

H. B. 4264

(By Delegates Manypenny, Walker and Skinner,
Fragale, Stephens, Diserio, Morgan, Moore,
Reynolds and Wells)

[Introduced January 23, 2014; referred to the
Committee on Health and Human Resources then the
Judiciary.]

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,
§16-8A-14, §16-8A-15, §16-8A-16, §16-8A-17, §16-8A-18,
§16-8A-19, §16-8A-20, §16-8A-21, §16-8A-22, §16-8A-23 and
§16-8A-24, all relating to creating the "Compassionate Use Act
for Medical Cannabis; providing for protections for the
medical use of cannabis; limitations of article; prohibiting
discrimination; authorizing addition of debilitating medical
conditions; registration of qualifying patients and
designated caregivers; issuance of registry identification
cards; affirmative defense and dismissal for medical
marihuana; providing misdemeanor offense and criminal
penalties for disclosing certain information; and otherwise

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

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

11 **§16-8A-1. Findings.**

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

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

1 fails to respond to conventional treatments and relief of nausea,
2 vomiting, and other side effects of drugs used to treat HIV/AIDS
3 and hepatitis C, increasing the chances of patients continuing on
4 life-saving treatment regimens.

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

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

21 (e) Alaska, Arizona, California, Colorado, Connecticut,
22 Delaware, Hawaii, Illinois, Maine, Massachusetts, Michigan,
23 Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon,

1 Vermont, Rhode Island, Washington state and the District of
2 Columbia, have removed state-level criminal penalties from the
3 medical use and cultivation of marihuana. West Virginia joins in
4 this effort for the health and welfare of its citizens.

5 (f) States are not required to enforce federal law or
6 prosecute people for engaging in activities prohibited by federal
7 law. Therefore, compliance with this article does not put the
8 State of West Virginia in violation of federal law.

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

15 **§16-8A-2. Definitions.**

16 For purposes of this article, unless the context otherwise
17 requires:

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

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

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

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

6 (b) "Cardholder" means a qualifying patient or a designated
7 caregiver who has been issued and possesses a valid registry
8 identification card.

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

13 (d) "Debilitating medical condition" means:

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

20 (2) A chronic or debilitating disease or medical condition or
21 its treatment that produces one or more of the following: Cachexia
22 or wasting syndrome; severe or chronic pain; severe nausea;
23 seizures; or severe and persistent muscle spasms, including, but

1 not limited to, those characteristic of multiple sclerosis; or

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

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

6 (f) "Designated caregiver" means a person who:

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

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

10 (3) Has not been convicted of a disqualifying felony offense;

11 and

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

14 (g) "Disqualifying felony offense" means:

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

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

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

23 (B) An offense that consisted of conduct for which this

1 article would likely have prevented a conviction, but the conduct
2 either occurred prior to the enactment of this article or was
3 prosecuted by an authority other than the State of West Virginia.

4 (h) "Enclosed, locked facility" means a closet, room,
5 greenhouse, building or other enclosed area that is equipped with
6 locks or other security devices that permit access only by the
7 cardholder allowed to cultivate the plants or, in the case of a
8 registered compassion center, the compassion center agents working
9 for the registered compassion center. Two or more registered
10 qualifying patients or registered designated caregivers who reside
11 in the same dwelling and have a registry identification card that
12 removes state penalties for marihuana cultivation may share one
13 enclosed, locked facility for cultivation.

14 (i) "Marihuana" has the meaning given that term in section
15 101, article one, chapter sixty-a of this code.

16 (j) "Mature marihuana plant" means a marihuana plant ~~that~~ with
17 one or more of the following characteristics:

18 (1) The plant has flowers;

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

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

21 (k) "Medical use" includes the acquisition, administration,
22 cultivation, or manufacture in an enclosed, locked facility,
23 delivery, possession, transfer, transportation or use of marihuana

1 or paraphernalia relating to the administration of marihuana to
2 treat or alleviate a registered qualifying patient's debilitating
3 medical condition or symptoms associated with the patient's
4 debilitating medical condition. It does not include cultivation by
5 a visiting qualifying patient or cultivation by a registered
6 designated caregiver or registered qualifying patient who is not
7 designated as being allowed to cultivate.

8 (l) "Practitioner" means a person who is licensed with
9 authority to prescribe drugs to humans under the provisions of
10 section one-b, article five, chapter thirty of this code, except as
11 otherwise provided in this subsection. If the qualifying patient's
12 debilitating medical condition is post-traumatic stress disorder,
13 the practitioner must be a licensed psychiatrist. In relation to a
14 visiting qualifying patient, "practitioner" means a person who is
15 licensed with authority to prescribe drugs to humans in the state
16 of the patient's residence.

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

19 (n) "Registered compassion center" means a not-for-profit
20 entity registered pursuant to section fourteen of this article that
21 acquires, possesses, cultivates, manufactures, delivers, transfers,
22 transports, sells, supplies or dispenses marihuana, paraphernalia
23 or related supplies and educational materials to registered

1 qualifying patients.

