

H. B. 4498

(By Delegate Manypenny)

[Introduced February 9, 2012; referred to the
Committee on Health and Human Resources then the Judiciary.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §16-8A-1, §16-8A-2,
12 §16-8A-3, §16-8A-4, §16-8A-5, §16-8A-6, §16-8A-7, §16-8A-8,
13 §16-8A-9, §16-8A-10, §16-8A-11, §16-8A-12, §16-8A-13, §16-8A-
14 14, §16-8A-15, §16-8A-16, §16-8A-17, §16-8A-18, §16-8A-19,
15 §16-8A-20, §16-8A-21, §16-8A-22, §16-8A-23 and §16-8A-24, all
16 relating to creating the "Compassionate Use Act for Medical
17 Cannabis; providing for protections for the medical use of
18 cannabis; limitations of article; prohibiting discrimination;
19 authorizing addition of debilitating medical conditions;
20 registration of qualifying patients and designated care
21 givers; issuance of registry identification cards; affirmative
22 defense and dismissal for medical marihuana; providing
23 misdemeanor offense and criminal penalties for disclosing
24 certain information; and otherwise provides for the

1 enforcement of this article.

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, §16-8A-
6 9, §16-8A-10, §16-8A-11, §16-8A-12, §16-8A-13, §16-8A-14, §16-8A-
7 15, §16-8A-16, §16-8A-17, §16-8A-18, §16-8A-19, §16-8A-20, §16-8A-
8 21, §16-8A-22, §16-8A-23 and §16-8A-24, all to read as follows:

9 **ARTICLE 8A. THE COMPASSIONATE USE ACT FOR MEDICAL CANNABIS.**

10 **§16-8A-1. Findings.**

11 (a) Marihuana's recorded use as a medicine goes back nearly
12 five thousand years. Modern medical research has confirmed the
13 beneficial uses for marihuana in treating or alleviating the pain,
14 nausea, and other symptoms associated with a variety of
15 debilitating medical conditions, including cancer, multiple
16 sclerosis, and HIV/AIDS, as found by the National Academy of
17 Sciences' Institute of Medicine in March 1999.

18 (b) Studies, published since the 1999 Institute of Medicine
19 report, have continued to show the therapeutic value of marihuana
20 in treating a wide array of debilitating medical conditions. These
21 include relief of the neuropathic pain caused by multiple
22 sclerosis, HIV/AIDS, and other illnesses and injuries that often
23 fails to respond to conventional treatments and relief of nausea,
24 vomiting, and other side effects of drugs used to treat HIV/AIDS

1 and hepatitis C, increasing the chances of patients continuing on
2 life-saving treatment regimens.

3 (c) Marihuana has many currently accepted medical uses in the
4 United States, having been recommended by thousands of licensed
5 physicians to more than five hundred thousand patients in states
6 with medical marihuana laws. Marihuana's medical utility has been
7 recognized by a wide range of medical and public health
8 organizations, including the American Academy of HIV Medicine, the
9 American College of Physicians, the American Nurses Association,
10 the American Public Health Association, the Leukemia & Lymphoma
11 Society and many others.

12 (d) Data from the Federal Bureau of Investigation's Uniform
13 Crime Reports and the Compendium of Federal Justice Statistics show
14 that approximately ninety-nine out of every one hundred marihuana
15 arrests in the United States are made under state law, rather than
16 under federal law. Consequently, changing state law will have the
17 practical effect of protecting from arrest the vast majority of
18 seriously ill patients who have a medical need to use marihuana.

19 (e) Alaska, Arizona, California, Colorado, Delaware, Hawaii,
20 Maine, Michigan, Montana, Nevada, New Mexico, New Jersey, Oregon,
21 Vermont, Rhode Island, Washington state and the District of
22 Columbia, have removed state-level criminal penalties from the
23 medical use and cultivation of marihuana. West Virginia joins in
24 this effort for the health and welfare of its citizens.

1 (f) States are not required to enforce federal law or
2 prosecute people for engaging in activities prohibited by federal
3 law. Therefore, compliance with this article does not put the
4 state of West Virginia in violation of federal law.

5 (g) State law should make a distinction between the medical
6 and nonmedical uses of marihuana. Hence, the purpose of this
7 article is to protect patients with debilitating medical
8 conditions, as well as their practitioners and providers, from
9 arrest and prosecution, criminal and other penalties and property
10 forfeiture, if the patients engage in the medical use of marihuana.

11 **§16-8A-2. Definitions.**

12 For purposes of this article, unless the context otherwise
13 requires:

14 (a) "Bona fide practitioner-patient relationship" means:

15 (1) A practitioner and patient have a treatment or consulting
16 relationship, during the course of which the physician has
17 completed a full assessment of the patient's medical history and
18 current medical condition, including an appropriate personal
19 physical examination;

20 (2) The practitioner has consulted with the patient with
21 respect to the patient's debilitating medical condition; and

22 (3) The physician is available to or offers to provide
23 follow-up care and treatment to the patient, including, but not
24 limited to, patient examinations.

1 (b) "Cardholder" means a qualifying patient or a designated
2 care giver who has been issued and possesses a valid registry
3 identification card.

4 (c) "Compassion center agent" means a principal officer, board
5 member, employee or agent of a registered compassion center who is
6 twenty-one years of age or older and has not been convicted of a
7 disqualifying felony offense.

8 (d) "Debilitating medical condition" means:

9 (1) Cancer, glaucoma, positive status for human
10 immunodeficiency virus, acquired immune deficiency syndrome,
11 hepatitis C, amyotrophic lateral sclerosis, Crohn's disease,
12 agitation of Alzheimer's disease, Parkinson's disease,
13 post-traumatic stress disorder, depression, anxiety, addiction to
14 opiates or amphetamines or the treatment of these conditions;

15 (2) A chronic or debilitating disease or medical condition or
16 its treatment that produces one or more of the following: cachexia
17 or wasting syndrome; severe or chronic pain; severe nausea;
18 seizures; or severe and persistent muscle spasms, including, but
19 not limited to, those characteristic of multiple sclerosis; or

20 (3) Any other medical condition or its treatment added by the
21 department, as provided in section six of this article.

22 (e) "Department" means the West Virginia Department of Health
23 and Human Resources or its successor agency.

24 (f) "Designated care giver" means a person who:

1 (1) Is at least twenty-one years of age;

2 (2) Has agreed to assist with a patient's medical use of
3 marihuana;

4 (3) Has not been convicted of a disqualifying felony offense;
5 and

6 (4) Assists no more than five qualifying patients with their
7 medical use of marihuana.

8 (g) "Disqualifying felony offense" means:

9 (1) A violent crime that was classified as a felony in the
10 jurisdiction where the person was convicted; or

11 (2) A violation of a state or federal controlled substance law
12 that was classified as a felony in the jurisdiction where the
13 person was convicted, not including:

14 (A) An offense for which the sentence, including any term of
15 probation, incarceration or supervised release was completed ten or
16 more years earlier; or

17 (B) An offense that consisted of conduct for which this
18 article would likely have prevented a conviction, but the conduct
19 either occurred prior to the enactment of this article or was
20 prosecuted by an authority other than the State of West Virginia.

21 (h) "Enclosed, locked facility" means a closet, room,
22 greenhouse, building or other enclosed area that is equipped with
23 locks or other security devices that permit access only by the
24 cardholder allowed to cultivate the plants or, in the case of a

1 registered compassion center, the compassion center agents working
2 for the registered compassion center. Two or more registered
3 qualifying patients or registered designated care givers who reside
4 in the same dwelling and have a registry identification card that
5 removes state penalties for marihuana cultivation may share one
6 enclosed, locked facility for cultivation.

7 (i) "Marihuana" has the meaning given that term in section
8 101, article one, chapter sixty-a of this code.

9 (j) "Mature marihuana plant" means a marihuana plant that with
10 one or more of the following characteristics:

11 (1) The plant has flowers;

12 (2) The plant is twelve or more inches in height; or

13 (3) The plant is twelve inches or greater in diameter.

