

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2677

**FISCAL
NOTE**

BY DELEGATES PUSHKIN, FLUHARTY, SPONAUGLE,
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C., DEAN, WILSON AND FOLK

[Introduced February 22, 2017; Referred
to the Committee on Prevention and Treatment of
Substance Abuse then Health and Human Resources
then 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 and
 5 §16-8A-23, all relating to creating the “Patient Freedom Act”; providing a regulatory
 6 scheme for the production, distribution and use of medical cannabis; providing protections
 7 for the medical use of cannabis; providing legislative findings; prohibiting discrimination
 8 for medical use of cannabis; providing medical conditions eligible for medical cannabis
 9 and process for addition of medical conditions; requiring registration of qualifying patients
 10 and designated caregivers; providing selection processes for permitting registered
 11 cannabis distribution centers and registered safety compliance facilities and its agents;
 12 providing for application and permit fees issuance of registry identification cards; providing
 13 protections for licensed and permitted persons; creates affirmative defense and for
 14 dismissal for medical cannabis activities; providing misdemeanor offense and criminal
 15 penalties for disclosing certain information; imposing sales tax on sales of medical
 16 cannabis, and otherwise providing 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 and §16-8A-23, all to
 5 read as follows:

ARTICLE 8A. THE PATIENT FREEDOM ACT.

§16-8A-1. Findings.

1 The West Virginia Legislature finds that:

2 (1) Patients and doctors have found cannabis to be an effective treatment for suffering

3 caused by debilitating medical conditions and, therefore, cannabis must be treated like other
4 medicines;

5 (2) West Virginians' suffering from debilitating medical conditions should be allowed to use
6 cannabis without fear of civil or criminal penalties when a doctor advises that using cannabis may
7 provide a medical benefit and when other reasonable restrictions are met regarding that use;

8 (3) This article is intended to allow West Virginians' with debilitating medical conditions
9 who may benefit from the medical use of cannabis to be able to freely discuss with doctors the
10 possible risks and benefits associated with the medical use of cannabis and to have the benefit
11 of professional medical advice; and

12 (4) This article is intended to protect patients and doctors from criminal and civil penalties
13 and are not intended to change current civil and criminal laws governing the use of cannabis for
14 nonmedical purposes.

§16-8A-2. Definitions.

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

2 "Bona fide practitioner-patient relationship" means:

3 (A) 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 (B) The practitioner has consulted with the patient with respect to the patient's debilitating
7 medical condition; and

8 (C) 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 "Cannabis" means marijuana as defined in section one hundred one, article one, chapter
11 sixty-a of this code.

12 "Cannabis distribution center agent" means a principal officer, board member, employee
13 or agent of a registered cannabis distribution center who is twenty-one years of age or older and

14 has not been convicted of a disqualifying felony offense.

15 "Cardholder" means a qualifying patient or a designated caregiver who has been issued
16 and possesses a valid registry identification card.

17 "Debilitating medical condition" means:

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

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

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

28 "Department" means the West Virginia Department of Health and Human Resources or
29 its successor agency.

30 "Designated caregiver" means a person who:

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

32 (B) Has agreed to assist with a patient's medical use of cannabis;

33 (C) Has not been convicted of a disqualifying felony offense; and

34 (D) Assists no more than five qualifying patients with their medical use of cannabis.

35 "Disqualifying felony offense" means:

36 (A) A violent crime that was classified as a felony in the jurisdiction where the person was
37 convicted; or

38 (B) A violation of a state or federal controlled substance law that was classified as a felony
39 in the jurisdiction where the person was convicted, not including;

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

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

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

52 "Mature cannabis plant" means a cannabis plant with one or more of the following
53 characteristics:

54 (A) The plant has flowers;

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

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

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

64 "Practitioner" means a person who is licensed with authority to prescribe drugs to humans
65 under the provisions of section one-b, article five, chapter thirty of this code, except as otherwise

66 provided in this subsection. If the qualifying patient's debilitating medical condition is post-
67 traumatic stress disorder, the practitioner must be a licensed psychiatrist. In relation to a visiting
68 qualifying patient, "practitioner" means a person who is licensed with authority to prescribe drugs
69 to humans in the state of the patient's residence.