2 (o) "Registry identification card" means a document issued by
3 the department that identifies a person as a registered qualifying
4 patient or registered designated caregiver.

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

8 (1) Testing marihuana produced for medical use, including for
9 potency and contaminants; and

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

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

15 (B) Security and inventory accountability procedures; and

16 (C) Up-to-date scientific and medical research findings
17 related to medical marihuana.

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

22 (r) "Seedling" means a marihuana plant that has no flowers, is
23 less than twelve inches in height, and is less than twelve inches

1 in diameter.

2 (s) "Usable marihuana" means the flowers of the marihuana
3 plant and any mixture or preparation thereof, but does not include
4 the seeds, stalks, and roots of the plant. It does not include the
5 weight of any nonmarihuana ingredients combined with marihuana,
6 including ingredients added to prepare a topical administration,
7 food, or drink.

8 (t) "Verification system" means a phone or Web-based system
9 established and maintained by the department that is available to
10 law-enforcement personnel and compassion center agents on a
11 twenty-four-hour basis for verification of registry identification
12 cards.

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

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

15 (2) Possesses a valid registry identification card, or its
16 equivalent, that was issued pursuant to the laws of another state,
17 district, territory, commonwealth, insular possession of the United
18 States or country recognized by the United States that allows the
19 person to use marihuana for medical purposes in the jurisdiction of
20 issuance; and

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

23 (v) "Written certification" means a document dated and signed

1 by a practitioner, stating that in the practitioner's professional
2 opinion the patient is likely to receive therapeutic or palliative
3 benefit from the medical use of marihuana to treat or alleviate the
4 patient's debilitating medical condition or symptoms associated
5 with the debilitating medical condition. A written certification
6 shall affirm that it is made in the course of a bona fide
7 practitioner-patient relationship and shall specify the qualifying
8 patient's debilitating medical condition.

9 **§16-8A-3. Protections for the medical use of cannabis.**

10 (a) A registered qualifying patient 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, for the
14 medical use of marihuana pursuant to this article, if the
15 registered qualifying patient does not possess more than:

16 (1) Six ounces of usable marihuana; and

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

21 (b) A registered designated caregiver may not be subject to
22 arrest, prosecution or denial of any right or privilege, including,
23 but not limited to, civil penalty or disciplinary action by a court

1 or occupational or professional licensing board or bureau:

2 (1) For assisting a registered qualifying patient to whom he
3 or she is connected through the department's registration process
4 with the medical use of marihuana if the designated caregiver does
5 not possess more than:

6 (A) Six ounces of usable marihuana for each qualifying patient
7 to whom the registered caregiver is connected through the
8 department's registration process; and

9 (B) Twelve mature marihuana plants and twelve seedlings for
10 each registered qualifying patient who has specified that the
11 designated caregiver will be allowed under state law to cultivate
12 marihuana for the qualifying patient.

13 (2) For receiving compensation for costs associated with
14 assisting a registered qualifying patient's medical use of
15 marihuana if the registered designated caregiver is connected to
16 the registered qualifying patient through the department's
17 registration process.

18 (c) All mature marihuana plants and seedlings possessed
19 pursuant to this section must be kept in an enclosed, locked
20 facility, unless they are being transported to a permissible
21 location, including because the cardholder is moving, the
22 registered qualifying patient has changed his or her designation of
23 who can cultivate or the plants are being given to someone allowed

1 to possess them pursuant to this article.

2 (d) A visiting qualifying patient may not be subject to
3 arrest, prosecution or denial of any right or privilege, including,
4 but not limited to, civil penalty or disciplinary action by a court
5 or occupational or professional licensing board or bureau, for the
6 medical use of marihuana pursuant to this article if the visiting
7 qualifying patient does not possess more than six ounces of usable
8 marihuana.

9 (e) A registered qualifying patient, visiting qualifying
10 patient or registered designated caregiver may not be subject to
11 arrest, prosecution, or denial of any right or privilege,
12 including, but not limited to, civil penalty or disciplinary action
13 by a court or occupational or professional licensing board or
14 bureau for:

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

18 (2) Selling, transferring, or delivering marihuana seeds
19 produced by the registered qualifying patient, visiting qualifying
20 patient, or registered designated caregiver to a registered
21 compassion center;

22 (3) Transferring marihuana to a registered safety compliance
23 facility for testing; or

1 (4) Giving marihuana to a registered qualifying patient, a
2 registered compassion center, or a registered designated caregiver
3 for a registered qualifying patient's medical use where nothing of
4 value is transferred in return, or for offering to do the same, if
5 the person giving the marihuana does not knowingly cause the
6 recipient to possess more marihuana than is permitted by this
7 section.

8 (f) (1) There is a presumption that a qualifying patient is
9 engaged in, or a designated caregiver is assisting with, the
10 medical use of marihuana in accordance with this article if the
11 qualifying patient or designated caregiver:

12 (A) Is in possession of a valid registry identification card,
13 or, in the case of a visiting qualifying patient, its equivalent;
14 and

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

17 (2) The presumption may be rebutted by evidence that conduct
18 related to marihuana was not for the purpose of treating or
19 alleviating the qualifying patient's debilitating medical condition
20 or symptoms associated with the debilitating medical condition in
21 compliance with this article.

