

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 640

BY SENATORS KESSLER, CARMICHAEL, STOLLINGS,

PREZIOSO AND PLYMALE

[Introduced February 20, 2016;

Referred to the Committee on Health and Human
Resources; and then to the Committee on the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §16-8A-1, §16-8A-2, §16-8A-3, §16-8A-4, §16-8A-5, §16-8A-6, §16-8A-7, §16-
3 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-
4 16, §16-8A-17, §16-8A-18, §16-8A-19, §16-8A-20, §16-8A-21, §16-8A-22, §16-8A-23 and §16-
5 8A-24, all to read as follows:

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

§16-8A-1. Findings.

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

6 (b) Studies, published since the 1999 Institute of Medicine report, have continued to show
7 the therapeutic value of marihuana in treating a wide array of debilitating medical conditions.

8 These include relief of the neuropathic pain caused by multiple sclerosis, HIV/AIDS and other
9 illnesses and injuries that often fail to respond to conventional treatments and relief of nausea,
10 vomiting and other side effects of drugs used to treat HIV/AIDS and hepatitis C, increasing the
11 chances of patients continuing on life-saving treatment regimens.

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

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

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

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

31 (g) State law should make a distinction between the medical and nonmedical uses of
32 marihuana. Hence, the purpose of this article is to protect patients with debilitating medical

33 conditions, as well as their practitioners and providers, from arrest and prosecution, criminal and
34 other penalties and property forfeiture, if the patients engage in the medical use of marihuana.

§16-8A-2. Definitions.

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

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

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

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

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

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

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

15 (d) "Debilitating medical condition" means:

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

20 (2) A chronic or debilitating disease or medical condition or its treatment that produces
21 one or more of the following: Cachexia or wasting syndrome; severe or chronic pain; severe
22 nausea; seizures; or severe and persistent muscle spasms, including, but not limited to, those
23 characteristic of multiple sclerosis; or

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

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

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

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

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

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

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

33 (g) "Disqualifying felony offense" means:

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

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

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

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

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

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

52 (j) "Mature marihuana plant" means a marihuana plant with one or more of the following
53 characteristics:

54 (1) The plant has flowers;

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

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

57 (k) "Medical use" includes the acquisition, administration, cultivation or manufacture in an
58 enclosed, locked facility, delivery, possession, transfer, transportation or use of marihuana or
59 paraphernalia relating to the administration of marihuana to treat or alleviate a registered
60 qualifying patient's debilitating medical condition or symptoms associated with the patient's
61 debilitating medical condition. It does not include cultivation by a visiting qualifying patient or
62 cultivation by a registered designated caregiver or registered qualifying patient who is not
63 designated as being allowed to cultivate.

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

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

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

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

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

80 (1) Testing marihuana produced for medical use, including for potency and contaminants;
81 and

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

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

86 (B) Security and inventory accountability procedures; and

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

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

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

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

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

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

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

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

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

108 (v) "Written certification" means a document dated and signed by a practitioner, stating
 109 that in the practitioner's professional opinion the patient is likely to receive therapeutic or palliative
 110 benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical
 111 condition or symptoms associated with the debilitating medical condition. A written certification
 112 shall affirm that it is made in the course of a bona fide practitioner-patient relationship and shall
 113 specify the qualifying patient's debilitating medical condition.

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

1 (a) A registered qualifying patient is not subject to arrest, prosecution or denial of any right
 2 or privilege including, but not limited to, civil penalty or disciplinary action by a court or
 3 occupational or professional licensing board or bureau, for the medical use of marihuana pursuant
 4 to this article, if the 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 the qualifying patient has not
 7 specified that a designated caregiver will be allowed under state law to cultivate marihuana for
 8 the qualifying patient.

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

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

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

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

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

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

28 (d) A visiting qualifying patient is not subject to arrest, prosecution or denial of any right or
29 privilege including, but not limited to, civil penalty or disciplinary action by a court or occupational
30 or professional licensing board or bureau, for the medical use of marihuana pursuant to this article
31 if the visiting qualifying patient does not possess more than six ounces of usable marihuana.

