

H. B. 3251

(By Delegate Manypenny)

[Introduced February 21, 2011; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-8A-1, §16-8A-2, §16-8A-3, §16-8A-4, §16-8A-5, §16-8A-6, §16-8A-7, §16-8A-8, §16-8A-9, §16-8A-10, §16-8A-11, §16-8A-12, §16-8A-13 and §16-8A-14, all relating to creating the "Compassionate Use Medical Marijuana Act;" stating legislative intent; permitting the medical use of marijuana; determining the types of patients and their physicians and caregivers who are exempt from prosecution; limiting the amount of marijuana that may be possessed; designating compassion centers; requiring sales tax to be collected and deposited into a special fund for drug prevention and abuse; prohibiting the operation of a motor vehicle; requiring the use of identification cards; requiring record keeping to be confidential; permitting funding; requiring reports; collecting sales tax; setting forth duties of the State Police; defining terms; and granting rule-making

1 authority.

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

3 That the Code of West Virginia, 1931, as amended, be amended
4 by adding thereto a new article, designated §16-8A-1, §16-8A-2,
5 §16-8A-3, §16-8A-4, §16-8A-5, §16-8A-6, §16-8A-7, §16-8A-8,
6 §16-8A-9, §16-8A-10, §16-8A-11, §16-8A-12, §16-8A-13 and §16-8A-14,
7 all to read as follows:

8 **ARTICLE 8A. THE COMPASSIONATE USE MEDICAL MARIJUANA ACT.**

9 **§16-8A-1. Short title.**

10 This article shall be known and may be cited as the
11 "Compassionate Use Medical Marijuana Act."

12 **§16-8A-2. Legislative intent.**

13 The Legislature finds and declares as follows:

14 (1) Modern medical research has discovered a beneficial use
15 for marijuana in treating or alleviating the pain or other symptoms
16 associated with certain debilitating medical conditions, as found
17 by the National Academy of Sciences' Institute of Medicine in March
18 1999.

19 (2) According to the United States Sentencing Commission and
20 the Federal Bureau of Investigation, ninety-nine percent of
21 marijuana arrests in this nation are made under the laws of states,
22 rather than under federal law. Consequently, changing the law of
23 this state on this subject will have the practical effect of
24 protecting from arrest seriously ill people who have a medical need

1 to use marijuana.

2 (3) Although federal law currently prohibits the use of
3 marijuana, the laws of Alaska, California, Colorado, Hawaii, Maine,
4 Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island,
5 Vermont and Washington permit the use of marijuana for medical
6 purposes, and in Arizona doctors are permitted to prescribe
7 marijuana. West Virginia joins this effort for the health and
8 welfare of its citizens.

9 **§16-8A-3. Definitions.**

10 The following words and phrases when used in this article
11 shall have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 (1) "Bona fide physician-patient relationship" means a
14 physician who has completed a full assessment of the patient's
15 medical history and current medical condition, including a personal
16 physical examination.

17 (2) "Compassion center" means a facility where usable
18 marijuana may be dispensed for medical use.

19 (3) "Controlled Substance, Drug, Device and Cosmetic Act"
20 means The Controlled Substance, Drug, Device and Cosmetic Act, P.L.
21 233, No.64.

22 (4) "Debilitating medical condition" includes any of the
23 following:

24 (A) Cancer, glaucoma, positive status for human
25 immunodeficiency virus, acquired immune deficiency syndrome or the

1 treatment of these conditions;

2 (B) A chronic or debilitating disease or medical condition or
3 its treatment that produces one or more of the following: Cachexia
4 or wasting syndrome; severe or chronic pain; severe nausea;
5 seizures, including, but not limited to, those characteristic of
6 epilepsy; severe and persistent muscle spasms, including, but not
7 limited to, those characteristic of multiple sclerosis or Crohn's
8 disease; or

9 (C) Any other weakening medical condition or its treatment
10 that is recognized by licensed medical authorities as being
11 treatable with marijuana in a manner that is superior to treatment
12 without marijuana.

13 (5) "Department" means the Department of Health and Human
14 Resources.

15 (6) "Marijuana" means the term that is defined using the
16 spelling "marihuana" under The Controlled Substance, Drug, Device
17 and Cosmetic Act, P.L. 233, No.64.

18 (7) "Medical use" means the acquisition, possession,
19 cultivation, manufacture, use, delivery, transfer or transportation
20 of marijuana or paraphernalia relating to a qualifying patient's
21 consumption of marijuana to alleviate the symptoms or effects of
22 the patient's debilitating medical condition.

23 (8) "Physician" means a person licensed to practice medicine
24 and surgery under the laws of this state.