22 (g) A practitioner may not be subject to arrest, prosecution,
23 or penalty in any manner or denied any right or privilege,

1 including, but not limited to, civil penalty or disciplinary action
2 by the West Virginia Board of Medicine or by any other occupational
3 or professional licensing board or bureau, solely for providing
4 written certifications or for otherwise stating that, in the
5 practitioner's professional opinion, a patient is likely to receive
6 therapeutic or palliative benefit from the medical use of marihuana
7 to treat or alleviate the patient's serious or debilitating medical
8 condition or symptoms associated with the serious or debilitating
9 medical condition: *Provided*, That nothing in this article may
10 prevent a practitioner from being sanctioned for:

11 (1) Issuing a written certification to a patient with whom the
12 practitioner does not have a bona fide practitioner-patient
13 relationship, or

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

16 (h) A person may not be subject to arrest, prosecution or
17 denial of any right or privilege, including, but not limited to,
18 civil penalty or disciplinary action by a court or occupational or
19 professional licensing board or bureau, for:

20 (1) Selling marihuana paraphernalia to a cardholder upon
21 presentation of a registry identification card in the recipient's
22 name that has not expired or to a compassion center agent or
23 registered safety compliance facility agent upon presentation of an

1 unexpired copy of the entity's registration certificate;

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

4 (3) Assisting a registered qualifying patient with using or
5 administering marihuana. For purposes of illustration and not
6 limitation, this includes preparing a vaporizer for a registered
7 qualifying patient's use or brewing tea for a registered qualifying
8 patient. It does not include providing marihuana to a patient that
9 the patient did not already possess.

10 (i) A registered compassion center is not subject to
11 prosecution under state or municipal law, search or inspection,
12 except by the department pursuant to subsection (o) of this
13 section; seizure; or penalty in any manner, or be denied any right
14 or privilege, including, but not limited to, civil penalty or
15 disciplinary action by a court or business licensing board or
16 entity, for acting pursuant to this article and department
17 regulations to: Sell marihuana seeds to similar entities that are
18 registered to dispense marihuana for medical use in other
19 jurisdictions, acquire, possess, cultivate, manufacture, deliver,
20 transfer, transport, supply, sell or dispense marihuana or related
21 supplies and educational materials to registered qualifying
22 patients and visiting qualifying patients who have designated the
23 compassion center to provide for them, to registered designated

1 caregivers on behalf of the registered qualifying patients who have
2 designated the registered compassion center, or to other registered
3 compassion centers.

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

17 (k) A registered safety compliance facility and registered
18 safety compliance facility agents acting on behalf of a registered
19 safety compliance facility may not be subject to prosecution,
20 search, except by the department pursuant to subsection (o) of this
21 section, 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

1 entity, solely for acting in accordance with this article and
2 department regulations to provide the following services:

3 (1) Acquiring or possessing marihuana obtained from registered
4 cardholders or registered compassion centers;

5 (2) Returning the marihuana to registered cardholders or
6 registered compassion centers;

7 (3) Transporting marihuana that was produced by registered
8 cardholders and registered compassion centers to or from those
9 registered cardholders and registered compassion centers;

10 (4) The production or sale of educational materials related to
11 medical marihuana;

12 (5) The production, sale or transportation of equipment or
13 materials other than marihuana to registered compassion centers or
14 cardholders, including lab equipment and packaging materials, that
15 are used by registered compassion centers and cardholders;

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

18 (7) Providing training to cardholders and prospective
19 compassion center agents, provided that only cardholders may be
20 allowed to possess or cultivate marihuana and any possession or
21 cultivation of marihuana must occur on the location registered with
22 the department; and

23 (8) Receiving compensation for actions allowed under this

1 section.

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

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

19 (n) For the purposes of West Virginia state law, the medical
20 use of marihuana by a cardholder or registered compassion center
21 shall be considered lawful as long as it is in accordance with this
22 article.

23 (o) A law-enforcement officer may not be employed by an agency

1 which receives state or local government funds may expend any state
2 or local resources, including the officer's time, to effect any
3 arrest or seizure of marihuana, or conduct any investigation, on
4 the sole basis of activity the officer believes to constitute a
5 violation of the federal Controlled Substances Act if the officer
6 has reason to believe that such activity is in compliance with
7 state medical marihuana laws, nor may any such officer expend any
8 state or local resources, including the officer's time, to provide
9 any information or logistical support related to such activity to
10 any federal law-enforcement authority or prosecuting entity.

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

18 **§16-8A-4. Limitations.**

19 (a) This article does not authorize any person to engage in,
20 and does not prevent the imposition of any civil, criminal, or
21 other penalties for engaging in, the following conduct:

22 (1) Undertaking any task under the influence of marihuana,
23 when doing so would constitute negligence or professional

1 malpractice;

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

4 (A) In a school bus;

5 (B) On the grounds of any preschool or primary or secondary
6 school; or

7 (C) In any correctional facility.