32 (e) A registered qualifying patient, visiting qualifying patient or registered designated
33 caregiver is not subject to arrest, prosecution or denial of any right or privilege including, but not
34 limited to, civil penalty or disciplinary action by a court or occupational or professional licensing
35 board or bureau for:

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

38 (2) Selling, transferring, or delivering marihuana seeds produced by the registered
39 qualifying patient, visiting qualifying patient or registered designated caregiver to a registered
40 compassion center;

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

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

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

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

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

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

56 (g) A practitioner is not subject to arrest, prosecution or penalty in any manner or denied
57 any right or privilege including, but not limited to, civil penalty or disciplinary action by the West
58 Virginia Board of Medicine or by any other occupational or professional licensing board or bureau,
59 solely for providing written certifications or for otherwise stating that, in the practitioner's
60 professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical
61 use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or
62 symptoms associated with the serious or debilitating medical condition: *Provided*, That nothing
63 in this article prevents a practitioner from being sanctioned for:

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

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

68 (h) A person is not subject to arrest, prosecution or denial of any right or privilege including,
69 but not limited to, civil penalty or disciplinary action by a court or occupational or professional
70 licensing board or bureau, for:

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

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

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

81 (i) A registered compassion center is not subject to prosecution under state or municipal
82 law, search or inspection, except by the department pursuant to subsection (o) of this section,
83 seizure or penalty in any manner or be denied any right or privilege including, but not limited to,
84 civil penalty or disciplinary action by a court or business licensing board or entity, for acting
85 pursuant to this article and department regulations to: Sell marihuana seeds to similar entities
86 that are registered to dispense marihuana for medical use in other jurisdictions, acquire, possess,
87 cultivate, manufacture, deliver, transfer, transport, supply, sell or dispense marihuana or related
88 supplies and educational materials to registered qualifying patients and visiting qualifying patients
89 who have designated the compassion center to provide for them, to registered designated

90 caregivers on behalf of the registered qualifying patients who have designated the registered
91 compassion center or to other registered compassion centers.

92 (i) A registered compassion center agent is not subject to prosecution, search or penalty
93 in any manner or be denied any right or privilege including, but not limited to, civil penalty or
94 disciplinary action by a court or business licensing board or entity, for working for a registered
95 compassion center pursuant to this article and department rules to acquire, possess, cultivate,
96 manufacture, deliver, transfer, transport, supply, sell or dispense marihuana or related supplies
97 and educational materials to registered qualifying patients who have designated the registered
98 compassion center to provide for them, to registered designated caregivers on behalf of the
99 registered qualifying patients who have designated the registered compassion center, or to other
100 registered compassion centers.

101 (k) A registered safety compliance facility and registered safety compliance facility agents
102 acting on behalf of a registered safety compliance facility are not subject to prosecution, search,
103 except by the department pursuant to subsection (o) of this section, seizure or penalty in any
104 manner or be denied any right or privilege including, but not limited to, civil penalty or disciplinary
105 action by a court or business licensing board or entity, solely for acting in accordance with this
106 article and department regulations to provide the following services:

107 (1) Acquiring or possessing marihuana obtained from registered cardholders or registered
108 compassion centers;

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

110 (3) Transporting marihuana that was produced by registered cardholders and registered
111 compassion centers to or from those registered cardholders and registered compassion centers;

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

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

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

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

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

122 (l) Any marihuana, marihuana paraphernalia, licit property or interest in licit property that
123 is possessed, owned or used in connection with the medical use of marihuana as allowed under
124 this article, or acts incidental to such use, may not be seized or forfeited. This article does not
125 prevent the seizure or forfeiture of marihuana exceeding the amounts allowed under this article,
126 nor does it prevent seizure or forfeiture if the basis for the action is unrelated to the marihuana
127 that is possessed, manufactured, transferred, or used pursuant to this article.