25 (9) "Primary caregiver" or "caregiver" means a person who is

1 at least eighteen years of age, who has never been convicted of a
2 felony drug offense, has agreed to assist with a qualifying
3 patient's medical use of marijuana and has been designated as
4 primary caregiver on the qualifying patient's application or
5 renewal for a registry identification card or in other written
6 notification to the Department of Health and Human Resources. A
7 primary caregiver shall only have one qualifying patient at any one
8 time. A primary caregiver shall not include the qualifying
9 patient's physician.

10 (10) "Qualifying patient" or "patient" means a person who has
11 been diagnosed by a physician as having a debilitating medical
12 condition.

13 (11) "Registry identification card" means a document issued by
14 the Department of Health and Human Resources that identifies a
15 person as a qualifying patient or primary caregiver. The term shall
16 include a registry identification card or its equivalent issued by
17 another state government to permit the medical use of marijuana by
18 a qualifying patient or to permit a person to assist with a
19 qualifying patient's medical use of marijuana.

20 (12) "Secretary" means the Secretary of Health and Human
21 Resources.

22 (13) "Usable marijuana" means the dried leaves and flowers of
23 marijuana, and any mixture or preparation thereof, and does not
24 include the seeds, stalks and roots of the plant.

25 (14) "Written certification" means the qualifying patient's

1 medical records, or a statement signed by a physician licensed in
2 accordance with the laws of this state with whom the patient has a
3 bona fide physician-patient relationship, stating that in the
4 physician's professional opinion, after having completed a full
5 assessment of the qualifying patient's medical history and current
6 medical condition, the qualifying patient has a debilitating
7 medical condition for which the potential benefits of the medical
8 use of marijuana would likely outweigh the health risks for the
9 qualifying patient and would likely be superior to treatment
10 without the medical use of marijuana.

11 **§16-8A-4. Compassion centers.**

12 (a) Duty of department. -- The department may establish its
13 own and shall license any privately owned compassion center.

14 (b) Sales tax and special fund. -- State sales tax at the
15 rate imposed under article fifteen, chapter eleven of this code
16 shall be imposed on all sales of marijuana in this state. However,
17 all revenue collected pursuant to this sales tax is to be deposited
18 into the newly created Drug and Abuse Prevention Fund to be held by
19 the State Treasurer. The Division of Criminal Justice Services is
20 to distribute proceeds from this fund for drug prevention and
21 substance abuse programs in schools and as substance abuse
22 treatment facilities community grants.

23 (c) Growth, processing or distribution of marijuana for
24 medical treatment. -- A compassion center shall maintain records
25 of all marijuana it grows, processes or distributes for medical

1 treatment and shall make its records available for inspection by
2 the department.

3 **§16-8A-5. Medical use of marijuana permitted.**

4 (a) Freedom from arrest, prosecution or penalty. --

5 (1) A qualifying patient shall not be subject to arrest,
6 prosecution or penalty in any manner, or denied any right or
7 privilege, including, but not limited to, civil penalty or
8 disciplinary action by a professional licensing board, for the
9 medical use of marijuana, provided that the patient possesses a
10 registry identification card and no more than six marijuana plants
11 and one ounce of usable marijuana.

12 (2) There shall exist a rebuttable presumption that a
13 qualifying patient is engaged in the medical use of marijuana if he
14 possesses a registry identification card and no more than six
15 marijuana plants and one ounce of usable marijuana. The presumption
16 may be rebutted by evidence that conduct related to marijuana was
17 not for the purpose of alleviating the symptoms or effects of a
18 patient's debilitating medical condition.

19 (3) A qualifying patient may assert the medical use of
20 marijuana as an affirmative defense to any prosecution involving
21 marijuana unless the patient was in violation of this section when
22 the events giving rise to the prosecution occurred. The defense
23 shall be presumed valid where the evidence shows both of the
24 following:

25 (A) At the time of the events giving rise to the prosecution,

1 the patient's medical records indicated or a physician stated that,
2 in the physician's professional opinion, after having completed a
3 full assessment of the patient's medical history and current
4 medical condition made in the course of a bona fide
5 physician-patient relationship, the potential benefits of the
6 medical use of marijuana would likely outweigh the health risks for
7 the patient; and

8 (B) The patient and his or her caregiver, if any, were
9 collectively in possession of no more than six marijuana plants and
10 one ounce of usable marijuana.

11 (4) Possession of, or application for, a registry
12 identification card shall not alone constitute probable cause to
13 search the person or the property of the person possessing or
14 applying for the registry identification card, or otherwise subject
15 the person or his or her property to inspection by any governmental
16 agency.

17 (5) The provisions of the Controlled Substance, Drug, Device
18 and Cosmetic Act, relating to destruction of marijuana shall not
19 apply if a qualifying patient has in his or her possession a
20 registry identification card and no more than six marijuana plants
21 and one ounce of usable marijuana.