8 (3) Smoking marihuana:

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

10 (B) In any public place.

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

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

20 **§16-8A-5. Discrimination prohibited.**

21 (a) Except as provided in this article, a registered
22 qualifying patient who uses marihuana for medical purposes shall be
23 afforded all the same rights under state and local law, including

1 those guaranteed under the provisions of article eleven, chapter
2 five of this code relating to human rights, as the individual would
3 have been afforded if he or she were solely prescribed
4 pharmaceutical medications, as it pertains to:

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

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

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

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

14 (2) An employer is not required to allow the ingestion of
15 marihuana in any workplace or to allow any employee to work while
16 under the influence of marihuana. A registered qualifying patient
17 may not be considered to be under the influence of marihuana solely
18 because of the presence of metabolites or components of marihuana
19 that appear in insufficient concentration to cause impairment.

20 (c) A school or landlord may not refuse to enroll or lease to,
21 or otherwise penalize, a person solely for his or her status as a
22 registered qualifying patient or a registered designated care
23 giver, unless failing to do so would violate federal law or

1 regulations or cause the school or landlord to lose a monetary or
2 licensing-related benefit under federal law or regulations.

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

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

17 (f) A school, landlord or employer may not be penalized or
18 denied any benefit under state law for enrolling, leasing to or
19 employing a cardholder.

20 **§16-8A-6. Addition of debilitating medical conditions.**

21 Any citizen may petition the department to add conditions or
22 treatments to the list of debilitating medical conditions listed in
23 section two(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

1 ninety days immediately preceding the date of an application;

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

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

9 (4) The application or renewal fee;

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

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

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

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

20 (9)If the qualifying patient designates a designated
21 caregiver, a designation as to whether the qualifying patient or
22 designated caregiver will be allowed under state law to possess and
23 cultivate marihuana plants for the qualifying patient's medical

1 use;

2 (10) A statement signed by the qualifying patient, pledging
3 not to divert marihuana to anyone who is not allowed to possess
4 marihuana pursuant to this article; and

5 (11) A signed statement from the designated caregiver, if any,
6 agreeing to be designated as the patient's designated caregiver and
7 pledging not to divert marihuana to anyone who is not allowed to
8 possess marihuana pursuant to this article.

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

15 **§16-8A-9. Issuance of registry identification cards.**

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

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

22 (2) Issue registry identification cards to a qualifying
23 patient and his or her designated caregiver, if any, within five

1 days of approving the application or renewal. A designated care
2 giver must have a registry identification card for each of his
3 qualifying patients; and

4 (3) Enter the registry identification number of the registered
5 compassion center the patient designates into the verification
6 system.

7 (b) The department may not issue a registry identification
8 card to a qualifying patient who is younger than eighteen years of
9 age unless:

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

14 (2) The custodial parent or legal guardian with responsibility
15 for health care decisions for the qualifying patient consents in
16 writing to:

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

18 (B) Serve as the qualifying patient's designated caregiver;

19 and

20 (C) Control the acquisition of the marihuana, the dosage and
21 the frequency of the medical use of marihuana by the qualifying
22 patient.

23 **\$16-8A-10. Denial of registry identification cards.**

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

- 4 (1) Did not provide the required information or materials;
5 (2) Previously had a registry identification card revoked; or
6 (3) Provided false or falsified information.

7 (b) The department may deny an application or renewal for a
8 designated caregiver chosen by a qualifying patient whose registry
9 identification card was granted only if:

- 10 (1) The designated caregiver does not meet the requirements of
11 section two-f of this article;
12 (2) The applicant did not provide the information required;
13 (3) The designated caregiver previously had a registry
14 identification card revoked; or
15 (4) The applicant or the designated caregiver provides false
16 or falsified information.

17 (c) The department may conduct a background check of the
18 prospective designated caregiver in order to carry out this
19 provision.

20 (d) The department shall notify the qualifying patient who has
21 designated someone to serve as his or her designated caregiver if
22 a registry identification card will not be issued to the designated
23 caregiver.

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

4 **§16-8A-11. Registry identification cards.**

5 (a) Registry identification cards shall contain all of the
6 following:

7 (1) The name of the cardholder;

8 (2) A designation of whether the cardholder is a designated
9 caregiver or qualifying patient;

10 (3) The date of issuance and expiration date of the registry
11 identification card;

12 (4) A random 10-digit alphanumeric identification number,
13 containing at least four numbers and at least four letters, that is
14 unique to the cardholder;

15 (5) If the cardholder is a designated caregiver, the random
16 10-digit alphanumeric identification number of the qualifying
17 patient the designated caregiver is receiving the registry
18 identification card to assist;

19 (6) A clear designation as to whether the cardholder will be
20 allowed under state law to possess the marihuana plants for the
21 qualifying patient's medical use, which shall be determined based
22 solely on the qualifying patient's preference;

23 (7) A photograph of the cardholder, if the department's

1 regulations require one; and

2 (8) The phone number or Web address for the verification
3 system.

4 (b) (1) Except as provided in this subsection, the expiration
5 date shall be one year after the date of issuance.