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

72 "Registered cannabis distribution center" means an entity registered pursuant to section
73 fourteen of this article that acquires, possesses, cultivates, manufactures, delivers, transfers,
74 transports, sells, supplies or dispenses cannabis, paraphernalia or related supplies and
75 educational materials to registered qualifying patients.

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

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

80 (A) Testing cannabis produced for medical use, including for potency and contaminants;
81 and

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

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

86 (ii) Security and inventory accountability procedures; and

87 (iii) Up-to-date scientific and medical research findings related to medical cannabis.

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

91 "Seedling" means a cannabis plant that has no flowers, is less than twelve inches in height,

92 and is less than twelve inches in diameter.

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

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

100 "Visiting qualifying patient" means a person who:

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

102 (B) 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 cannabis
105 for medical purposes in the jurisdiction of issuance; and

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

108 "Written certification" means a document dated and signed by a practitioner, stating that
109 in the practitioner's professional opinion the patient is likely to receive therapeutic or palliative
110 benefit from the medical use of cannabis 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 medical use.

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 cannabis pursuant

4 to this article, if the registered qualifying patient does not possess more than:

5 (1) Six ounces of usable cannabis; and

6 (2) Twelve mature cannabis plants and twelve seedlings, if the qualifying patient has not
7 specified that a designated caregiver will be allowed under state law to cultivate cannabis for the
8 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 cannabis if the designated caregiver
14 does not possess more than:

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

17 (B) Twelve mature cannabis 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 cannabis for the qualifying patient.

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

23 (c) All mature cannabis plants and seedlings possessed pursuant to this section must be
24 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 cannabis pursuant to this article
31 if the visiting qualifying patient does not possess more than six ounces of usable cannabis.

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 cannabis that is incidental to medical use, but is not mature cannabis
37 plants, seedlings, or usable cannabis as defined in this article;

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

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

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

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

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

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

54 (2) The presumption may be rebutted by evidence that conduct related to cannabis was
55 not for the purpose of treating or alleviating the qualifying patient's debilitating medical condition

56 or symptoms associated with the debilitating medical condition in compliance with this article.

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

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

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

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

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

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

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

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

93 (j) A registered cannabis distribution center agent is not subject to prosecution, search or
94 penalty in any manner nor may the agent be denied any right or privilege, including, but not limited
95 to, civil penalty or disciplinary action by a court or business licensing board or entity, for working
96 for a registered cannabis distribution center pursuant to this article and department rules to
97 acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, sell or dispense
98 cannabis or related supplies and educational materials to registered qualifying patients who have
99 designated the registered cannabis distribution center to provide for them, to registered
100 designated caregivers on behalf of the registered qualifying patients who have designated the
101 registered cannabis distribution center, or to other registered cannabis distribution centers.

102 (k) A registered safety compliance facility and registered safety compliance facility agents
103 acting on behalf of a registered safety compliance facility are not subject to prosecution, search,
104 except by the department pursuant to subsection (o) of this section, seizure or penalty in any
105 manner nor may they be denied any right or privilege, including, but not limited to, civil penalty or
106 disciplinary action by a court or business licensing board or entity, solely for acting in accordance
107 with this article and department rules to provide the following services:

108 (1) Acquiring or possessing cannabis obtained from registered cardholders or registered
109 cannabis distribution centers;

110 (2) Returning the cannabis to registered cardholders or registered cannabis distribution
111 centers;

112 (3) Transporting cannabis that was produced by registered cardholders and registered
113 cannabis distribution centers to or from those registered cardholders and registered cannabis
114 distribution centers;

115 (4) The production or sale of educational materials related to medical cannabis;