14 (k) "Medical use" includes the acquisition, administration,
15 cultivation, or manufacture in an enclosed, locked facility,
16 delivery, possession, transfer, transportation or use of marihuana
17 or paraphernalia relating to the administration of marihuana to
18 treat or alleviate a registered qualifying patient's debilitating
19 medical condition or symptoms associated with the patient's
20 debilitating medical condition. It does not include cultivation by
21 a visiting qualifying patient or cultivation by a registered
22 designated care giver or registered qualifying patient who is not
23 designated as being allowed to cultivate.

24 (l) "Practitioner" means a person who is licensed with

1 authority to prescribe drugs to humans under the provisions of
2 section one-b, article five, chapter thirty of this code, except as
3 otherwise provided in this subsection. If the qualifying patient's
4 debilitating medical condition is post-traumatic stress disorder,
5 the practitioner must be a licensed psychiatrist. In relation to a
6 visiting qualifying patient, "practitioner" means a person who is
7 licensed with authority to prescribe drugs to humans in the state
8 of the patient's residence.

9 (m) "Qualifying patient" means a person who has been diagnosed
10 by a practitioner as having a debilitating medical condition.

11 (n) "Registered compassion center" means a not-for-profit
12 entity registered pursuant to section fourteen of this article that
13 acquires, possesses, cultivates, manufactures, delivers, transfers,
14 transports, sells, supplies or dispenses marihuana, paraphernalia
15 or related supplies and educational materials to registered
16 qualifying patients.

17 (o) "Registry identification card" means a document issued by
18 the department that identifies a person as a registered qualifying
19 patient or registered designated care giver.

20 (p) "Registered safety compliance facility" means an entity
21 registered under section fifteen by the department to provide one
22 or more of the following services:

23 (1) Testing marihuana produced for medical use, including for
24 potency and contaminants; and

1 (2) Training cardholders and compassion center agents. The
2 training may include, but need not be limited to, information
3 related to one or more of the following:

4 (A) The safe and efficient cultivation, harvesting, packaging,
5 labeling and distribution of marihuana;

6 (B) Security and inventory accountability procedures; and

7 (C) Up-to-date scientific and medical research findings
8 related to medical marihuana.

9 (q) "Safety compliance facility agent" means a principal
10 officer, board member, employee, or agent of a registered safety
11 compliance facility who is twenty-one years of age or older and has
12 not been convicted of a disqualifying felony offense.

13 (r) "Seedling" means a marihuana plant that has no flowers, is
14 less than twelve inches in height, and is less than twelve inches
15 in diameter.

16 (s) "Usable marihuana" means the flowers of the marihuana
17 plant and any mixture or preparation thereof, but does not include
18 the seeds, stalks, and roots of the plant. It does not include the
19 weight of any nonmarihuana ingredients combined with marihuana,
20 including ingredients added to prepare a topical administration,
21 food, or drink.

22 (t) "Verification system" means a phone or Web-based system
23 established and maintained by the department that is available to
24 law-enforcement personnel and compassion center agents on a

1 twenty-four-hour basis for verification of registry identification
2 cards.

3 (u) "Visiting qualifying patient" means a person who:

4 (1) Has been diagnosed with a debilitating medical condition;

5 (2) Possesses a valid registry identification card, or its
6 equivalent, that was issued pursuant to the laws of another state,
7 district, territory, commonwealth, insular possession of the United
8 States or country recognized by the United States that allows the
9 person to use marihuana for medical purposes in the jurisdiction of
10 issuance; and

11 (3) Is not a resident of West Virginia or who has been a
12 resident of West Virginia for less than thirty days.

13 (v) "Written certification" means a document dated and signed
14 by a practitioner, stating that in the practitioner's professional
15 opinion the patient is likely to receive therapeutic or palliative
16 benefit from the medical use of marihuana to treat or alleviate the
17 patient's debilitating medical condition or symptoms associated
18 with the debilitating medical condition. A written certification
19 shall affirm that it is made in the course of a bona fide
20 practitioner-patient relationship and shall specify the qualifying
21 patient's debilitating medical condition.

22 **§16-8A-3. Protections for the medical use of cannabis.**

23 (a) A registered qualifying patient may not be subject to
24 arrest, prosecution or denial of any right or privilege, including,

1 but not limited to, civil penalty or disciplinary action by a court
2 or occupational or professional licensing board or bureau, for the
3 medical use of marihuana pursuant to this article, if the
4 registered qualifying patient does not possess more than:

5 (1) Six ounces of usable marihuana; and

6 (2) Twelve mature marihuana plants and twelve seedlings, if
7 the qualifying patient has not specified that a designated care
8 giver will be allowed under state law to cultivate marihuana for
9 the qualifying patient.

10 (b) A registered designated care giver may not be subject to
11 arrest, prosecution or denial of any right or privilege, including,
12 but not limited to, civil penalty or disciplinary action by a court
13 or occupational or professional licensing board or bureau:

14 (1) For assisting a registered qualifying patient to whom he
15 or she is connected through the department's registration process
16 with the medical use of marihuana if the designated care giver does
17 not possess more than:

18 (A) Six ounces of usable marihuana for each qualifying patient
19 to whom the registered care giver is connected through the
20 department's registration process; and

21 (B) Twelve mature marihuana plants and twelve seedlings for
22 each registered qualifying patient who has specified that the
23 designated care giver will be allowed under state law to cultivate
24 marihuana for the qualifying patient.

1 (2) For receiving compensation for costs associated with
2 assisting a registered qualifying patient's medical use of
3 marihuana if the registered designated care giver is connected to
4 the registered qualifying patient through the department's
5 registration process.

6 (c) All mature marihuana plants and seedlings possessed
7 pursuant to this section must be kept in an enclosed, locked
8 facility, unless they are being transported to a permissible
9 location, including because the cardholder is moving, the
10 registered qualifying patient has changed his or her designation of
11 who can cultivate or the plants are being given to someone allowed
12 to possess them pursuant to this article.

13 (d) A visiting qualifying patient may not be subject to
14 arrest, prosecution or denial of any right or privilege, including,
15 but not limited to, civil penalty or disciplinary action by a court
16 or occupational or professional licensing board or bureau, for the
17 medical use of marihuana pursuant to this article if the visiting
18 qualifying patient does not possess more than six ounces of usable
19 marihuana.

20 (e) A registered qualifying patient, visiting qualifying
21 patient or registered designated care giver may not be subject to
22 arrest, prosecution, or denial of any right or privilege,
23 including, but not limited to, civil penalty or disciplinary action
24 by a court or occupational or professional licensing board or

1 bureau for:

2 (1) Possession of marihuana that is incidental to medical use,
3 but is not mature marihuana plants, seedlings, or usable marihuana
4 as defined in this article;

5 (2) Selling, transferring, or delivering marihuana seeds
6 produced by the registered qualifying patient, visiting qualifying
7 patient, or registered designated care giver to a registered
8 compassion center;

9 (3) Transferring marihuana to a registered safety compliance
10 facility for testing; or

11 (4) Giving marihuana to a registered qualifying patient, a
12 registered compassion center, or a registered designated care giver
13 for a registered qualifying patient's medical use where nothing of
14 value is transferred in return, or for offering to do the same, if
15 the person giving the marihuana does not knowingly cause the
16 recipient to possess more marihuana than is permitted by this
17 section.

18 (f) (1) There is a presumption that a qualifying patient is
19 engaged in, or a designated care giver is assisting with, the
20 medical use of marihuana in accordance with this article if the
21 qualifying patient or designated care giver:

22 (A) Is in possession of a valid registry identification card,
23 or, in the case of a visiting qualifying patient, its equivalent;
24 and

1 (B) Is in possession of an amount of marihuana that does not
2 exceed the amount allowed under the provisions of this section.

3 (2) The presumption may be rebutted by evidence that conduct
4 related to marihuana was not for the purpose of treating or
5 alleviating the qualifying patient's debilitating medical condition
6 or symptoms associated with the debilitating medical condition in
7 compliance with this article.

8 (g) A practitioner may not be subject to arrest, prosecution,
9 or penalty in any manner or denied any right or privilege,
10 including, but not limited to, civil penalty or disciplinary action
11 by the West Virginia Board of Medicine or by any other occupational
12 or professional licensing board or bureau, solely for providing
13 written certifications or for otherwise stating that, in the
14 practitioner's professional opinion, a patient is likely to receive
15 therapeutic or palliative benefit from the medical use of marihuana
16 to treat or alleviate the patient's serious or debilitating medical
17 condition or symptoms associated with the serious or debilitating
18 medical condition: *Provided*, That nothing in this article may
19 prevent a practitioner from being sanctioned for:

20 (1) Issuing a written certification to a patient with whom the
21 practitioner does not have a bona fide practitioner-patient
22 relationship, or

23 (2) Failing to properly evaluate a patient's medical condition
24 or otherwise violating the standard of care.