6 (2) If the practitioner stated in the written certification
7 that the qualifying patient would benefit from marihuana until a
8 specified earlier date, then the registry identification card shall
9 expire on that date.

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

14 **§16-8A-12. Notifications to department and responses; Civil**
15 **penalty.**

16 (a) The following notifications and department responses are
17 required:

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

22 (2) A registered designated caregiver shall notify the
23 department of any change in his or her name or address, or if the

1 designated caregiver becomes aware the qualifying patient passed
2 away, within ten days of the change.

3 (3) Before a registered qualifying patient changes his or her
4 designated caregiver, the qualifying patient must notify the
5 department.

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

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

12 (b) When a cardholder notifies the department of items listed
13 in subsection (a), but remains eligible under this article, the
14 department shall issue the cardholder a new registry identification
15 card with a new random 10-digit alphanumeric identification number
16 within ten days of receiving the updated information and a \$20 fee.
17 If the person notifying the department is a registered qualifying
18 patient, the department shall also issue his or her registered
19 designated caregiver, if any, a new registry identification card
20 within ten days of receiving the updated information.

21 (c) If a registered qualifying patient ceases to be a
22 registered qualifying patient or changes his or her registered
23 designated caregiver, the department shall promptly notify the

1 designated caregiver. The registered designated caregiver's
2 protections under this article as to that qualifying patient shall
3 expire fifteen days after notification by the department.

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

7 (e) A registered qualifying patient shall notify the
8 department before changing his or her designated registered
9 compassion center and pay a \$20 fee. The department shall, within
10 five business days of receiving the notification, update the
11 registered qualifying patient's entry in the identification
12 registry system to reflect the change in designation and notify the
13 patient that the change has been processed.

14 (f) If the registered qualifying patient's certifying
15 practitioner notifies the department in writing that either the
16 registered qualifying patient has ceased to suffer from a
17 debilitating medical condition or that the practitioner no longer
18 believes the patient would receive therapeutic or palliative
19 benefit from the medical use of marihuana, the card shall become
20 null and void. However, the registered qualifying patient shall
21 have fifteen days to dispose of or give away his or her marihuana.

22 **§16-8A-13. Affirmative defense and dismissal for medical**
23 **marihuana.**

1 (a) Except as provided in section four of this article and
2 this section, an individual may assert a medical purpose for using
3 marihuana as a defense to any prosecution of an offense involving
4 marihuana intended for the patient's medical use, and this defense
5 shall be presumed valid and the prosecution shall be dismissed
6 where the evidence shows that:

7 (1) A practitioner states that, in the practitioner's
8 professional opinion, after having completed a full assessment of
9 the individual's medical history and current medical condition made
10 in the course of a bona fide practitioner-patient relationship, the
11 patient is likely to receive therapeutic or palliative benefit from
12 marihuana;

13 (2) To treat or alleviate the individual's serious or
14 debilitating medical condition or symptoms associated with the
15 individual's serious or debilitating medical condition; or

16 (b) To treat any other illness for which marihuana provides
17 relief that, in the practitioner's professional opinion the
18 potential benefits of the medical use of marihuana would likely
19 outweigh the health risks for the qualifying patient and would
20 likely be superior to treatment without the medical use of
21 marihuana; and

22 (1) The individual and the individual's designated caregiver,
23 if any, were collectively in possession of a quantity of marihuana

1 that was not more than was reasonably necessary to ensure the
2 uninterrupted availability of marihuana for the purpose of treating
3 or alleviating the individual's serious or debilitating medical
4 condition or symptoms associated with the individual's serious or
5 debilitating medical condition or other illness for which marihuana
6 was providing relief; and

7 (2) The individual was engaged in the acquisition, possession,
8 cultivation, manufacture, use or transportation of marihuana,
9 paraphernalia, or both marihuana and paraphernalia, relating to the
10 administration of marihuana to treat or alleviate the individual's
11 serious or debilitating medical condition or symptoms associated
12 with the individual's serious or debilitating medical condition or
13 other illness for which marihuana was providing relief; and

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

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

19 (1) The individual had a registry identification card revoked
20 for misconduct; or

21 (2) The purposes for the possession or cultivation of
22 marihuana were not solely for palliative or therapeutic use by the
23 individual with a serious or debilitating medical condition who

1 raised the defense.

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

5 (e) If an individual demonstrates the individual's medical
6 purpose for using marihuana pursuant to this section, except as
7 provided in section four of this article, the individual is not
8 subject to the following for the individual's use of marihuana for
9 medical purposes:

10 (1) Disciplinary action by an occupational or professional
11 licensing board or bureau; or

12 (2) Forfeiture of any interest in or right to nonmarihuana,
13 licit property.

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

15 (a) Compassion centers may only operate if they have been
16 issued a valid registration certificate from the department. When
17 applying for a compassion center registration certificate, the
18 applicant shall submit the following in accordance with department
19 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 compassion center.

23 (3) The proposed physical address of the compassion center and

1 the proposed physical address of any additional locations, if any,
2 where marihuana will be cultivated, harvested, packaged, labeled,
3 or otherwise prepared for distribution by the compassion center.