116 (5) The production, sale or transportation of equipment or materials other than cannabis
117 to registered cannabis distribution centers or cardholders, including lab equipment and packaging
118 materials, that are used by registered cannabis distribution centers and cardholders;

119 (6) Testing of medical cannabis samples, including for potency, pesticides, mold and
120 contamination;

121 (7) Providing training to cardholders and prospective cannabis distribution center agents:
122 Provided, That only cardholders may be allowed to possess or cultivate cannabis and any
123 possession or cultivation of cannabis must occur on the location registered with the department;
124 and

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

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

132 (m) Mere possession of, or application for, a registry identification card or registration
133 certificate does not constitute probable cause or reasonable suspicion, nor may it be used to

134 support the search of the person, property or home of the person possessing or applying for the
135 registry identification card. The possession of, or application for, a registry identification card does
136 not preclude the existence of probable cause if probable cause exists on other grounds.

137 (n) For the purposes of West Virginia state law, the medical use of cannabis by a
138 cardholder or registered cannabis distribution center is lawful as long as it is in accordance with
139 this article.

140 (o) A law-enforcement officer may not be employed by an agency which receives state or
141 local government funds may expend any state or local resources, including the officer's time, to
142 effect any arrest or seizure of cannabis, or conduct any investigation, on the sole basis of activity
143 the officer believes to constitute a violation of the federal Controlled Substances Act if the officer
144 has reason to believe that the activity is in compliance with state medical cannabis laws, nor may
145 any such officer expend any state or local resources, including the officer's time, to provide any
146 information or logistical support related to such activity to any federal law-enforcement authority
147 or prosecuting entity.

148 (p) An attorney is not subject to disciplinary action by the state Bar Association or other
149 professional licensing association for providing legal assistance to prospective or registered
150 cannabis distribution centers, prospective or registered safety compliance facilities or others
151 related to activity that is no longer subject to criminal penalties under state law pursuant to this
152 article.

§16-8A-4. Limitations of article.

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 cannabis, when doing so would constitute
4 negligence or professional malpractice;

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

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 cannabis:

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 cannabis, except that a registered qualifying patient or
14 visiting qualifying patient may not be considered to be under the influence of cannabis solely
15 because of the presence of metabolites or components of cannabis that appear in insufficient
16 concentration to cause impairment.

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

18 (b) Nothing in this article requires:

19 (1) A government medical assistance program or private insurer to reimburse a person for
20 costs associated with the medical use of cannabis; or

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

23 (c) Nothing in this article prohibits an employer from disciplining an employee for ingesting
24 cannabis in the workplace or working while under the influence of cannabis.

§16-8A-5. Discrimination prohibited.

1 (a) Except as provided in this article, a registered qualifying patient who uses cannabis for
2 medical purposes shall be afforded all the same rights under state and local law, including those
3 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 cannabis in any workplace or to
14 allow any employee to work while under the influence of cannabis. A registered qualifying patient
15 is not under the influence of cannabis solely because of the presence of metabolites or
16 components of cannabis that appear in insufficient concentration to cause impairment.

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

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

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

31 (f) A school, landlord or employer may not be penalized or denied any benefit under state
32 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 included in section two 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. 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 cannabis distribution center the qualifying patient
17 designates, if any;

18 (9) If the qualifying patient designates a designated caregiver, a designation as to whether
19 the qualifying patient or designated caregiver will be allowed under state law to possess and

20 cultivate cannabis plants for the qualifying patient's medical use;

21 (10) A statement signed by the qualifying patient, pledging not to divert cannabis to anyone
22 who is not allowed to possess cannabis pursuant to this article; and

23 (11) A signed statement from the designated caregiver, if any, agreeing to be designated
24 as the patient's designated caregiver and pledging not to divert cannabis to anyone who is not
25 allowed to possess cannabis pursuant to this article.