128 (m) Mere possession of, or application for, a registry identification card or registration
129 certificate does not constitute probable cause or reasonable suspicion, nor may it be used to
130 support the search of the person, property or home of the person possessing or applying for the
131 registry identification card. The possession of, or application for, a registry identification card does
132 not preclude the existence of probable cause if probable cause exists on other grounds.

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

136 (o) A law-enforcement officer may not be employed by an agency which receives state or
137 local government funds nor may expend any state or local resources, including the officer's time,
138 to effect any arrest or seizure of marihuana, or conduct any investigation, on the sole basis of
139 activity the officer believes to constitute a violation of the federal Controlled Substances Act if the
140 officer has reason to believe that such activity is in compliance with state medical marihuana laws,
141 nor may any such officer expend any state or local resources, including the officer's time, to

142 provide any information or logistical support related to such activity to any federal law-
143 enforcement authority or prosecuting entity.

144 (p) An attorney is not subject to disciplinary action by the state Bar Association or other
145 professional licensing association for providing legal assistance to prospective or registered
146 compassion centers, prospective or registered safety compliance facilities or others related to
147 activity that is no longer subject to criminal penalties under state law pursuant to this article.

§16-8A-4. Limitations.

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

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

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

6 (A) In a school bus;

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

8 (C) In any correctional facility.

9 (3) Smoking marihuana:

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

11 (B) In any public place.

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

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

§16-8A-5. Discrimination prohibited.

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

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

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

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

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

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

18 (c) A school or landlord may not refuse to enroll or lease to, or otherwise penalize, a person
19 solely for his or her status as a registered qualifying patient or a registered designated caregiver,
20 unless failing to do so would violate federal law or regulations or cause the school or landlord to
21 lose a monetary or licensing-related benefit under federal law or regulations.

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

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

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

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

1 Any citizen may petition the department to add conditions or treatments to the list of
 2 debilitating medical conditions listed in section two (d) of this article. The department shall
 3 consider petitions in the manner required by department rule, including public notice and hearing.
 4 The department shall approve or deny a petition within one hundred eighty days of its submission.
 5 The approval or denial of any petition is a final decision of the department subject to judicial
 6 review. Jurisdiction and venue are vested in the circuit court.

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

1 (a) Nothing in this article requires:

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

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

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

§16-8A-8. Registration of qualifying patients and designated caregivers.

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

- 3 (1) A written certification issued by a practitioner within ninety days immediately preceding
4 the date of an application;
- 5 (2) If the patient is not a visiting qualifying patient, documentation required by department
6 rules to reasonably establish proof of residency in West Virginia;
- 7 (3) If the patient is a visiting qualifying patient, a copy of his or her registry identification
8 card or its equivalent that was issued pursuant to the laws of the jurisdiction of the person's
9 residence;
- 10 (4) The application or renewal fee;
- 11 (5) The name, address and date of birth of the qualifying patient, except that if the applicant
12 is homeless no address is required;
- 13 (6) The name, address and telephone number of the qualifying patient's practitioner;
- 14 (7) The name, address and date of birth of the designated caregiver, if any, chosen by the
15 qualifying patient, except that a visiting qualifying patient may not have a designated caregiver;
- 16 (8) The name of the registered compassion center the qualifying patient designates, if any;
- 17 (9) If the qualifying patient designates a designated caregiver, a designation as to whether
18 the qualifying patient or designated caregiver will be allowed under state law to possess and
19 cultivate marihuana plants for the qualifying patient's medical use;
- 20 (10) A statement signed by the qualifying patient, pledging not to divert marihuana to
21 anyone who is not allowed to possess marihuana pursuant to this article; and
- 22 (11) A signed statement from the designated caregiver, if any, agreeing to be designated
23 as the patient's designated caregiver and pledging not to divert marihuana to anyone who is not
24 allowed to possess marihuana pursuant to this article.
- 25 (b) The application for qualifying patients' registry identification cards shall ask whether
26 the patient would like the department to notify him or her of any clinical studies needing human
27 subjects for research on the medical use of marihuana. The department shall notify interested
28 patients if it is notified of studies that will be conducted in the United States.