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

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

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

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

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

23 (2) The principal officer and board members' character and

1 relevant experience, including any training or professional
2 licensing related to medicine, pharmaceuticals, natural treatments,
3 botany or marihuana cultivation and preparation and their
4 experience running businesses or not-for-profits.

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

10 (4) The sufficiency of the applicant's plans for record
11 keeping.

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

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

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

22 (c) No later than one year after the effective date of this
23 article, provided that at least five applications have been

1 submitted, the department shall issue compassion center
2 registration certificates to the five highest-scoring applicants,
3 except that the department may divide the state into geographical
4 areas and grant a registration to the highest scoring applicant in
5 each geographical area.

6 (d) No later than two years after the effective date of this
7 article, the department shall issue registration certifications to
8 at least one compassion center registration certificate for each
9 two hundred thousand residents of the state of the highest scoring
10 applicants not already awarded a registration certificate:
11 Provided, That a sufficient number of additional applications have
12 been submitted. The need to ensure an adequate geographic
13 distribution may supersede the requirement that the approved
14 applicants be granted registration certificates based solely on
15 which applicants receive the highest scores. If the department
16 determines, after reviewing the report issued pursuant to section
17 twenty-two of this article, that additional compassion centers are
18 needed to meet the needs of registered qualifying patients
19 throughout the state, the department shall issue registration
20 certificates to the corresponding number of applicants who score
21 the highest.

22 (e) (1) At any time after two years after the effective date
23 of this article that the number of outstanding and valid registered

1 compassion center certificates is lower than the number of
2 registration certificates the department is required to issue
3 pursuant to subsections (c) and (d) of this section, the department
4 shall accept applications for compassion centers and issue
5 registration certificates to the corresponding number of additional
6 applicants who score the highest or that score the highest in given
7 geographic areas.

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

12 (A) The applicant failed to submit the materials required by
13 this section, including if the applicant's plans do not satisfy the
14 security, oversight or record keeping rules issued by the
15 department;

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

19 (C) The applicant does not meet the requirements of section
20 twenty;

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

23 (E) One or more of the prospective principal officers or board

1 members has served as a principal officer or board member for a
2 registered compassion center that has had its registration
3 certificate revoked; and

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

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

11 (g) The department shall issue each compassion center one copy
12 of its registration certificate for each compassion center
13 location. Registration certificates must include the compassion
14 center's identification number. The department shall also provide
15 each registered compassion center with the contact information for
16 the verification system.

17 (h) Sales tax and special fund. - State sales tax at the rate
18 imposed under article fifteen, chapter eleven of this code shall be
19 imposed on all sales of marihuana in this state. However, all
20 revenue collected pursuant to this sales tax is to be deposited
21 into the "Drug and Abuse Prevention Fund" which is hereby created.
22 This fund is to be held by the State Treasurer. The Commissioner of
23 the Bureau for Public Health may distribute proceeds from this fund

1 for drug prevention and substance abuse programs in schools
2 including, but not limited to, after school programs, sports and
3 extracurricular educational opportunities; to offer community
4 grants for substance abuse treatment facilities; and to offer
5 grants for community improvement projects including, but not
6 limited to, playgrounds, public parks and local farmers' markets.

7 **§16-8A-15. Registration and certification of safety compliance**
8 **facilities.**

9 (a) Safety compliance facilities may only operate if they have
10 been issued a valid registration certificate from the department.
11 When applying for a safety compliance facility registration
12 certificate, the applicant shall submit the following in accordance
13 with department rules:

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

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

17 (3) The proposed physical address of the safety compliance
18 facility;

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

23 (5) Any instances in which a business or not-for-profit that

1 any of the prospective board members managed or served on the board
2 of was convicted, fined, censured or had a registration or license
3 suspended or revoked in any administrative or judicial proceeding;
4 and

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

8 (b) The department shall evaluate applications for safety
9 compliance facility registration certificates using an impartial
10 and numerically scored competitive bidding process developed by the
11 department in accordance with this article. The registration
12 considerations shall consist of the following criteria:

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

19 (2) The suitability of the proposed location, including
20 compliance with any local zoning laws and the geographic
21 convenience to cardholders and registered compassion centers from
22 throughout the State of West Virginia to registered safety
23 compliance facilities if the applicant were approved;

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

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

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

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

20 (2) Notwithstanding the provisions of subsections (c) and (d)
21 of this section, an application for a safety compliance facility
22 registration certificate must be denied if any of the following
23 conditions are met:

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

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

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

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

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

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

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

22 (f) The department shall issue each safety compliance facility
23 a registration certificate, which must include an identification

1 number for the safety compliance facility. The department shall
2 also provide the registered safety compliance facility with the
3 contact information for the verification system.