1 (h) No person may be subject to arrest, prosecution or denial
2 of any right or privilege, including, but not limited to, civil
3 penalty or disciplinary action by a court or occupational or
4 professional licensing board or bureau, for:

5 (1) Selling marihuana paraphernalia to a cardholder upon
6 presentation of a registry identification card in the recipient's
7 name that has not expired or to a compassion center agent or
8 registered safety compliance facility agent upon presentation of an
9 unexpired copy of the entity's registration certificate;

10 (2) Being in the presence or vicinity of the medical use of
11 marihuana as allowed under this article; or

12 (3) Assisting a registered qualifying patient with using or
13 administering marihuana. For purposes of illustration and not
14 limitation, this includes preparing a vaporizer for a registered
15 qualifying patient's use or brewing tea for a registered qualifying
16 patient. It does not include providing marihuana to a patient that
17 the patient did not already possess.

18 (i) A registered compassion center may not be subject to
19 prosecution under state or municipal law, search or inspection,
20 except by the department pursuant to subsection (o) of this section;
21 seizure; or penalty in any manner, or be denied any right or
22 privilege, including, but not limited to, civil penalty or
23 disciplinary action by a court or business licensing board or
24 entity, for acting pursuant to this article and department

1 regulations to: sell marihuana seeds to similar entities that are
2 registered to dispense marihuana for medical use in other
3 jurisdictions, acquire, possess, cultivate, manufacture, deliver,
4 transfer, transport, supply, sell or dispense marihuana or related
5 supplies and educational materials to registered qualifying
6 patients and visiting qualifying patients who have designated the
7 compassion center to provide for them, to registered designated
8 care givers on behalf of the registered qualifying patients who
9 have designated the registered compassion center, or to other
10 registered compassion centers.

11 (j) A registered compassion center agent may not be subject to
12 prosecution, search or penalty in any manner or be denied any right
13 or privilege, including, but not limited to, civil penalty or
14 disciplinary action by a court or business licensing board or
15 entity, for working for a registered compassion center pursuant to
16 this article and department regulations to acquire, possess,
17 cultivate, manufacture, deliver, transfer, transport, supply, sell
18 or dispense marihuana or related supplies and educational materials
19 to registered qualifying patients who have designated the
20 registered compassion center to provide for them, to registered
21 designated care givers on behalf of the registered qualifying
22 patients who have designated the registered compassion center, or
23 to other registered compassion centers.

24 (k) A registered safety compliance facility and registered

1 safety compliance facility agents acting on behalf of a registered
2 safety compliance facility may not be subject to prosecution,
3 search, except by the department pursuant to subsection (o) of this
4 section, seizure or penalty in any manner or be denied any right or
5 privilege, including, but not limited to, civil penalty or
6 disciplinary action by a court or business licensing board or
7 entity, solely for acting in accordance with this article and
8 department regulations to provide the following services:

9 (1) Acquiring or possessing marihuana obtained from registered
10 cardholders or registered compassion centers;

11 (2) Returning the marihuana to registered cardholders or
12 registered compassion centers;

13 (3) Transporting marihuana that was produced by registered
14 cardholders and registered compassion centers to or from those
15 registered cardholders and registered compassion centers;

16 (4) The production or sale of educational materials related to
17 medical marihuana;

18 (5) The production, sale or transportation of equipment or
19 materials other than marihuana to registered compassion centers or
20 cardholders, including lab equipment and packaging materials, that
21 are used by registered compassion centers and cardholders;

22 (6) Testing of medical marihuana samples, including for
23 potency, pesticides, mold and contamination;

24 (7) Providing training to cardholders and prospective

1 compassion center agents, provided that only cardholders may be
2 allowed to possess or cultivate marihuana and any possession or
3 cultivation of marihuana must occur on the location registered with
4 the department; and

5 (8) Receiving compensation for actions allowed under this
6 section.

7 (1) Any marihuana, marihuana paraphernalia, licit property or
8 interest in licit property that is possessed, owned or used in
9 connection with the medical use of marihuana as allowed under this
10 article, or acts incidental to such use, may not be seized or
11 forfeited. This article may not prevent the seizure or forfeiture
12 of marihuana exceeding the amounts allowed under this article, nor
13 may it prevent seizure or forfeiture if the basis for the action is
14 unrelated to the marihuana that is possessed, manufactured,
15 transferred, or used pursuant to this article.

16 (m) Mere possession of, or application for, a registry
17 identification card or registration certificate may not constitute
18 probable cause or reasonable suspicion, nor may it be used to
19 support the search of the person, property or home of the person
20 possessing or applying for the registry identification card. The
21 possession of, or application for, a registry identification card
22 may not preclude the existence of probable cause if probable cause
23 exists on other grounds.

24 (n) For the purposes of West Virginia state law, the medical

1 use of marihuana by a cardholder or registered compassion center
2 shall be considered lawful as long as it is in accordance with this
3 article.

4 (o) No law-enforcement officer employed by an agency which
5 receives state or local government funds may expend any state or
6 local resources, including the officer's time, to effect any arrest
7 or seizure of marihuana, or conduct any investigation, on the sole
8 basis of activity the officer believes to constitute a violation of
9 the federal Controlled Substances Act if the officer has reason to
10 believe that such activity is in compliance with state medical
11 marihuana laws, nor may any such officer expend any state or local
12 resources, including the officer's time, to provide any information
13 or logistical support related to such activity to any federal law
14 enforcement authority or prosecuting entity.

15 (p) An attorney may not be subject to disciplinary action by
16 the state bar association or other professional licensing
17 association for providing legal assistance to prospective or
18 registered compassion centers, prospective or registered safety
19 compliance facilities or others related to activity that is no
20 longer subject to criminal penalties under state law pursuant to
21 this article.

22 **§16-8A-4. Limitations.**

23 (a) This article does not authorize any person to engage in,
24 and does not prevent the imposition of any civil, criminal, or

1 other penalties for engaging in, the following conduct:

2 (1) Undertaking any task under the influence of marihuana,
3 when doing so would constitute negligence or professional
4 malpractice;

5 (2) Possessing marihuana, or otherwise engaging in the medical
6 use of marihuana:

7 (A) In a school bus;

8 (B) On the grounds of any preschool or primary or secondary
9 school; or

10 (C) In any correctional facility.

11 (3) Smoking marihuana:

12 (A) On any form of public transportation; or

13 (B) In any public place.

14 (4) Operating, navigating, or being in actual physical control
15 of any motor vehicle, aircraft or motorboat while under the
16 influence of marihuana, except that a registered qualifying patient
17 or visiting qualifying patient may not be considered to be under
18 the influence of marihuana solely because of the presence of
19 metabolites or components of marihuana that appear in insufficient
20 concentration to cause impairment.

21 (5) Using marihuana, if that person does not have a serious or
22 debilitating medical condition.

23 **§16-8A-5. Discrimination Prohibited.**

24 (a) Except as provided in this article, a registered

1 qualifying patient who uses marihuana for medical purposes shall be
2 afforded all the same rights under state and local law, including
3 those guaranteed under the provisions of article eleven, chapter
4 five of this code relating to human rights, as the individual would
5 have been afforded if he or she were solely prescribed
6 pharmaceutical medications, as it pertains to:

7 (1) Any interaction with a person's employer;

8 (2) Drug testing by one's employer; or

9 (3) Drug testing required by any state or local law, agency,
10 or government official.

11 (b) (1) The rights provided by this section do not apply to
12 the extent that they conflict with an employer's obligations under
13 federal law or regulations or to the extent that they would
14 disqualify an employer from a monetary or licensing-related benefit
15 under federal law or regulations.

16 (2) No employer is required to allow the ingestion of
17 marihuana in any workplace or to allow any employee to work while
18 under the influence of marihuana. A registered qualifying patient
19 may not be considered to be under the influence of marihuana solely
20 because of the presence of metabolites or components of marihuana
21 that appear in insufficient concentration to cause impairment.

