WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 386

BY SENATORS OJEDA, BEACH, FACEMIRE, MILLER,
PALUMBO, PLYMALE, ROMANO, RUCKER, STOLLINGS,
SWOPE, WOELFEL AND BOSO

[Introduced February 21, 2017; Referred
to the Committee on Health and Human Resources;
and then to the Committee on the Judiciary]
A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-8A-1, §16-8A-2, §16-8A-3, §16-8A-4, §16-8A-5, §16-8A-6, §16-8A-7, §16-8A-8, §16-8A-9, §16-8A-10, §16-8A-11, §16-8A-12, §16-8A-13, §16-8A-14, §16-8A-15 and §16-8A-16, all relating to creating the West Virginia Medical Cannabis Act; defining terms; creating the West Virginia Medical Cannabis Commission; setting forth members of the West Virginia Medical Cannabis Commission; setting forth responsibilities for the West Virginia Medical Cannabis Commission; creating a special revenue account known as the West Virginia Medical Cannabis Commission Fund; detailing the fund's revenue sources and disbursements; detailing requirements of the commission to implement the provisions of the act; setting requirements for becoming a certifying physician; authorizing the commission to approve physician applications for certain medical conditions; requiring certain annual reports to the Governor and Legislature; authorizing the commission to license medical cannabis growers and grower agents that meet certain requirements; setting forth certain parameters for licensed growers and grower agents; authorizing the commission to license dispensaries and register dispensary agents; setting forth certain requirements for dispensaries and dispensary agents; authorizing the commission to license medical cannabis processors and register processor agents; authorizing testing laboratories; naming the Marshall University Forensic Science Center as the primary testing laboratory; stating requirements for the commission's registration of independent laboratories; requiring the State Police and commission to enter a memorandum of understanding for criminal records checks and setting forth basic requirements; providing that certain persons licensed, registered and authorized under the act may not be subject to arrest, prosecution or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege, for the medical use of cannabis; creating a new criminal offense of distributing, possessing, manufacturing or using cannabis that has been diverted from an authorized
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27 medicinal use; specifically stating conduct related to cannabis that is not protected by the
28 provisions of the act; authorizing state employees to recover certain counsel fees;
29 empowering the Governor to suspend implementation of the act if the Governor
determines certain federal action may occur; and requiring promulgation of emergency
rules and the submission of legislative rules for approval by the Legislature.

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 and §16-
4 8A-16, all to read as follows:

ARTICLE 8A. WEST VIRGINIA MEDICAL CANNABIS ACT.

§16-8A-1. Definitions.

As used in this article, the following words have the meanings indicated.

1 (1) “Caregiver” means:
2 (A) A person who has agreed to assist with a qualifying patient’s medical use of cannabis;
3 and
4 (B) For a qualifying patient under the age of eighteen years, a parent or legal guardian.
5 (2) “Certifying physician” means an individual who:
6 (A) Has an active, unrestricted license to practice medicine that was issued by the West
7 Virginia Board of Medicine or the West Virginia Board of Osteopathic Medicine;
8 (B) Is in good standing with the West Virginia Board of Medicine or the West Virginia Board
9 of Osteopathic Medicine, whichever is applicable;
10 (C) Has a valid and unencumbered authority to prescribe controlled substances; and
11 (D) Is registered with the commission to make cannabis available to patients for medical
12 use in accordance with regulations adopted by the commission.
13 (3) “Commission” means the West Virginia Medical Cannabis Commission established
under this article.

(4) “Dispensary” means an entity licensed under this article that acquires, possesses, processes, transfers, transports, sells, distributes, dispenses, or administers cannabis, products containing cannabis, related supplies, related products containing cannabis including food, tinctures, aerosols, oils, or ointments, or educational materials for use by a qualifying patient or caregiver.

(5) “Dispensary agent” means an owner, a member, an employee, a volunteer, an officer, or a director of a dispensary.

(6) “Fund” means the West Virginia Medical Cannabis Commission Fund established under this article.