4 **§16-8A-16. Compassion center and safety compliance facilities**
5 **suspension and revocation.**

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

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

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

21 **§16-8A-17. Local ordinances.**

22 Local governments are not prohibited from enacting ordinances
23 or regulations not in conflict with this article or with department

1 rule regulating the time, place and manner of registered compassion
2 center operations and registered safety compliance facilities:
3 Provided, That a local government may not prohibit registered
4 compassion center operation altogether, either expressly or through
5 the enactment of ordinances, rules or regulations which make
6 registered compassion center and registered safety compliance
7 facility operation unreasonably impracticable in the jurisdiction.

8 **§16-8A-18. Compassion center and safety compliance facility**
9 **agents.**

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

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

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

19 (b) A registered compassion center or safety compliance
20 facility agent must have documentation when transporting marihuana
21 on behalf of the registered safety compliance facility or
22 registered compassion center that specifies the amount of marihuana
23 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 bylaws 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.

1 (e) A registered compassion center is prohibited from
2 acquiring, possessing, cultivating, manufacturing, delivering,
3 transferring, transporting, supplying or dispensing marihuana for
4 the purposes of distributing marihuana to any person except
5 registered qualifying patients directly or through their designated
6 caregivers.

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

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

22 (h) Before marihuana may be dispensed to a designated care
23 giver or a registered qualifying patient, a registered compassion

1 center agent must make a diligent effort to verify each of the
2 following:

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

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

10 (3) That the registered compassion center the compassion
11 center agent is working for is the designated compassion center for
12 the registered qualifying patient who is obtaining the marihuana
13 directly or via his or her designated caregiver.

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

1 (j) A registered compassion center or registered compassion
2 center agent may only dispense marihuana to a visiting qualifying
3 patient if he or she possesses a valid West Virginia registry
4 identification card and if the procedures in subsections (h) and
5 (i) are followed.

6 (k) A person may not advertise medical marihuana sales in
7 printed materials, on radio or television, or by paid in-person
8 solicitation of customers. This does not prevent appropriate signs
9 on the property of the registered compassion center, listings in
10 business directories including phone books, listings in
11 marihuana-related or medical publications or the sponsorship of
12 health or not-for-profit charity or advocacy events.

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

15 (m) A practitioner may not refer patients to a registered
16 compassion center or registered designated caregiver, advertise in
17 a registered compassion center, or, if the practitioner issues
18 written certifications, hold any financial interest in a registered
19 compassion center.

20 (n) Any person who has been convicted of a disqualifying
21 felony offense may not be a registered compassion center agent.

22 (o) Registered compassion centers and registered safety
23 compliance facilities must display their registration certificates

1 on the premises at all times.

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

4 (q) The suspension or revocation of a certificate is a final
5 department action, subject to judicial review. Jurisdiction and
6 venue for judicial review are vested in the circuit court.

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

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

15 (t) Registered compassion centers are subject to reasonable
16 inspection by the department. The department shall give a
17 reasonable notice of an inspection under this paragraph.

18 **§16-8A-20. Confidentiality.**

19 (a) The following information received and records kept by
20 department regulations for purposes of administering this article
21 are confidential and exempt from the West Virginia Freedom of
22 Information Act, and not subject to disclosure to any individual or
23 public or private entity, except as necessary for authorized

1 employees of the department to perform official duties pursuant to
2 this article:

3 (1) Applications and renewals, their contents, and supporting
4 information submitted by qualifying patients and designated care
5 givers, including information regarding their designated care
6 givers and practitioners.

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

11 (3) The individual names and other information identifying
12 persons to whom the department has issued registry identification
13 cards.

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

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

22 (6) Data subject to this section may not be combined or linked
23 in any manner with any other list or database and it may not be

1 used for any purpose not provided in this article.

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

3 (1) Department employees may notify state or local law
4 enforcement about falsified or fraudulent information submitted to
5 the department or of other apparently criminal violations of this
6 article if the employee who suspects that falsified or fraudulent
7 information has been submitted conferred with his or her supervisor
8 and both agree that circumstances exist that warrant reporting.

9 (2) Department employees may notify the West Virginia Board
10 of Medicine if the department has reasonable suspicion to believe
11 a practitioner did not have a bona fide practitioner-patient
12 relationship with a patient for whom he or she signed a written
13 certification, if the department has reasonable suspicion to
14 believe the practitioner violated the standard of care, or for
15 other suspected violations of this article by a practitioner.

16 (3) Compassion center agents may notify the department of a
17 suspected violation or attempted violation of this article or the
18 rules issued pursuant to it.

19 (4) The department may verify registry identification cards
20 pursuant to section twenty-one of this article.

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

23 (c) Any person, including an employee or official of the

1 department or another state agency or local government, who
2 breaches the confidentiality of information obtained pursuant to
3 this article is guilty of a misdemeanor and, upon conviction
4 thereof, shall be fined \$1,000 or confined in jail up to one
5 hundred eighty days, or both fined and confined.

6 **§16-8A-21. Registry identification and registration certificate**
7 **verification.**

8 (a) The department shall maintain a confidential list of the
9 persons to whom the department has issued registry identification
10 cards and their addresses, phone numbers and registry
11 identification numbers. This confidential list may not be combined
12 or linked in any manner with any other list or database, nor may it
13 be used for any purpose not provided in this article.