22 (c) No school or landlord may refuse to enroll or lease to, or
23 otherwise penalize, a person solely for his or her status as a
24 registered qualifying patient or a registered designated care

1 giver, unless failing to do so would violate federal law or
2 regulations or cause the school or landlord to lose a monetary or
3 licensing-related benefit under federal law or regulations.

4 (d) For the purposes of medical care, including organ
5 transplants, a registered qualifying patient's authorized use of
6 marihuana in accordance with this article is the equivalent of the
7 authorized use of any other medication used at the direction of a
8 physician, and may not constitute the use of an illicit substance
9 or otherwise disqualify a qualifying patient from needed medical
10 care.

11 (e) A person otherwise entitled to custody of or visitation or
12 parenting time with a minor may not be denied such a right and
13 there is no presumption of neglect or child endangerment for
14 conduct allowed under this article unless the person's actions in
15 relation to marihuana were such that they created an unreasonable
16 danger to the safety of the minor as established by clear and
17 convincing evidence.

18 (f) No school, landlord or employer may be penalized or denied
19 any benefit under state law for enrolling, leasing to or employing
20 a cardholder.

21 **§16-8A-6. Addition of Debilitating Medical Conditions.**

22 Any citizen may petition the department to add conditions or
23 treatments to the list of debilitating medical conditions listed in
24 section 2(d) of this article. The department shall consider

1 petitions in the manner required by department rule, including
2 public notice and hearing. The department shall approve or deny a
3 petition within one hundred eighty days of its submission. The
4 approval or denial of any petition is a final decision of the
5 department subject to judicial review. Jurisdiction and venue are
6 vested in the circuit court.

7 **§16-8A-7. Acts not required; acts not prohibited.**

8 (a) Nothing in this article requires:

9 (1) A government medical assistance program or private insurer
10 to reimburse a person for costs associated with the medical use of
11 marihuana, or

12 (2) Any person or establishment in lawful possession of
13 property to allow a guest, client, customer or other visitor to
14 smoke marihuana on or in that property.

15 (b) Nothing in this article prohibits an employer from
16 disciplining an employee for ingesting marihuana in the workplace
17 or working while under the influence of marihuana.

18 **§16-8A-8. Registration of qualifying patients and designated care**
19 **givers.**

20 (a) The department shall issue registry identification cards
21 to qualifying patients who submit the following, in accordance with
22 the department's rules:

23 (1) A written certification issued by a practitioner within
24 ninety days immediately preceding the date of an application;

1 (2) If the patient is not a visiting qualifying patient,
2 documentation required by department regulations to reasonably
3 establish proof of residency in West Virginia;

4 (3) If the patient is a visiting qualifying patient, a copy of
5 his or her registry identification card or its equivalent that was
6 issued pursuant to the laws of the jurisdiction of the person's
7 residence;

8 (4) The application or renewal fee;

9 (5) The name, address, and date of birth of the qualifying
10 patient, except that if the applicant is homeless no address is
11 required;

12 (6) The name, address, and telephone number of the qualifying
13 patient's practitioner;

14 (7) The name, address, and date of birth of the designated
15 care giver, if any, chosen by the qualifying patient, except that
16 a visiting qualifying patient may not have a designated care giver;

17 (8) The name of the registered compassion center the
18 qualifying patient designates, if any;

19 (9) The qualifying patient designates a designated care giver,
20 a designation as to whether the qualifying patient or designated
21 care giver will be allowed under state law to possess and cultivate
22 marihuana plants for the qualifying patient's medical use;

23 (10) A statement signed by the qualifying patient, pledging
24 not to divert marihuana to anyone who is not allowed to possess

1 marihuana pursuant to this article; and

2 (11) A signed statement from the designated care giver, if
3 any, agreeing to be designated as the patient's designated care
4 giver and pledging not to divert marihuana to anyone who is not
5 allowed to possess marihuana pursuant to this article.

6 (b) The application for qualifying patients' registry
7 identification cards shall ask whether the patient would like the
8 department to notify him or her of any clinical studies needing
9 human subjects for research on the medical use of marihuana. The
10 department shall notify interested patients if it is notified of
11 studies that will be conducted in the United States.

12 **§16-8A-9. Issuance of registry identification cards.**

13 (a) Except as provided in subsection (b) of this section, the
14 department shall:

15 (1) Verify the information contained in an application or
16 renewal submitted pursuant to this article, and approve or deny an
17 application or renewal, within fifteen days of receiving a
18 completed application or renewal application;

19 (2) Issue registry identification cards to a qualifying
20 patient and his or her designated care giver, if any, within five
21 days of approving the application or renewal. A designated care
22 giver must have a registry identification card for each of his
23 qualifying patients; and

24 (3) Enter the registry identification number of the registered

1 compassion center the patient designates into the verification
2 system.

3 (b) The department may not issue a registry identification
4 card to a qualifying patient who is younger than [eighteen](#) years of
5 age unless:

6 (1) The qualifying patient's practitioner has explained the
7 potential risks and benefits of the medical use of marihuana to the
8 custodial parent or legal guardian with responsibility for health
9 care decisions for the qualifying patient; and

10 (2) The custodial parent or legal guardian with responsibility
11 for health care decisions for the qualifying patient consents in
12 writing to:

13 (A) Allow the qualifying patient's medical use of marihuana;

14 (B) Serve as the qualifying patient's designated care giver;

15 and

16 (C) Control the acquisition of the marihuana, the dosage, and
17 the frequency of the medical use of marihuana by the qualifying
18 patient.

19 **§16-8A-10. Denial of Registry Identification Cards.**

20 (a) The department may deny an application or renewal of a
21 qualifying patient's registry identification card only if the
22 applicant:

23 (1) Did not provide the required information or materials;

24 (2) Previously had a registry identification card revoked; or

1 (3) Provided false or falsified information.

2 (b) The department may deny an application or renewal for a
3 designated care giver chosen by a qualifying patient whose registry
4 identification card was granted only if:

5 (1) The designated care giver does not meet the requirements
6 of section two(f) of this article;

7 (2) The applicant did not provide the information required;

8 (3) The designated care giver previously had a registry
9 identification card revoked; or

10 (4) The applicant or the designated care giver provides false
11 or falsified information.

12 (c) The department may conduct a background check of the
13 prospective designated care giver in order to carry out this
14 provision.

15 (d) The department shall notify the qualifying patient who has
16 designated someone to serve as his or her designated care giver if
17 a registry identification card will not be issued to the designated
18 care giver.

19 (e) Denial of an application or renewal is considered a final
20 department action, subject to judicial review. Jurisdiction and
21 venue for judicial review are vested in the circuit court.

22 **§16-8A-11. Registry identification cards.**

23 (a) Registry identification cards shall contain all of the
24 following:

- 1 (1) The name of the cardholder;
- 2 (2) A designation of whether the cardholder is a designated
3 care giver or qualifying patient;
- 4 (3) The date of issuance and expiration date of the registry
5 identification card;
- 6 (4) A random 10-digit alphanumeric identification number,
7 containing at least four numbers and at least four letters, that is
8 unique to the cardholder;
- 9 (5) If the cardholder is a designated care giver, the random
10 10-digit alphanumeric identification number of the qualifying
11 patient the designated care giver is receiving the registry
12 identification card to assist;
- 13 (6) A clear designation as to whether the cardholder will be
14 allowed under state law to possess the marihuana plants for the
15 qualifying patient's medical use, which shall be determined based
16 solely on the qualifying patient's preference;
- 17 (7) A photograph of the cardholder, if the department's
18 regulations require one; and
- 19 (8) The phone number or Web address for the verification
20 system.
- 21 (b) (1) Except as provided in this subsection, the expiration
22 date shall be one year after the date of issuance.
- 23 (2) If the practitioner stated in the written certification
24 that the qualifying patient would benefit from marihuana until a

1 specified earlier date, then the registry identification card shall
2 expire on that date.

3 (c) The department may, at its discretion, electronically
4 store in the card, all of the information listed in subsection (a),
5 along with the address and date of birth of the cardholder, to
6 allow it to be read by law enforcement agents.