22 (b) Patients under eighteen years of age. -- The provisions of
23 subsection (a) of this section shall not apply to a qualifying
24 patient under eighteen years of age, unless:

25 (1) The patient's physician has explained to the patient and

1 the patient's custodial parent, guardian or person having legal
2 custody, the potential risks and benefits of the medical use of
3 marijuana; and

4 (2) The custodial parent, guardian or person having legal
5 custody consents in writing to: allow the patient's medical use of
6 marijuana; serve as the patient's primary caregiver; and control
7 the acquisition, dosage and frequency of the medical use of
8 marijuana by the patient.

9 (c) Immunity of primary caregiver.--

10 (1) A primary caregiver who has in his or her possession a
11 registry identification card shall not be subject to arrest,
12 prosecution or penalty in any manner or denied any right or
13 privilege, including, but not limited to, civil penalty or
14 disciplinary action by a professional licensing board, for
15 assisting a qualifying patient to whom the caregiver is connected
16 through the department's registration process with the medical use
17 of marijuana, provided that the caregiver possesses no more than
18 six marijuana plants and one ounce of usable marijuana for the
19 patient to whom he or she is connected through the department's
20 registration process.

21 (2) There shall exist a rebuttable presumption that a primary
22 caregiver is engaged in the medical use of marijuana if the
23 caregiver possesses a registry identification card and no more than
24 six marijuana plants and one ounce of usable marijuana. The
25 presumption may be rebutted by evidence that conduct related to

1 marijuana was not for the purpose of alleviating the symptoms or
2 effects of a qualifying patient's debilitating medical condition.

3 (3) A primary caregiver may assert the medical use of
4 marijuana as an affirmative defense to any prosecution involving
5 marijuana unless the caregiver was in violation of this section
6 when the events giving rise to the prosecution occurred. The
7 defense shall be presumed valid where the evidence shows that:

8 (A) At the time of the events giving rise to the prosecution,
9 the patient's medical records indicated or a physician stated that,
10 in the physician's professional opinion, after having completed a
11 full assessment of the patient's medical history and current
12 medical condition made in the course of a bona fide
13 physician-patient relationship, the potential benefits of the
14 medical use of marijuana would likely outweigh the health risks for
15 the patient; and

16 (B) The patient and his or her caregiver, if any, were
17 collectively in possession of no more than six marijuana plants and
18 one ounce of usable marijuana.

19 (4) Possession of, or application for, a registry
20 identification card shall not alone constitute probable cause to
21 search a person or property of a person possessing or applying for
22 the registry identification card or otherwise subject the person or
23 his or her property to inspection by any governmental agency.

24 (5) The provisions of the Controlled Substance, Drug, Device
25 and Cosmetic Act, relating to destruction of marijuana determined

1 to exist by the department, shall not apply if a primary caregiver
2 has in his or her possession a registry identification card and no
3 more than six marijuana plants and one ounce of usable marijuana.

4 (d) Immunity of physician. -- A physician shall not be
5 subject to arrest, prosecution or penalty in any manner, or denied
6 any right or privilege, including, but not limited to, civil
7 penalty or disciplinary action by the State Board of Medicine or
8 the Board of Osteopathy for providing written certification for the
9 medical use of marijuana to a qualifying patient.

10 (e) Personal proximity. -- No person shall be subject to
11 arrest or prosecution for constructive possession, conspiracy or
12 any other offense for simply being in the presence or vicinity of
13 the medical use of marijuana as permitted under this article.

14 **§16-8A-6. Operation of a motorized vehicle prohibited.**

15 This article may not be construed to permit any person to
16 operate, navigate or be in actual physical control of any motor
17 vehicle, aircraft or motorboat while under the influence of
18 marijuana; or smoke marijuana in a school bus or other form of
19 public transportation, on any school grounds, in any correctional
20 facility, at any public park or beach, at any recreation center or
21 at any place where cigarette smoking is prohibited by law or by
22 organizational policy. A person who commits an act as provided in
23 this section shall be subject to such penalties as provided by law.

24 **§16-8A-7. Misrepresentation prohibited.**

25 It shall be a violation of section one-b, article six, chapter

1 sixty-one (relating to disorderly conduct) for a person to fabricate
2 or misrepresent a registry identification card to a law-enforcement
3 official.

4 **§16-8A-8. Registry identification cards.**

5 (a) Registry. -- The department shall establish a registry and
6 shall issue a registry identification card to a qualifying patient
7 who submits the following information in accordance with the
8 department's regulations:

9 (1) Written certification that the person is a qualifying
10 patient;

11 (2) An application or renewal fee of not less than \$50, which
12 may be based on a sliding scale as determined by the secretary;

13 (3) Name, address and date of birth of the patient;

14 (4) Name, address and telephone number of the patient's
15 physician; and

16 (5) Name, address and date of birth of the patient's primary
17 caregiver, if any.