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

§16-8A-8. 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 qualifying patients; and

8 (3) Enter the registry identification number of the registered cannabis distribution center
9 the patient 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 cannabis 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 cannabis;

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

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

§16-8A-9. 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 being a designated
9 caregiver, as provided in section 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-10. 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 is allowed under state law to possess
- 11 the cannabis plants for the qualifying patient's medical use, which shall be determined based
- 12 solely on the qualifying patient's preference;
- 13 (7) A photograph of the cardholder, if the department's rules 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 cannabis until a specified earlier date, then the registry identification card expires on
- 19 that date.
- 20 (c) The department may, at its discretion, electronically store in the card, all of the
- 21 information listed in subsection (a) of this section, along with the address and date of birth of the
- 22 cardholder, to allow it to be read by law-enforcement agents.

§16-8A-11. 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 shall notify the department.

10 (4) When a registered qualifying patient changes his or her preference as to who may
11 cultivate cannabis for the qualifying patient, the qualifying patient shall 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, if
19 any, a 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 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 cannabis distribution center and pay a \$20 fee. The department shall, within
28 five business days of receiving the notification, update the registered qualifying patient's entry in
29 the identification registry system to reflect the change in designation and notify the patient that

30 the 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 cannabis, the card becomes null and void. However, the
35 registered qualifying patient has fifteen days to dispose of or give away his or her cannabis.

§16-8A-12. Affirmative defense and dismissal for medical cannabis.

1 (a) Except as provided in section four of this article and this section, an individual may
2 assert a medical purpose for using cannabis as a defense to any prosecution of an offense
3 involving cannabis 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) 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 cannabis;

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

15 (2) The individual and the individual's designated caregiver, if any, were collectively in
16 possession of a quantity of cannabis that was not more than was reasonably necessary to ensure
17 the uninterrupted availability of cannabis 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 cannabis was providing relief; and

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

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

27 (b) 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 cannabis were not solely for palliative
30 or therapeutic use by the individual with a serious or debilitating medical condition who raised the
31 defense.

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

34 (d) If an individual demonstrates the individual's medical purpose for using cannabis
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 cannabis 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 noncannabis, licit property.

§16-8A-13. Registration of cannabis distribution centers; imposition of sales tax.

1 (a) Cannabis distribution centers may only operate if they have been issued a valid
2 registration certificate from the department. When applying for a cannabis distribution center
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 cannabis distribution center;

8 (3) The proposed physical address of the cannabis distribution center and the proposed
9 physical address of any additional locations, if any, where cannabis will be cultivated, harvested,
10 packaged, labeled, or otherwise prepared for distribution by the cannabis distribution center;

11 (4) The name, address, and date of birth of each principal officer and board member of
12 the cannabis distribution center. Principal officers and all board members shall be at least twenty-
13 one years of age and residents of this state;

14 (5) Any instances in which a business that any of the prospective board members
15 managed or served on the board of was convicted, fined, censured or had a registration or license
16 suspended or revoked in any administrative or judicial proceeding; and

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

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

23 (1) The suitability of the proposed location or locations, including compliance with any local
24 zoning laws and the geographic convenience to patients from throughout the State of West
25 Virginia to cannabis distribution centers if the applicant were approved;

26 (2) The principal officer and board members' character and relevant experience, including
27 any training or professional licensing related to medicine, pharmaceuticals, natural treatments,
28 botany or cannabis cultivation and preparation and their experience running businesses;

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

32 (4) The sufficiency of the applicant's plans for record keeping;

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

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

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

40 (c) No later than one year after the effective date of this article, if at least five applications
41 have been submitted, the department shall issue cannabis distribution 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 cannabis distribution center registration certificate for
47 each two hundred thousand residents of the state of the highest scoring applicants not already
48 awarded a registration certificate, if 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 cannabis distribution
53 centers are needed to meet the needs of registered qualifying patients throughout the state, the
54 department shall issue registration certificates to the corresponding number of applicants who
55 score the highest.