7 **§16-8A-12. Notifications to department and responses; Civil**
8 **Penalty.**

9 (a) The following notifications and department responses are
10 required:

11 (1) A registered qualifying patient shall notify the
12 department of any change in his or her name or address, or if the
13 registered qualifying patient ceases to have his or her
14 debilitating medical condition, within ten days of the change.

15 (2) A registered designated care giver shall notify the
16 department of any change in his or her name or address, or if the
17 designated care giver becomes aware the qualifying patient passed
18 away, within ten days of the change.

19 (3) Before a registered qualifying patient changes his or her
20 designated care giver, the qualifying patient must notify the
21 department.

22 (4) When a registered qualifying patient changes his or her
23 preference as to who may cultivate marihuana for the qualifying
24 patient, the qualifying patient must notify the department.

1 (5) If a cardholder loses his or her registry identification
2 card, he or she shall notify the department within ten days of
3 becoming aware the card has been lost.

4 (b) When a cardholder notifies the department of items listed
5 in subsection (a), but remains eligible under this article, the
6 department shall issue the cardholder a new registry identification
7 card with a new random 10-digit alphanumeric identification number
8 within ten days of receiving the updated information and a \$20 fee.
9 If the person notifying the department is a registered qualifying
10 patient, the department shall also issue his or her registered
11 designated care giver, if any, a new registry identification card
12 within ten days of receiving the updated information.

13 (c) If a registered qualifying patient ceases to be a
14 registered qualifying patient or changes his or her registered
15 designated care giver, the department shall promptly notify the
16 designated care giver. The registered designated care giver's
17 protections under this article as to that qualifying patient shall
18 expire fifteen days after notification by the department.

19 (d) A cardholder who fails to make a notification to the
20 department that is required by this section is subject to a civil
21 infraction, punishable by a penalty of no more than \$150.

22 (e) A registered qualifying patient shall notify the
23 department before changing his or her designated registered
24 compassion center and pay a \$20 fee. The department shall, within

1 five business days of receiving the notification, update the
2 registered qualifying patient's entry in the identification
3 registry system to reflect the change in designation and notify the
4 patient that the change has been processed.

5 (f) If the registered qualifying patient's certifying
6 practitioner notifies the department in writing that either the
7 registered qualifying patient has ceased to suffer from a
8 debilitating medical condition or that the practitioner no longer
9 believes the patient would receive therapeutic or palliative
10 benefit from the medical use of marihuana, the card shall become
11 null and void. However, the registered qualifying patient shall
12 have fifteen days to dispose of or give away his or her marihuana.

13 **§16-8A-13. Affirmative defense and dismissal for medical**
14 **marihuana.**

15 (a) Except as provided in section four of this article and
16 this section, an individual may assert a medical purpose for using
17 marihuana as a defense to any prosecution of an offense involving
18 marihuana intended for the patient's medical use, and this defense
19 shall be presumed valid and the prosecution shall be dismissed
20 where the evidence shows that:

21 (1) A practitioner states that, in the practitioner's
22 professional opinion, after having completed a full assessment of
23 the individual's medical history and current medical condition made
24 in the course of a bona fide practitioner-patient relationship, the

1 patient is likely to receive therapeutic or palliative benefit from
2 marihuana;

3 (2) To treat or alleviate the individual's serious or
4 debilitating medical condition or symptoms associated with the
5 individual's serious or debilitating medical condition or;

6 (b) To treat any other illness for which marihuana provides
7 relief that, in the practitioner's professional opinion the
8 potential benefits of the medical use of marihuana would likely
9 outweigh the health risks for the qualifying patient and would
10 likely be superior to treatment without the medical use of
11 marihuana; and

12 (1) The individual and the individual's designated care giver,
13 if any, were collectively in possession of a quantity of marihuana
14 that was not more than was reasonably necessary to ensure the
15 uninterrupted availability of marihuana for the purpose of treating
16 or alleviating the individual's serious or debilitating medical
17 condition or symptoms associated with the individual's serious or
18 debilitating medical condition or other illness for which marihuana
19 was providing relief; and

20 (2) The individual was engaged in the acquisition, possession,
21 cultivation, manufacture, use or transportation of marihuana,
22 paraphernalia, or both marihuana and paraphernalia, relating to the
23 administration of marihuana to treat or alleviate the individual's
24 serious or debilitating medical condition or symptoms associated

1 with the individual's serious or debilitating medical condition or
2 other illness for which marihuana was providing relief; and

3 (3) Any cultivation of marihuana occurred in an enclosed,
4 locked area that only the person asserting the defense could
5 access.

6 (c) The defense and motion to dismiss may not prevail if
7 either of the following are proven:

8 (1) The individual had a registry identification card revoked
9 for misconduct; or

10 (2) The purposes for the possession or cultivation of
11 marihuana were not solely for palliative or therapeutic use by the
12 individual with a serious or debilitating medical condition who
13 raised the defense.

14 (d) An individual is not required to possess a registry
15 identification card to raise the affirmative defense set forth in
16 this section.

17 (e) If an individual demonstrates the individual's medical
18 purpose for using marihuana pursuant to this section, except as
19 provided in section four of this article, the individual may not be
20 subject to the following for the individual's use of marihuana for
21 medical purposes:

22 (1) Disciplinary action by an occupational or professional
23 licensing board or bureau; or

24 (2) Forfeiture of any interest in or right to non-marihuana,

1 licit property.

2 **§16-8A-14. Registration of compassion centers.**

3 (a) Compassion centers may only operate if they have been
4 issued a valid registration certificate from the department. When
5 applying for a compassion center registration certificate, the
6 applicant shall submit the following in accordance with department
7 regulations:

8 (1) A nonrefundable application fee in an amount determined by
9 the department's regulations, not to exceed \$4,000.

10 (2) The proposed legal name of the compassion center.

11 (3) The proposed physical address of the compassion center and
12 the proposed physical address of any additional locations, if any,
13 where marihuana will be cultivated, harvested, packaged, labeled,
14 or otherwise prepared for distribution by the compassion center.

15 (4) The name, address, and date of birth of each principal
16 officer and board member of the compassion center, provided that
17 all such individuals shall be at least twenty-one years of age.

18 (5) Any instances in which a business or not-for-profit that
19 any of the prospective board members managed or served on the board
20 of was convicted, fined, censured or had a registration or license
21 suspended or revoked in any administrative or judicial proceeding.

22 (6) Any information required by the department to evaluate the
23 applicant pursuant to the competitive bidding process described in
24 subsection (b) of this section.

1 (b) The department shall evaluate applications for compassion
2 center registration certificates using an impartial and numerically
3 scored competitive bidding process developed by the department in
4 accordance with this article. The registration considerations shall
5 consist of the following criteria:

6 (1) The suitability of the proposed location or locations,
7 including compliance with any local zoning laws and the geographic
8 convenience to patients from throughout the State of West Virginia
9 to compassion centers if the applicant were approved.

10 (2) The principal officer and board members' character and
11 relevant experience, including any training or professional
12 licensing related to medicine, pharmaceuticals, natural treatments,
13 botany or marihuana cultivation and preparation and their
14 experience running businesses or not-for-profits.

15 (3) The proposed compassion center's plan for operations and
16 services, including its staffing and training plans, whether it has
17 sufficient capital to operate and its ability to provide an
18 adequate supply of medical marihuana to the registered patients in
19 the state.

20 (4) The sufficiency of the applicant's plans for record
21 keeping.

22 (5) The sufficiency of the applicant's plans for safety,
23 security, and the prevention of diversion, including proposed
24 locations and security devices employed.

1 (6) The applicant's plan for making medical marihuana
2 available on an affordable basis to registered qualifying patients
3 enrolled in Medicaid or receiving Supplemental Security Income or
4 Social Security Disability Insurance.

5 (7) The applicant's plan for safe and accurate packaging and
6 labeling of medical marihuana, including the applicant's plan for
7 ensuring that all medical marihuana is free of contaminants.

8 (c) No later than one year after the effective date of this
9 article, provided that at least five applications have been
10 submitted, the department shall issue compassion center
11 registration certificates to the five highest-scoring applicants,
12 except that the department may divide the state into geographical
13 areas and grant a registration to the highest scoring applicant in
14 each geographical area.