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

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

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

5 (2) Issue registry identification cards to a qualifying patient and his or her designated
6 caregiver, if any, within five days of approving the application or renewal. A designated caregiver
7 must have a registry identification card for each of his or her qualifying patients; and

8 (3) Enter the registry identification number of the registered compassion center the patient
9 designates into the verification system.

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

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

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

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

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

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

§16-8A-10. Denial of registry identification cards.

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

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

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

5 (3) Provided false or falsified information.

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

8 (1) The designated caregiver does not meet the requirements of subsection (f) of section
9 two of this article;

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

11 (3) The designated caregiver previously had a registry identification card revoked; or

12 (4) The applicant or the designated caregiver provides false or falsified information.

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

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

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

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

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

2 (1) The name of the cardholder;

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

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

5 (4) A random ten-digit alphanumeric identification number, containing at least four
6 numbers and at least four letters, that is unique to the cardholder;

7 (5) If the cardholder is a designated caregiver, the random ten-digit alphanumeric
8 identification number of the qualifying patient the designated caregiver is receiving the registry
9 identification card to assist;

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

13 (7) A photograph of the cardholder, if the department's regulations require one; and

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

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

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

20 (c) The department may electronically store in the card all of the information listed in
21 subsection (a), along with the address and date of birth of the cardholder, to allow it to be read by
22 law-enforcement agents.

§16-8A-12. Notifications to department and responses; civil penalty.

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

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

5 (2) A registered designated caregiver shall notify the department of any change in his or
6 her name or address, or if the designated caregiver becomes aware the qualifying patient passed
7 away, within ten days of the change.

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

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

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

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

20 (c) If a registered qualifying patient ceases to be a registered qualifying patient or changes
21 his or her registered designated caregiver, the department shall promptly notify the designated
22 caregiver. The registered designated caregiver's protections under this article as to that qualifying
23 patient shall expire fifteen days after notification by the department.

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

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

31 (f) If the registered qualifying patient's certifying practitioner notifies the department in
32 writing that either the registered qualifying patient has ceased to suffer from a debilitating medical
33 condition or that the practitioner no longer believes the patient would receive therapeutic or
34 palliative benefit from the medical use of marihuana, the card becomes void. However, the
35 registered qualifying patient has fifteen days to dispose of or give away his or her marihuana.

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

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

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

9 (2) To treat or alleviate the individual's serious or debilitating medical condition or
10 symptoms associated with the individual's serious or debilitating medical condition; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (3) The proposed physical address of the compassion center and the proposed physical
8 address of any additional locations where marihuana will be cultivated, harvested, packaged,
9 labeled or otherwise prepared for distribution by the compassion center.

10 (4) The name, address and date of birth of each principal officer and board member of the
11 compassion center. All such individuals shall be at least twenty-one years of age.

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

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

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

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

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

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

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

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

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

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

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

45 (d) No later than two years after the effective date of this article, the department shall issue
46 registration certifications to at least one compassion center registration certificate for each two
47 hundred thousand residents of the state of the highest scoring applicants not already awarded a
48 registration certificate: *Provided*, That a sufficient number of additional applications have been
49 submitted. The need to ensure an adequate geographic distribution may supersede the
50 requirement that the approved applicants be granted registration certificates based solely on
51 which applicants receive the highest scores. If the department determines, after reviewing the
52 report issued pursuant to section twenty-two of this article, that additional compassion centers are
53 needed to meet the needs of registered qualifying patients throughout the state, the department
54 shall issue registration certificates to the corresponding number of applicants who score the
55 highest.

56 (e) (1) At any time after two years after the effective date of this article the number of
57 outstanding and valid registered compassion center certificates is lower than the number of
58 registration certificates the department is required to issue pursuant to subsections (c) and (d) of
59 this section, the department shall accept applications for compassion centers and issue
60 registration certificates to the corresponding number of additional applicants who score the
61 highest or that score the highest in given geographic areas.