56 (e) (1) At any time after two years after the effective date of this article that the number of
57 outstanding and valid registered cannabis distribution center certificates is lower than the number
58 of registration certificates the department is required to issue pursuant to subsections (c) and (d)

59 of this section, the department shall accept applications for cannabis distribution centers and
60 issue 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) and (d) of this section and
63 subdivision (1) of this subsection, an application for a cannabis distribution center registration
64 certificate shall be denied if any of the following 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 of this article;

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 cannabis distribution center that has had its
75 registration certificate revoked; or

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

82 (g) A cannabis distribution center may not advertise or promote its product in any fashion
83 except for signage at retail locations where medical cannabis is distributed. The department may
84 establish standards for or otherwise limit such signage, and shall prohibit any signage that

85 promotes consumption of cannabis products.

86 (h) The department shall issue each cannabis distribution center one copy of its registration
87 certificate for each cannabis distribution center location. Registration certificates must include the
88 cannabis distribution center's identification number. The department shall also provide each
89 registered cannabis distribution center with the contact information for the verification system.

90 (i) A state sales tax at the rate of thirteen percent of the sales price is imposed on the
91 sales of medical cannabis in this state. The tax shall be collected as if the tax was the sales tax
92 imposed under article fifteen, chapter eleven of this code. However, the Tax Commissioner shall
93 deposit all revenue collected, after deducting ten percent for administrative expenses, into the
94 "Drug and Abuse Prevention Fund" which is hereby created. This fund is to be held by the State
95 Treasurer. The Commissioner of the Bureau for Public Health may distribute proceeds from this
96 fund for drug prevention and substance abuse programs in schools including, but not limited to,
97 after school programs, sports and extracurricular educational opportunities; to offer community
98 grants for substance abuse treatment facilities; and to offer grants for community improvement
99 projects including, but not limited to, playgrounds, public parks and local farmers' markets.

§16-8A-14. 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, provided that all such individuals shall be at least twenty-one years of

11 age:

12 (5) Any instances in which a business that any of the prospective board members
13 managed or served on the board of was convicted, fined, censured or had a registration or license
14 suspended or revoked in any administrative or judicial proceeding; and

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 safety compliance facility 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 shall consist of the
20 following criteria:

21 (1) The proposed principal officers' and board members' relevant experience, including
22 any training or professional licensing related to analytical testing, medicine, pharmaceuticals,
23 natural treatments, botany or cannabis cultivation, preparation and testing and their experience
24 running businesses;

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

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

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

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

35 (d)(1) The department may issue additional safety compliance facility registration
36 certificates to the highest scoring applicant or applicants or to the highest applicant or applicants

37 in a given geographic area. If the department determines, after reviewing the report issued
38 pursuant to section twenty-two of this article, that additional safety compliance facilities are
39 needed to meet the needs of cardholders and registered cannabis distribution centers throughout
40 the state, the department shall issue registration certificates to the corresponding number of
41 applicants who score the highest overall or in a geographic area.

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

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

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

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

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

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

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

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

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

63 verification system.

§16-8A-15. Cannabis distribution 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 cannabis distribution center or safety compliance
3 facility has been afforded an opportunity to be heard, suspend or revoke a registration certificate
4 for multiple or serious violations by the registrant or any of its agents of this article or any rules
5 promulgated 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 cannabis distribution center may continue to cultivate and possess
11 cannabis plants during a suspension, but it may not dispense, transfer or sell cannabis.

§16-8A-16. 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 cannabis distribution center operations and registered safety compliance facilities: *Provided, That*
4 a local government may not prohibit registered cannabis distribution center operation altogether,
5 either expressly or though the enactment of ordinances, rules or regulations which make
6 registered cannabis distribution center and registered safety compliance facility operation
7 unreasonably impracticable in the jurisdiction.

§16-8A-17. Cannabis distribution center and safety compliance facility agents.