18 (b) Issuance of registry identification card to qualified
19 patient.--

20 Before issuing a registry identification card, the department
21 shall verify the information contained in the application or renewal
22 form submitted under this section. The department shall approve or
23 deny an application or renewal within fifteen days of receipt of the
24 application or renewal and shall issue a registry identification
25 card within five days of approving the application or renewal. The

1 department may deny an application or renewal only if the applicant
2 fails to provide the information required under this section or if
3 the department determines that the information was falsified. Denial
4 of an application is considered a final agency decision, subject to
5 review by the courts of this state.

6 (c) Issuance of registry identification card to caregiver.--

7 The department shall issue a registry identification card to
8 the caregiver named in a patient's approved application if the
9 caregiver signs a statement agreeing to provide marijuana only to
10 the patient who has named him or her as caregiver.

11 (d) Information on face of registry identification card.--A
12 registry identification card shall contain the following
13 information:

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

15 (2) The name, address and date of birth of the patient's
16 caregiver, if any;

17 (3) The date of issuance and expiration date of the registry
18 identification card;

19 (4) Photo identification of the cardholder; and

20 (5) Such other information that the department may specify in
21 its regulations.

22 (e) Changes in listed information. -- A patient who has been
23 issued a registry identification card shall notify the department
24 of any change in the patient's name, address, physician or
25 caregiver, or change in status of the patient's debilitating medical

1 condition, within ten days of such change, or the registry
2 identification card shall be deemed null and void.

3 (f) Freedom of Information Act inapplicable. -- The department
4 shall maintain a confidential list of the persons to whom it has
5 issued registry identification cards. Individual names and other
6 identifying information on the list shall be confidential, and shall
7 not be considered a public record under the Freedom of Information
8 Act in chapter twenty-nine-b of this code and shall not be disclosed
9 except to:

10 (1) Authorized employees of the department as necessary to
11 perform official duties of the department; or

12 (2) Authorized employees of state or local law-enforcement
13 agencies, only as necessary to verify that a person who is engaged
14 in the suspected or alleged medical use of marijuana is lawfully in
15 possession of a registry identification card.

16 **§16-8A-9. Funding.**

17 The secretary may accept from any governmental department or
18 agency, public or private body or any other source grants or
19 contributions to be used in carrying out the purposes of this
20 article.

21 **§16-8A-10. Reports by secretary.**

22 The secretary shall report annually to the Governor and the
23 Legislature on the number of applications for registry
24 identification cards, the number of qualifying patients and primary
25 caregivers approved, the nature of the debilitating medical

1 conditions of the patients, the number of registry identification
2 cards revoked and the number of physicians providing written
3 certifications for patients. The report shall not contain any
4 identifying information of patients, caregivers or physicians.

5 **§16-8A-11. Health insurance.**

6 This article may not be construed to require a government
7 medical assistance program or private health insurer to reimburse
8 a person for costs associated with the medical use of marijuana, or
9 an employer to accommodate the medical use of marijuana in any
10 workplace.

11 **§16-8A-12. Sovereign immunity.**

12 The state shall not be held liable for any deleterious outcomes
13 from the medical use of marijuana by any qualifying patient.

14 **§16-8A-13. Rule making.**

15 The secretary shall promulgate rules in accordance with chapter
16 twenty-nine-a of this code to effectuate the purposes of this
17 article. The rules shall establish the application and renewal form,
18 process and fee schedule and any limitations in the public interest
19 on debilitating medical conditions not specifically included in this
20 article.

21 **§16-8A-14. Duty of West Virginia State Police.**

22 The West Virginia State Police shall advise the department and
23 caregivers on effective security measures for the possession and
24 transportation of medical marijuana and shall inspect sites if
25 requested.

NOTE: The purpose of this bill is to create the "Compassionate Use Medical Marijuana Act." The bill states legislative intent of permitting the medical use of marijuana. The bill determines the types of patients and their physicians and caregivers who are exempt from prosecution. The bill also limits the amount of marijuana that may be possessed. The bill designates compassion centers and prohibits the operation of a motor vehicle. The bill also requires the use of identification cards and all record keeping to be confidential. The bill requires sales tax to be collected and deposited into a special fund for drug prevention and abuse. The bill requires reports be made to the Governor and Legislature. The bill requires the collecting of sales tax. The bill further sets forth duties of the State Police, defines terms, grants and rule-making authority.

This article is new; therefore, it has been completely underscored.