15 (d) No later than two years after the effective date of this
16 article, the department shall issue registration certifications to
17 at least one compassion center registration certificate for each
18 two hundred thousand residents of the state of the highest scoring
19 applicants not already awarded a registration certificate:
20 Provided, That a sufficient number of additional applications have
21 been submitted. The need to ensure an adequate geographic
22 distribution may supersede the requirement that the approved
23 applicants be granted registration certificates based solely on
24 which applicants receive the highest scores. If the department

1 determines, after reviewing the report issued pursuant to section
2 twenty-two of this article, that additional compassion centers are
3 needed to meet the needs of registered qualifying patients
4 throughout the state, the department shall issue registration
5 certificates to the corresponding number of applicants who score
6 the highest.

7 (e) (1) At any time after two years after the effective date
8 of this article that the number of outstanding and valid registered
9 compassion center certificates is lower than the number of
10 registration certificates the department is required to issue
11 pursuant to subsections (c) and (d) of this section, the department
12 shall accept applications for compassion centers and issue
13 registration certificates to the corresponding number of additional
14 applicants who score the highest or that score the highest in given
15 geographic areas.

16 (2) Notwithstanding the provisions of subsections (c), (d),
17 and (e) of this section, an application for a compassion center
18 registration certificate must be denied if any of the following
19 conditions are met:

20 (A) The applicant failed to submit the materials required by
21 this section, including if the applicant's plans do not satisfy the
22 security, oversight or record keeping regulations issued by the
23 department;

24 (B) The applicant would not be in compliance with local zoning

1 regulations issued in accordance with the provisions of section
2 seventeen of this article;

3 (C) The applicant does not meet the requirements of section
4 20;

5 (D) One or more of the prospective principal officers or board
6 members has been convicted of a disqualifying felony offense;

7 (E) One or more of the prospective principal officers or board
8 members has served as a principal officer or board member for a
9 registered compassion center that has had its registration
10 certificate revoked; and

11 (F) One or more of the principal officers or board members is
12 younger than twenty-one years of age.

13 (f) After a compassion center is approved, but before it
14 begins operations, it shall submit a registration fee to the
15 department in the amount determined by the department's regulations
16 and, if a physical address had not been finalized when it applied,
17 it shall submit a complete listing of all its physical addresses.

18 (g) The department shall issue each compassion center one copy
19 of its registration certificate for each compassion center
20 location. Registration certificates must include the compassion
21 center's identification number. The department shall also provide
22 each registered compassion center with the contact information for
23 the verification system.

24 (h) Sales tax and special fund. - State sales tax at the rate

1 imposed under article fifteen, chapter eleven of this code shall be
2 imposed on all sales of marihuana in this state. However, all
3 revenue collected pursuant to this sales tax is to be deposited
4 into the "Drug and Abuse Prevention Fund" which is hereby created.
5 This fund is to be held by the State Treasurer. The Commissioner of
6 the Bureau for Public Health may distribute proceeds from this fund
7 for drug prevention and substance abuse programs in schools
8 including, but not limited to, after school programs, sports and
9 extracurricular educational opportunities; to offer community
10 grants for substance abuse treatment facilities; and to offer
11 grants for community improvement projects including, but not
12 limited to, playgrounds, public parks, and local farmer markets.

13 **§16-8A-15. Registration and Certification of Safety Compliance**

14 **Facilities.**

15 (a) Safety compliance facilities may only operate if they have
16 been issued a valid registration certificate from the department.
17 When applying for a safety compliance facility registration
18 certificate, the applicant shall submit the following in accordance
19 with department rules:

20 (1) A nonrefundable application fee in an amount determined by
21 the department's rules, not to exceed \$4,000;

22 (2) The proposed legal name of the safety compliance facility;

23 (3) The proposed physical address of the safety compliance
24 facility;

1 (4) The name, address, and date of birth of each principal
2 officer and board member of the safety compliance facility,
3 provided that all such individuals shall be at least twenty-one
4 years of age;

5 (5) Any instances in which a business or not-for-profit that
6 any of the prospective board members managed or served on the board
7 of was convicted, fined, censured or had a registration or license
8 suspended or revoked in any administrative or judicial proceeding;
9 and

10 (6) Any information required by the department to evaluate the
11 applicant pursuant to the competitive bidding process described in
12 subsection (b) of this section.

13 (b) The department shall evaluate applications for safety
14 compliance facility registration certificates using an impartial
15 and numerically scored competitive bidding process developed by the
16 department in accordance with this article. The registration
17 considerations shall consist of the following criteria:

18 (1) The proposed principal officers' and board members'
19 relevant experience, including any training or professional
20 licensing related to analytical testing, medicine, pharmaceuticals,
21 natural treatments, botany or marihuana cultivation, preparation
22 and testing and their experience running businesses or
23 not-for-profits;

24 (2) The suitability of the proposed location, including

1 compliance with any local zoning laws and the geographic
2 convenience to cardholders and registered compassion centers from
3 throughout the state of West Virginia to registered safety
4 compliance facilities if the applicant were approved;

5 (3) The sufficiency of the applicant's plans for safety,
6 security, and the prevention of diversion, including proposed
7 locations and security devices employed; and

8 (4) The proposed safety compliance facility's plan for
9 operations and services, including its staffing and training plans,
10 and whether it has sufficient capital to operate.

11 (c) The department shall issue at least one safety compliance
12 facility registration certificate to the highest scoring applicant
13 within one year of the effective date of this article.

14 (d) (1) The department may issue additional safety compliance
15 facility registration certificates to the highest scoring applicant
16 or applicants or to the highest applicant or applicants in a given
17 geographic area. If the department determines, after reviewing the
18 report issued pursuant to section twenty-two of this article, that
19 additional safety compliance facilities are needed to meet the
20 needs of cardholders and registered compassion centers throughout
21 the state, the department shall issue registration certificates to
22 the corresponding number of applicants who score the highest
23 overall or in a geographic area.

24 (2) Notwithstanding the provisions of subsections (c) and (d)

1 of this section, an application for a safety compliance facility
2 registration certificate must be denied if any of the following
3 conditions are met:

4 (A) The applicant failed to submit the materials required by
5 this section, including if the plans do not satisfy the security,
6 oversight, or record keeping regulations issued by the department;

7 (B) The applicant would not be in compliance with local zoning
8 regulations issued in accordance with the provisions of section
9 seventeen of this article;

10 (C) The applicant does not meet the requirements of section
11 nineteen of this article;

12 (D) One or more of the prospective principal officers or board
13 members has been convicted of a disqualifying felony offense;

14 (E) One or more of the prospective principal officers or board
15 members has served as a principal officer or board member for a
16 registered safety compliance facility or registered compassion
17 center that has had its registration certificate revoked; and

18 (F) One or more of the principal officers or board members is
19 younger than twenty-one years of age.

20 (e) After a safety compliance facility is approved, but before
21 it begins operations, it shall submit a registration fee paid to
22 the department in the amount determined by department regulation
23 and, if a physical address had not been finalized when it applied,
24 its physical address.

1 (f) The department shall issue each safety compliance facility
2 a registration certificate, which must include an identification
3 number for the safety compliance facility. The department shall
4 also provide the registered safety compliance facility with the
5 contact information for the verification system.

6 **§16-8A-16. Compassion Center and Safety Compliance Facilities**

7 **Suspension and Revocation.**

8 (a) The department may on its own motion or on complaint,
9 after investigation and opportunity for a public hearing at which
10 the compassion center or safety compliance facility has been
11 afforded an opportunity to be heard, suspend or revoke a
12 registration certificate for multiple or serious violations by the
13 registrant or any of its agents of this article or any rules
14 promulgated pursuant to it.

15 (b) The department shall provide notice of suspension,
16 revocation, fine, or other sanction, as well as the required notice
17 of the hearing, by mailing the same in writing to the registration
18 at the address on the registration certificate. A suspension may
19 not be for a longer period than six months.

20 (c) A registered compassion center may continue to cultivate
21 and possess marihuana plants during a suspension, but it may not
22 dispense, transfer, or sell marihuana.