1 (a) Registered cannabis distribution centers and registered safety compliance facilities
2 shall 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 cannabis distribution centers or registered safety compliance facility. A registered
5 cannabis distribution 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 cannabis distribution center or safety compliance facility agent must have
9 documentation when transporting cannabis on behalf of the registered safety compliance facility
10 or registered cannabis distribution center that specifies the amount of cannabis being transported,
11 the date the cannabis is being transported, the registry identification certificate number of the
12 registered cannabis distribution center or registered safety compliance facility, and a contact
13 number to verify that the cannabis is being transported on behalf of the registered cannabis
14 distribution center or registered safety compliance facility.

§16-8A-18. Requirements, prohibitions, penalties.

1 (a) The operating documents of a registered cannabis distribution center shall include
2 procedures for the oversight of the registered cannabis distribution center and procedures to
3 ensure accurate record keeping.

4 (b) A registered cannabis distribution center and a registered safety compliance facility
5 shall implement appropriate security measures to deter and prevent the theft of cannabis and
6 unauthorized entrance into areas containing cannabis.

7 (c) A registered cannabis distribution center and a registered safety compliance facility
8 may not be located within one thousand feet of the property line of a preexisting public or private
9 school.

10 (d) A registered cannabis distribution center is prohibited from acquiring, possessing,
11 cultivating, manufacturing, delivering, transferring, transporting, supplying or dispensing cannabis
12 for the purposes of distributing cannabis to any person except registered qualifying patients
13 directly or through their designated caregivers.

14 (e) All cultivation of cannabis for registered cannabis distribution centers must take place

15 in an enclosed, locked location at the physical address or addresses provided to the department
16 during the registration process, which can only be accessed by cannabis distribution center
17 agents working on behalf of the registered cannabis distribution center.

18 (f) A registered cannabis distribution center may not acquire usable cannabis or mature
19 cannabis plants from any person other than another registered cannabis distribution center, a
20 registered qualifying patient, or a registered designated caregiver. A registered cannabis
21 distribution center is only allowed to acquire usable cannabis or mature cannabis plants from a
22 registered qualifying patient or a registered designated caregiver if the registered qualifying
23 patient or registered designated caregiver receives no compensation for the cannabis.

24 (g) Before cannabis may be dispensed to a designated caregiver or a registered qualifying
25 patient, a registered cannabis distribution center agent must make a diligent effort to verify each
26 of the following:

27 (1) That the registry identification card presented to the registered cannabis distribution
28 center is valid, including by checking the verification system if it is operational;

29 (2) That the person presenting the card is the person identified on the registry identification
30 card presented to the registered cannabis distribution center agent, including by examining
31 government-issued photo identification; and

32 (3) That the registered cannabis distribution center the cannabis distribution center agent
33 is working for is the designated cannabis distribution center for the registered qualifying patient
34 who is obtaining the cannabis directly or via his or her designated caregiver.

35 (h) A registered cannabis distribution center may not dispense more than three ounces of
36 cannabis to a registered qualifying patient, directly or via a designated caregiver, in any fourteen-
37 day period. Registered cannabis distribution centers shall ensure compliance with this limitation
38 by maintaining internal, confidential records that include records specifying how much cannabis
39 is being dispensed to the registered qualifying patient and whether it was dispensed directly to
40 the registered qualifying patient or to the designated caregiver. Each entry must include the date

41 and time the cannabis was dispensed.

42 (i) A registered cannabis distribution center or registered cannabis distribution center
43 agent may only dispense cannabis to a visiting qualifying patient if he or she possesses a valid
44 West Virginia registry identification card and if the procedures of this section are followed.

45 (j) A person may not advertise medical cannabis sales in printed materials, on radio or
46 television, or by paid in-person solicitation of customers. This does not prevent appropriate signs
47 on the property of the registered cannabis distribution center, listings in business directories
48 including phone books, listings in cannabis-related or medical publications or the sponsorship of
49 health or not-for-profit charity or advocacy events.

50 (k) A registered cannabis distribution center may not share office space with nor refer
51 patients to a practitioner.