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

1 act; and the registry identification number of the registered
2 compassion center designated to serve the registered qualifying
3 patient who holds the card or the registry identification number of
4 the patient who is assisted by the registered designated caregiver
5 who holds the card.

6 (c) The department shall, at a cardholder's request, confirm
7 his or her status as a registered qualifying patient or registered
8 designated caregiver to a third party, such as a landlord,
9 employer, school, medical professional or court.

10 (d) The department shall disclose the fact that a registry
11 identification card was revoked to a prosecutor or court personnel
12 in any case where the prosecutor or court personnel inquires about
13 a specific person who is seeking to assert the protections of the
14 provisions of section thirteen of this article. The prosecutor or
15 court personnel must provide the department with the person's name
16 and date of birth.

17 **§16-8A-22. Annual reports.**

18 (a) (1) The Legislature shall appoint a nine-member oversight
19 committee comprised of: One member of the House of Delegates; one
20 representative of the department; one member of the Senate; one
21 physician with experience in medical marihuana issues; one nurse;
22 one board member or principal officer of a registered safety
23 compliance facility; one individual with experience in policy

1 development or implementation in the field of medical marihuana;
2 and three registered patients.

3 (2) The oversight committee shall meet at least two times a
4 year for the purpose of evaluating and making recommendations to
5 the Legislature and the Department of Health and Human Resources
6 regarding:

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

9 (B) The effectiveness of the registered compassion centers,
10 individually and together, in serving the needs of qualifying
11 patients, including the provision of educational and support
12 services, the reasonableness of their fees, whether they are
13 generating any complaints or security problems, and the sufficiency
14 of the number operating to serve the registered qualifying patients
15 of West Virginia.

16 (C) The effectiveness of the registered safety compliance
17 facility or facilities, including whether a sufficient number are
18 operating.

19 (D) The sufficiency of the regulatory and security safeguards
20 contained in this article and adopted by the department to ensure
21 that access to and use of marihuana cultivated is provided only to
22 cardholders.

23 (E) Any recommended additions or revisions to the department

1 regulations or this article, including relating to security, safe
2 handling, labeling and nomenclature.

3 (F) Any research studies regarding health effects of medical
4 marihuana for patients.

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

9 (1) The number of applications and renewals filed for registry
10 identification cards;

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

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

15 (4) The nature of the debilitating medical conditions of the
16 qualifying patients;

17 (5) The number of registry identification cards revoked for
18 misconduct;

19 (6) The number of practitioners providing written
20 certifications for qualifying patients; and

21 (7) The number of registered compassion centers.

22 **§16-8A-23. Department to issue rules.**

23 (a) Not later than one hundred twenty days after the effective

1 date of this article, the department shall propose rules for
2 legislative approval in accordance with the provisions of article
3 three, chapter twenty-nine-a of this code, which rules shall
4 include the:

5 (1) Governing the manner in which the department shall
6 consider petitions from the public to add debilitating medical
7 conditions or treatments to the list of debilitating medical
8 conditions set forth in section two-d of this article, including
9 public notice of and an opportunity to comment in public hearings
10 on the petitions;

11 (2) Establishing the form and content of registration and
12 renewal applications submitted under this article;

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

17 (4) Governing the following matters related to registered
18 compassion centers, with the goal of protecting against diversion
19 and theft, without imposing an undue burden on the registered
20 compassion centers or compromising the confidentiality of
21 cardholders:

22 (A) Oversight requirements for registered compassion centers;

23 (B) Record keeping requirements for registered compassion

1 centers;

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

5 (D) Electrical safety requirements;

6 (E) The competitive scoring process addressed in section
7 fourteen of this article;

8 (F) Procedures for suspending or terminating the registration
9 certificates or registry identification cards of cardholders,
10 registered compassion centers, and registered safety compliance
11 facilities that commit multiple or serious violations of the
12 provisions of this article or the rules promulgated pursuant to
13 this section; and

14 (G) Labeling requirements for marihuana and marihuana products
15 sold by compassion centers.

16 (5) Application and renewal fees for registry identification
17 cards, and application and registration fees for compassion center
18 and safety compliance facility certificates, according to the
19 following:

20 (A) The total fees collected must generate revenues sufficient
21 to offset all expenses of implementing and administering this
22 article, except that fee revenue may be offset or supplemented by
23 private donations: *Provided*, That any excess revenue from fees and

1 private donations shall be distributed according to paragraph D of
2 this subdivision;

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

6 (C) The department may accept donations from private sources
7 to reduce application and renewal fees; and

8 (D) Excess revenue from fees and private donations collected
9 pursuant to this article, if any, shall be distributed as follows:

10 (i) Thirty percent shall be deposited into the Veterans
11 Nursing Home Building Fund created in section nine-a, article
12 twenty-two, chapter twenty-nine of this code; and

13 (ii) The remainder of the excess revenue shall be deposited
14 into the Drug and Abuse Prevention Fund created in section fourteen
15 of this article.

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

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

22 (b) If the department fails to issue a valid registry
23 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 caregivers 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.