23 **§16-8A-17. Local Ordinances.**

24 Nothing may prohibit local governments from enacting

1 ordinances or regulations not in conflict with this article or with
2 department rule regulating the time, place and manner of registered
3 compassion center operations and registered safety compliance
4 facilities: *Provided*, That no local government may prohibit
5 registered compassion center operation altogether, either expressly
6 or through the enactment of ordinances, rules or regulations which
7 make registered compassion center and registered safety compliance
8 facility operation unreasonably impracticable in the jurisdiction.

9 **§16-8A-18. Compassion Center and Safety Compliance Facility**

10 **Agents.**

11 (a) Registered compassion centers and registered safety
12 compliance facilities shall conduct a background check into the
13 criminal history of every person seeking to become a principal
14 officer, board member, agent, volunteer or employee before the
15 person begins working at the registered compassion centers or
16 registered safety compliance facility. A registered compassion
17 center may not employ any person who:

18 (1) Was convicted of a disqualifying felony offense; or

19 (2) Is under twenty-one years of age.

20 (b) A registered compassion center or safety compliance
21 facility agent must have documentation when transporting marihuana
22 on behalf of the registered safety compliance facility or
23 registered compassion center that specifies the amount of marihuana
24 being transported, the date the marihuana is being transported, the

1 registry ID certificate number of the registered compassion center
2 or registered safety compliance facility, and a contact number to
3 verify that the marihuana is being transported on behalf of the
4 registered compassion center or registered safety compliance
5 facility.

6 **§16-8A-19. Requirements, Prohibitions, Penalties.**

7 (a) A registered compassion center shall be operated on a
8 not-for-profit basis. The by-laws of a registered compassion center
9 shall contain such provisions relative to the disposition of
10 revenues to establish and maintain its not-for-profit character. A
11 registered compassion center need not be recognized as tax-exempt
12 by the Internal Revenue Service and is not required to incorporate
13 pursuant to the provisions of chapter thirty-one-e of this code.

14 (b) The operating documents of a registered compassion center
15 shall include procedures for the oversight of the registered
16 compassion center and procedures to ensure accurate record keeping.

17 (c) A registered compassion center and a registered safety
18 compliance facility shall implement appropriate security measures
19 to deter and prevent the theft of marihuana and unauthorized
20 entrance into areas containing marihuana.

21 (d) A registered compassion center and a registered safety
22 compliance facility may not be located within one thousand feet of
23 the property line of a preexisting public or private school.

24 (e) A registered compassion center is prohibited from

1 acquiring, possessing, cultivating, manufacturing, delivering,
2 transferring, transporting, supplying or dispensing marihuana for
3 the purposes of distributing marihuana to any person except
4 registered qualifying patients directly or through their designated
5 care givers.

6 (f) All cultivation of marihuana for registered compassion
7 centers must take place in an enclosed, locked location at the
8 physical address or addresses provided to the department during the
9 registration process, which can only be accessed by compassion
10 center agents working on behalf of the registered compassion
11 center.

12 (g) A registered compassion center may not acquire usable
13 marihuana or mature marihuana plants from any person other than
14 another registered compassion center, a registered qualifying
15 patient, or a registered designated care giver. A registered
16 compassion center is only allowed to acquire usable marihuana or
17 mature marihuana plants from a registered qualifying patient or a
18 registered designated care giver if the registered qualifying
19 patient or registered designated care giver receives no
20 compensation for the marihuana.

21 (h) Before marihuana may be dispensed to a designated care
22 giver or a registered qualifying patient, a registered compassion
23 center agent must make a diligent effort to verify each of the
24 following:

1 (1) That the registry identification card presented to the
2 registered compassion center is valid, including by checking the
3 verification system if it is operational;

4 (2) That the person presenting the card is the person
5 identified on the registry identification card presented to the
6 registered compassion center agent, including by examining
7 government-issued photo identification; and

8 (3) That the registered compassion center the compassion
9 center agent is working for is the designated compassion center for
10 the registered qualifying patient who is obtaining the marihuana
11 directly or via his or her designated care giver.

12 (i) A registered compassion center may not dispense more than
13 three ounces of marihuana to a registered qualifying patient,
14 directly or via a designated care giver, in any [fourteen](#)-day
15 period. Registered compassion centers shall ensure compliance with
16 this limitation by maintaining internal, confidential records that
17 include records specifying how much marihuana is being dispensed to
18 the registered qualifying patient and whether it was dispensed
19 directly to the registered qualifying patient or to the designated
20 care giver. Each entry must include the date and time the marihuana
21 was dispensed.

22 (j) A registered compassion center or registered compassion
23 center agent may only dispense marihuana to a visiting qualifying
24 patient if he or she possesses a valid West Virginia registry

1 identification card and if the procedures in sections (h) and (i)
2 are followed.

3 (k) No person may advertise medical marihuana sales in printed
4 materials, on radio or television, or by paid in-person
5 solicitation of customers. This may not prevent appropriate signs
6 on the property of the registered compassion center, listings in
7 business directories including phone books, listings in
8 marihuana-related or medical publications or the sponsorship of
9 health or not-for-profit charity or advocacy events.

10 (l) A registered compassion center may not share office space
11 with nor refer patients to a practitioner.

12 (m) A practitioner may not refer patients to a registered
13 compassion center or registered designated care giver, advertise in
14 a registered compassion center, or, if the practitioner issues
15 written certifications, hold any financial interest in a registered
16 compassion center.

17 (n) No person who has been convicted of a disqualifying felony
18 offense may be a registered compassion center agent.

19 (o) Registered compassion centers and registered safety
20 compliance facilities must display their registration certificates
21 on the premises at all times.

22 (p) The department may issue a civil fine of up to \$3,000 for
23 violations of this section.

24 (q) The suspension or revocation of a certificate is a final

1 department action, subject to judicial review. Jurisdiction and
2 venue for judicial review are vested in the circuit court.

3 (r) Any cardholder who sells marihuana to a person who is not
4 allowed to possess marihuana for medical purposes under this
5 article shall have his or her registry identification card revoked
6 and shall be subject to other penalties for the unauthorized sale
7 of marihuana.

8 (s) The department may revoke the registry identification card
9 of any cardholder who knowingly commits multiple or serious
10 violations of this article.

11 (t) Registered compassion centers are subject to reasonable
12 inspection by department regulations. The department shall give at
13 reasonable notice of an inspection under this paragraph.

14 **§16-8A-20. Confidentiality.**

15 (a) The following information received and records kept by
16 department regulations for purposes of administering this article
17 are confidential and exempt from the West Virginia Freedom of
18 Information Act, and not subject to disclosure to any individual or
19 public or private entity, except as necessary for authorized
20 employees of the department to perform official duties pursuant to
21 this article:

22 (1) Applications and renewals, their contents, and supporting
23 information submitted by qualifying patients and designated care
24 givers, including information regarding their designated care

1 givers and practitioners.

2 (2) Applications and renewals, their contents, and supporting
3 information submitted by or on behalf of compassion centers and
4 safety compliance facilities in compliance with this article,
5 including their physical addressees.

6 (3) The individual names and other information identifying
7 persons to whom the department has issued registry identification
8 cards.

9 (4) Any dispensing information required to be kept under the
10 provisions of section nineteen of this article or department rule
11 shall identify cardholders and registered compassion centers by
12 their registry identification numbers and may not contain names or
13 other personal identifying information.

14 (5) Any department hard drives or other data-recording media
15 that are no longer in use and that contain cardholder information
16 must be destroyed.

17 (6) Data subject to this section may not be combined or linked
18 in any manner with any other list or database and it may not be
19 used for any purpose not provided for in this article.

20 (b) Nothing in this section precludes the following:

21 (1) Department employees may notify state or local law
22 enforcement about falsified or fraudulent information submitted to
23 the department or of other apparently criminal violations of this
24 article if the employee who suspects that falsified or fraudulent

1 information has been submitted conferred with his or her supervisor
2 and both agree that circumstances exist that warrant reporting.

3 (2) Department employees may notify the West Virginia Board
4 of Medicine if the department has reasonable suspicion to believe
5 a practitioner did not have a bona fide practitioner-patient
6 relationship with a patient for whom he or she signed a written
7 certification, if the department has reasonable suspicion to
8 believe the practitioner violated the standard of care, or for
9 other suspected violations of this act by a practitioner.

10 (3) Compassion center agents may notify the department of a
11 suspected violation or attempted violation of this article or the
12 regulations issued pursuant to it.