52 (l) A practitioner may not refer patients to a registered cannabis distribution center or
53 registered designated caregiver, advertise in a registered cannabis distribution center or, if the
54 practitioner issues written certifications, hold any financial interest in a registered cannabis
55 distribution center.

56 (m) Any person who has been convicted of a disqualifying felony offense may not be a
57 registered cannabis distribution center agent.

58 (n) Registered cannabis distribution centers and registered safety compliance facilities
59 must display their registration certificates on the premises at all times.

60 (o) The department may issue a civil penalty of up to \$3,000 for violations of this section.

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

63 (q) Any cardholder who sells cannabis to a person who is not allowed to possess cannabis
64 for medical purposes under this article shall have his or her registry identification card revoked
65 and is subject to other penalties for the unauthorized sale of cannabis.

66 (r) The department may revoke the registry identification card of any cardholder who

67 knowingly commits multiple or serious violations of this article.

68 (s) Registered cannabis distribution centers are subject to reasonable inspection by the
69 department. The department shall give a reasonable notice of an inspection under this paragraph.

§16-8A-19. 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, article one, chapter twenty-nine-b of this code, and not subject to disclosure to
4 any individual or public or private entity, except as necessary for authorized employees of the
5 department to perform official duties pursuant to this article:

6 (1) Applications and renewals, their contents and supporting information submitted by
7 qualifying patients and designated caregivers, 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 cannabis distribution centers and safety compliance facilities in compliance with this
11 article, 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 cannabis distribution
16 centers by their registry identification numbers and may not contain names or other personal
17 identifying 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:

23 (1) Department employees from notifying 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 from notifying 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) Cannabis distribution center agents from notifying the department of a suspected
34 violation or attempted violation of this article or the rules issued pursuant to it;

35 (4) The department from verifying registry identification cards pursuant to section twenty-
36 one of this article; and

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-20. 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, cannabis distribution center agents, and safety compliance facility agents to enter a
8 registry identification number to determine whether or not the number corresponds with a current,
9 valid registry identification card. The system shall only disclose whether the identification card is
10 valid; whether the cardholder is a registered qualifying patient or a registered designated
11 caregiver; whether the cardholder is permitted to cultivate under this act; and the registry
12 identification number of the registered cannabis distribution center designated to serve the
13 registered qualifying patient who holds the card or the registry identification number of the patient
14 who is assisted by the 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 inquiries
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-21. 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 cannabis 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 cannabis; 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 cannabis;

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

24 (F) Any research studies regarding health effects of medical cannabis 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 cannabis distribution centers, or
27 practitioners, but 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 cannabis distribution centers.

§16-8A-22. 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. The rules shall include provisions:

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 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 cannabis distribution centers,
14 with the goal of protecting against diversion and theft, without imposing an undue burden on the
15 registered cannabis distribution centers or compromising the confidentiality of cardholders:

16 (A) Oversight requirements for registered cannabis distribution centers;

17 (B) Record keeping requirements for registered cannabis distribution centers;

18 (C) Security requirements for registered cannabis distribution centers, which shall include,
19 at a minimum, lighting, video security, alarm requirements, on-site parking and measures to
20 prevent 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 cannabis distribution 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 cannabis and cannabis products sold by cannabis
28 distribution centers; and

29 (5) Establishing application and renewal fees for registry identification cards, and
30 application and registration fees for cannabis distribution center and safety compliance facility
31 certificates, according to 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-23. 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 is considered a valid registry identification
8 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 “The Patient Freedom Act.” It provides protections for the medical use of cannabis; defines debilitating medical conditions for which medical cannabis may be used; requires the registration of qualifying patients and designated caregivers; requires issuance of registry identification cards; establishes an affirmative defense and dismissal of proceedings for medical cannabis; establishes licenses provided for only indoor growing of medical cannabis by registered patients, caregivers and cannabis distribution centers; provides for inspections by safety compliance agents; provides criminal penalties for violations; imposes a sales tax on sales of medical cannabis; and includes provisions for its enforcement.

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