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

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

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

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

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

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

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

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

82 (g) The department shall issue each compassion center one copy of its registration
83 certificate for each compassion center location. Registration certificates must include the
84 compassion center's identification number. The department shall also provide each registered
85 compassion center with the contact information for the verification system.

86 (h) Sales tax and special fund. – State sales tax at the rate imposed under article fifteen,
87 chapter eleven of this code shall be imposed on all sales of marihuana in this state. However, all

88 revenue collected pursuant to this sales tax is to be deposited into the “Drug and Abuse
89 Prevention Fund” which is hereby created. This fund is to be held by the State Treasurer. The
90 Commissioner of the Bureau for Public Health may distribute proceeds from this fund for drug
91 prevention and substance abuse programs in schools including, but not limited to, after school
92 programs, sports and extracurricular educational opportunities; to offer community grants for
93 substance abuse treatment facilities; and to offer grants for community improvement projects
94 including, but not limited to, playgrounds, public parks and local farmers’ markets.

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

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

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

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

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

9 (4) The name, address and date of birth of each principal officer and board member of the
10 safety compliance facility. All such individuals shall be at least twenty-one years of age;

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

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

16 (b) The department shall evaluate applications for safety compliance facility registration
17 certificates using an impartial and numerically scored competitive bidding process developed by

18 the department in accordance with this article. The registration considerations shall consist of the
19 following criteria:

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

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

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

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

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

34 (d) (1) The department may issue additional safety compliance facility registration
35 certificates to the highest scoring applicant or applicants or to the highest applicant or applicants
36 in a given geographic area. If the department determines, after reviewing the report issued
37 pursuant to section twenty-two of this article, that additional safety compliance facilities are
38 needed to meet the needs of cardholders and registered compassion centers throughout the
39 state, the department shall issue registration certificates to the corresponding number of
40 applicants who score the highest overall or in a geographic area.

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

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

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

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

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

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

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

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

59 (f) The department shall issue each safety compliance facility a registration certificate,
60 which must include an identification number for the safety compliance facility. The department
61 shall also provide the registered safety compliance facility with the contact information for the
62 verification system.

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

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

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

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

§16-8A-17. Local ordinances.

1 Local governments are not prohibited from enacting ordinances or regulations not in
2 conflict with this article or with department rule regulating the time, place and manner of registered
3 compassion center operations and registered safety compliance facilities: *Provided, That a local*
4 government may not prohibit registered compassion center operation altogether, either expressly
5 or though the enactment of ordinances, rules or regulations which make a registered compassion
6 center and registered safety compliance facility operation unreasonably impracticable in the
7 jurisdiction.

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

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

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

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

8 (b) A registered compassion center or safety compliance facility agent must have
9 documentation when transporting marihuana on behalf of the registered safety compliance facility
10 or registered compassion center that specifies the amount of marihuana being transported, the
11 date the marihuana is being transported, the registry ID certificate number of the registered

12 compassion center or registered safety compliance facility and a contact number to verify that the
13 marihuana is being transported on behalf of the registered compassion center or registered safety
14 compliance facility.

§16-8A-19. Requirements, prohibitions, penalties.

1 (a) A registered compassion center shall be operated on a not-for-profit basis. The bylaws
2 of a registered compassion center shall contain such provisions relative to the disposition of
3 revenues to establish and maintain its not-for-profit character. A registered compassion center
4 need not be recognized as tax-exempt by the Internal Revenue Service and is not required to
5 incorporate pursuant to the provisions of chapter thirty-one-e of this code.

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

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

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

14 (e) A registered compassion center is prohibited from acquiring, possessing, cultivating,
15 manufacturing, delivering, transferring, transporting, supplying or dispensing marihuana for the
16 purposes of distributing marihuana to any person except registered qualifying patients directly or
17 through their designated caregivers.

