess a firearm, as such is defined in section two of this article, who:

(1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Is habitually addicted to alcohol;

(3) Is an unlawful user of or habitually addicted to any controlled substance;

(4) Has been adjudicated to be mentally incompetent or who has been involuntarily committed to a mental institution pursuant to the provisions of §27-1-1 *et seq.* of this code or in similar law of another jurisdiction: *Provided*, That once an individual has been adjudicated as a mental defective or involuntarily committed to a mental institution, he or she shall be duly notified that they are to immediately surrender any firearms in their ownership or possession: *Provided*, *however*, That the mental hygiene commissioner or circuit judge shall first make a determination of the appropriate public or private individual or entity to act as conservator for the surrendered property;

(5) Is an alien illegally or unlawfully in the United States;

(6) Has been discharged from the armed forces under dishonorable conditions;

(7) Is subject to a domestic violence protective order that:

(A) Was issued after a hearing of which such person received actual notice and at which such person had an opportunity to participate;

(B) Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(8) Has been convicted of a misdemeanor offense of assault or battery either under the provisions of §61-2-28 of this code or the provisions of subsection (b) or (c) of §61-2-9 of this code or a federal or state statute with the same essential elements in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or has been convicted in any court of any jurisdiction of a comparable misdemeanor crime of domestic violence.

Any person who violates the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000 or confined in the county jail for not less than ninety days nor more than one year, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, any person:

(1) Who has been convicted in this state or any other jurisdiction of a felony crime of violence against the person of another or of a felony sexual offense; or

(2) Who has been convicted in this state or any other jurisdiction of a felony controlled substance offense involving a Schedule I controlled substance ~~other than marijuana~~, a Schedule II or a Schedule III controlled substance as such are defined in §60A-2-204, §60A-2-205, and §60A-2-206 of this code and who possesses a firearm as such is defined in section two of this article shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not more than five years or fined not more than $5,000, or both. The provisions of subsection (f) of this section shall not apply to persons convicted of offenses referred to in this subsection or to persons convicted of a violation of this subsection.

(3) The Gun Control Act of 1968, 18 U.S.C. §922 prohibits any person who is an unlawful user of or addicted to any controlled substance, as defined by the Controlled Substances Act of 1970, 21 U.S.C. §801, *et seq.* from shipping, transporting, receiving, or possessing a firearm or ammunition.

(4) Until marijuana is legalized under federal law, an individual who is a current user of marijuana is, under federal law, an unlawful user of a controlled substance and federal law does not exempt the use of marijuana for medicinal purposes.

(c) Any person may carry a concealed deadly weapon without a license therefor who is:

(1) At least twenty-one years of age;

(2) A United States citizen or legal resident thereof;

(3) Not prohibited from possessing a firearm under the provisions of this section; and

(4) Not prohibited from possessing a firearm under the provisions of 18 U. S. C. §922(g) or (n).

(d) As a separate and additional offense to the offense provided for in subsection (a) of this section, and in addition to any other offenses outlined in this code, and except as provided by subsection (e) of this section, any person prohibited by subsection (a) of this section from possessing a firearm who carries a concealed firearm is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not more than three years or fined not more than $5,000, or both.

(e) As a separate and additional offense to the offense described in subsection (b) of this section, and in additional to any other offenses outlined in this code, any person prohibited by subsection (b) of this section from possessing a firearm who carries a concealed firearm is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not more than ten years or fined not more than $10,000, or both.

(f) Any person prohibited from possessing a firearm by the provisions of subsection (a) of this section may petition the circuit court of the county in which he or she resides to regain the ability to possess a firearm and if the court finds by clear and convincing evidence that the person is competent and capable of exercising the responsibility concomitant with the possession of a firearm, the court may enter an order allowing the person to possess a firearm if such possession would not violate any federal law: *Provided*, That a person prohibited from possessing a firearm by the provisions of subdivision (4), subsection (a) of this section may petition to regain the ability to possess a firearm in accordance with the provisions of §61-7A-5 of this code.

(g) Any person who has been convicted of an offense which disqualifies him or her from possessing a firearm by virtue of a criminal conviction whose conviction was expunged or set aside or who subsequent thereto receives an unconditional pardon for said offense shall not be prohibited from possessing a firearm by the provisions of the section.

NOTE: The purpose of this bill is to codify that The Gun Control Act of 1968 prohibits unlawful users of drugs and those addicted to controlled substances, specifically marijuana, may not ship, receive, or possess a firearm.

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