13 (4) The department may verify registry identification cards
14 pursuant to section twenty-on of this article.

15 (5) The submission of the report to the Legislature required
16 by the provisions of section twenty-two of this article.

17 (c) Any person, including an employee or official of the
18 department or another state agency or local government, who
19 breaches the confidentiality of information obtained pursuant to
20 this article is guilty of a misdemeanor and, upon conviction
21 thereof, shall be fined \$1,000 or confined in jail up to one
22 hundred eighty days, or both fined and confined.

23 **§16-8A-21. Registry Identification and Registration Certificate**

24 **Verification.**

1 (a) The department shall maintain a confidential list of the
2 persons to whom the department has issued registry identification
3 cards and their addresses, phone numbers and registry
4 identification numbers. This confidential list may not be combined
5 or linked in any manner with any other list or database, nor may it
6 be used for any purpose not provided for in this article.

7 (b) Within one hundred twenty days of the effective date of
8 this article, the department shall establish a verification system.
9 The verification system must allow law-enforcement personnel,
10 compassion center agents, and safety compliance facility agents to
11 enter a registry identification number to determine whether or not
12 the number corresponds with a current, valid registry
13 identification card. The system shall only disclose whether the
14 identification card is valid; whether the cardholder is a
15 registered qualifying patient or a registered designated care
16 giver; whether the cardholder is permitted to cultivate under this
17 act; and the registry identification number of the registered
18 compassion center designated to serve the registered qualifying
19 patient who holds the card or the registry identification number of
20 the patient who is assisted by the registered designated care giver
21 who holds the card.

22 (c) The department shall, at a cardholder's request, confirm
23 his or her status as a registered qualifying patient or registered
24 designated care giver to a third party, such as a landlord,

1 employer, school, medical professional or court.

2 (d) The department shall disclose the fact that a registry
3 identification card was revoked to a prosecutor or court personnel
4 in any case where the prosecutor or court personnel inquires about
5 a specific person who is seeking to assert the protections of the
6 provisions of section thirteen of this article. The prosecutor or
7 court personnel must provide the department with the person's name
8 and date of birth.

9 **§16-8A-22. Annual Reports.**

10 (a) (1) The legislature shall appoint a nine-member oversight
11 committee comprised of: one member of the House of Delegates; one
12 representative of the department; one member of the Senate; one
13 physician with experience in medical marihuana issues; one nurse;
14 one board member or principal officer of a registered safety
15 compliance facility; one individual with experience in policy
16 development or implementation in the field of medical marihuana;
17 and three registered patients.

18 (2) The oversight committee shall meet at least two times a
19 year for the purpose of evaluating and making recommendations to
20 the Legislature and the Department of Health and Human Resources
21 regarding:

22 (A) The ability of qualifying patients in all areas of the
23 state to obtain timely access to high-quality medical marihuana.

24 (B) The effectiveness of the registered compassion centers,

1 individually and together, in serving the needs of qualifying
2 patients, including the provision of educational and support
3 services, the reasonableness of their fees, whether they are
4 generating any complaints or security problems, and the sufficiency
5 of the number operating to serve the registered qualifying patients
6 of West Virginia.

7 (C) The effectiveness of the registered safety compliance
8 facility or facilities, including whether a sufficient number are
9 operating.

10 (D) The sufficiency of the regulatory and security safeguards
11 contained in this article and adopted by the department to ensure
12 that access to and use of marihuana cultivated is provided only to
13 cardholders.

14 (E) Any recommended additions or revisions to the department
15 regulations or this article, including relating to security, safe
16 handling, labeling and nomenclature.

17 (F) Any research studies regarding health effects of medical
18 marihuana for patients.

19 (b) The department shall submit to the Legislature an annual
20 report that does not disclose any identifying information about
21 cardholders, registered compassion centers, or practitioners, but
22 does contain, at a minimum, all of the following information:

23 (1) The number of applications and renewals filed for registry
24 identification cards;

1 (2) The number of registered qualifying patients who are
2 residents of West Virginia at the time of the report;

3 (3) The number of registry identification cards that were
4 issued to visiting qualifying patients at the time of the report;

5 (4) The nature of the debilitating medical conditions of the
6 qualifying patients;

7 (5) The number of registry identification cards revoked for
8 misconduct;

9 (6) The number of practitioners providing written
10 certifications for qualifying patients; and

11 (7) The number of registered compassion centers.

12 **§16-8A-23. Department to issue rules.**

13 (a) Not later than one hundred twenty days after the effective
14 date of this article, the department shall propose rules for
15 legislative approval in accordance with the provisions of article
16 three, chapter twenty-nine-a of this code, which rules shall
17 include the:

18 (1) Governing the manner in which the department shall
19 consider petitions from the public to add debilitating medical
20 conditions or treatments to the list of debilitating medical
21 conditions set forth in section two(d) of this article, including
22 public notice of and an opportunity to comment in public hearings
23 on the petitions;

24 (2) Establishing the form and content of registration and

1 renewal applications submitted under this article;

2 (3) Governing the manner in which it shall consider
3 applications for and renewals of registry identification cards,
4 which may include creating a standardized written certification
5 form; and

6 (4) Governing the following matters related to registered
7 compassion centers, with the goal of protecting against diversion
8 and theft, without imposing an undue burden on the registered
9 compassion centers or compromising the confidentiality of
10 cardholders:

11 (A) Oversight requirements for registered compassion centers;

12 (B) Record keeping requirements for registered compassion
13 centers;

14 (C) Security requirements for registered compassion centers,
15 which shall include, at a minimum, lighting, video security, alarm
16 requirements, on-site parking, and measures to prevent loitering;

17 (D) Electrical safety requirements;

18 (E) The competitive scoring process addressed in section
19 fourteen of this article;

20 (F) Procedures for suspending or terminating the registration
21 certificates or registry identification cards of cardholders,
22 registered compassion centers, and registered safety compliance
23 facilities that commit multiple or serious violations of the
24 provisions of this article or the regulations promulgated pursuant

1 to this section; and

2 (G) Labeling requirements for marihuana and marihuana products
3 sold by compassion centers.

4 (5) Application and renewal fees for registry identification
5 cards, and application and registration fees for compassion center
6 and safety compliance facility certificates, according to the
7 following:

8 (A) The total fees collected must generate revenues sufficient
9 to offset all expenses of implementing and administering this
10 article, except that fee revenue may be offset or supplemented by
11 private donations;

12 (B) The department may establish a sliding scale of patient
13 application and renewal fees based upon a qualifying patient's
14 household income; and

15 (C) The department may accept donations from private sources
16 to reduce application and renewal fees.

17 **§16-8A-24. Enforcement of this article.**

18 (a) If the department fails to adopt regulations to implement
19 this article within the times provided for in this article, any
20 citizen may commence an action in circuit court to compel the
21 department to perform the actions mandated pursuant to the
22 provisions of this article.

23 (b) If the department fails to issue a valid registry
24 identification card in response to a valid application or renewal

1 submitted pursuant to this article within twenty days of its
2 submission, the registry identification card shall be considered
3 granted, and a copy of the registry identification application or
4 renewal and proof of receipt of the mailing shall be deemed a valid
5 registry identification card.

6 (c) If at any time after the one hundred forty days following
7 the effective date of this article the department has not
8 established a process for accepting and approving or denying
9 applications, a notarized statement by a qualifying patient
10 containing the information required in an application pursuant to
11 section eight of this article, together with a written
12 certification issued by a practitioner within ninety days
13 immediately preceding the notarized statement, shall be considered
14 a valid registry identification card for all purposes under this
15 article.

NOTE: The purpose of this bill is to create the "Compassionate Use Act for Medical Cannabis. It provides protections for the medical use of cannabis; defines debilitating medical conditions for which medical cannabis may be used; and authorizes the addition of debilitating medical conditions. The bill sets out limitations of this article. It prohibits discrimination against persons entitled to the protection of this article. The bill requires the registration of qualifying patients and designated care givers and requires issuance of registry identification cards. The bill affords an affirmative defense and dismissal of proceedings for medical marihuana. It provides a misdemeanor offense and criminal penalties for disclosing certain information. And, the bill otherwise provides for enforcement of the provisions of this article.

This article is new; therefore it has been completely

underscored.