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

22 (g) A registered compassion center may not acquire usable marihuana or mature
23 marihuana plants from any person other than another registered compassion center, a registered
24 qualifying patient or a registered designated caregiver. A registered compassion center is only
25 allowed to acquire usable marihuana or mature marihuana plants from a registered qualifying
26 patient or a registered designated caregiver if the registered qualifying patient or registered
27 designated caregiver receives no compensation for the marihuana.

28 (h) Before marihuana may be dispensed to a designated caregiver or a registered
29 qualifying patient, a registered compassion center agent must make a diligent effort to verify each
30 of the following:

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

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

36 (3) That the registered compassion center the compassion center agent is working for is
37 the designated compassion center for the registered qualifying patient who is obtaining the
38 marihuana directly or via his or her designated caregiver.

39 (i) A registered compassion center may not dispense more than three ounces of
40 marihuana to a registered qualifying patient, directly or via a designated caregiver, in any
41 fourteen-day period. Registered compassion centers shall ensure compliance with this limitation
42 by maintaining internal, confidential records that include records specifying how much marihuana
43 is being dispensed to the registered qualifying patient and whether it was dispensed directly to
44 the registered qualifying patient or to the designated caregiver. Each entry must include the date
45 and time the marihuana was dispensed.

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

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

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

56 (m) A practitioner may not refer patients to a registered compassion center or registered
57 designated caregiver, advertise in a registered compassion center or, if the practitioner issues
58 written certifications, hold any financial interest in a registered compassion center.

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

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

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

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

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

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

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

§16-8A-20. Confidentiality.

1 (a) The following information received and records kept by department rules for purposes
2 of administering this article are confidential and exempt from the West Virginia Freedom of
3 Information Act, and not subject to disclosure to any individual or public or private entity, except
4 as necessary for authorized employees of the department to perform official duties pursuant to
5 this article:

6 (1) Applications and renewals, their contents and supporting information submitted by
7 qualifying patients and designated care givers, including information regarding their designated
8 caregivers and practitioners.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§16-8A-22. Annual reports.

1 (a)(1) The Legislature shall appoint a nine-member oversight committee comprised of:
2 One member of the House of Delegates; one representative of the department; one member of
3 the Senate; one physician with experience in medical marihuana issues; one nurse; one board
4 member or principal officer of a registered safety compliance facility; one individual with
5 experience in policy development or implementation in the field of medical marihuana; and three
6 registered patients.

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

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

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

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

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

22 (E) Any recommended additions or revisions to the department rules or this article,
23 including relating to security, safe handling, labeling and nomenclature.

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

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

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

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

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

- 33 (4) The nature of the debilitating medical conditions of the qualifying patients;
- 34 (5) The number of registry identification cards revoked for misconduct;
- 35 (6) The number of practitioners providing written certifications for qualifying patients; and
- 36 (7) The number of registered compassion centers.

§16-8A-23. Department to issue rules.

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

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

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

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

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

16 (A) Oversight requirements for registered compassion centers;

17 (B) Record keeping requirements for registered compassion centers;

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

21 (D) Electrical safety requirements;

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

23 (F) Procedures for suspending or terminating the registration certificates or registry
24 identification cards of cardholders, registered compassion centers and registered safety
25 compliance facilities that commit multiple or serious violations of the provisions of this article or
26 the rules promulgated pursuant to this section; and

27 (G) Labeling requirements for marihuana and marihuana products sold by compassion
28 centers.

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

32 (A) The total fees collected must generate revenues sufficient to offset all expenses of
33 implementing and administering this article, except that fee revenue may be offset or
34 supplemented by private donations: *Provided*, That any excess revenue from fees and private
35 donations shall be distributed according to paragraph (D) of this subdivision;

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

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

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

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

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

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

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

4 (b) If the department fails to issue a valid registry identification card in response to a valid
5 application or renewal submitted pursuant to this article within twenty days of its submission, the
6 registry identification card shall be considered granted, and a copy of the registry identification
7 application or renewal and proof of receipt of the mailing shall be deemed a valid registry
8 identification card.

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

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