(7) “Grower” means an entity licensed under this article that:

(A)(i) Cultivates, manufactures, processes, packages, or dispenses medical cannabis; or

(ii) Processes medical cannabis products; and

(B) Is authorized by the commission to provide cannabis to a qualifying patient, caregiver, processor, dispensary, or independent testing laboratory.

(8) “Independent testing laboratory” means a facility, an entity, or a site that offers or performs tests related to the inspection and testing of cannabis and products containing cannabis.

(9) “Medical cannabis grower agent” means an owner, an employee, a volunteer, an officer, or a director of a grower.

(10) “Processor” means an entity that:

(A) Transforms medical cannabis into another product or extract; and

(B) Packages and labels medical cannabis.

(11) “Processor agent” means an owner, a member, an employee, a volunteer, an officer, or a director of a processor.

(12) “Qualifying patient” means an individual who:

(A) Has been provided with a written certification by a certifying physician in accordance
with a bona fide physician–patient relationship; and

(B) If under the age of eighteen years, has a caregiver.

(13) “Written certification” means a certification that:

(A) Is issued by a certifying physician to a qualifying patient with whom the physician has
a bona fide physician–patient relationship; and

(B) Includes a written statement certifying that, in the physician’s professional opinion,

after having completed an assessment of the patient’s medical history and current medical
condition, the patient has a condition:

(i) That meets the inclusion criteria and does not meet the exclusion criteria of the certifying
physician’s application; and

(ii) For which the potential benefits of the medical use of cannabis would likely outweigh
the health risks for the patient; and

(C) May include a written statement certifying that, in the physician’s professional opinion,
a thirty–day supply of medical cannabis would be inadequate to meet the medical needs of the
qualifying patient.


(a) There is hereby created the West Virginia Medical Cannabis Commission.

(b) The commission is an independent commission that functions within the department.

(c) The purpose of the commission is to develop policies, procedures, guidelines, and
regulations to implement programs to make medical cannabis available to qualifying patients in a
safe and effective manner.

(d)(1) The commission shall develop identification cards for qualifying patients and
caregivers.

(2)(A) The department shall adopt regulations that establish the requirements for
identification cards provided by the commission.

(B) The regulations adopted under paragraph (A) of this subdivision shall include:

4
(i) The information to be included on an identification card;
(ii) The method through which the commission will distribute identification cards; and
(iii) The method through which the commission will track identification cards.

(e) The commission shall develop and maintain a Web site that:
(1) Provides information on how an individual can obtain medical cannabis in the state; and
(2) Provides contact information for licensed dispensaries.


(a) The commission consists of the following sixteen members:

(1) The Secretary of the Department of Health and Human Resources, or the secretary's designee;

(2) The Commissioner of the Department of Agriculture, or the commissioner’s designee;

(3) The West Virginia Treasurer, or the Treasurer’s designee; and

(4) The following thirteen members, appointed by the Governor:

(i) Two members of the public who support the use of cannabis for medical purposes and who are or were patients who found relief from the use of medical cannabis;

(ii) One member designated by the West Virginia Association of Alcoholism and Drug Counselors;

(iii) Three physicians licensed in the state;

(iv) One nurse practitioner licensed in the state who has experience in hospice care;

(v) One pharmacist licensed in the state;

(vi) One scientist who has experience in the science of cannabis;

(vii) One representative of the West Virginia State Bar;

(viii) One representative of law enforcement;

(ix) An attorney who is knowledgeable about medical cannabis laws in the United States; and
(x) An individual with experience in horticulture, recommended by the Department of Agriculture.

(b)(1) The term of a member is four years. However, the Governor shall set the terms of the initial members of the commission by executive order such that three expire after one year, three expire after two years, and three expire after three years in order to stagger the membership terms of the commission.

(2) At the end of a commission member's term, the member continues to serve until a successor is appointed and qualified.

(3) A member may not serve more than three consecutive full terms.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(c) The Governor shall designate the chair from among the members of the commission.

(d) A majority of the full authorized membership of the commission is a quorum.

(e) A member of the commission:

(1) May not receive compensation as a member of the commission; but

(2) Is entitled to reimbursement for expenses incurred while engaged in the discharge of official duties, not to exceed the amount paid to members of the Legislature.

(f) The commission may employ a staff, including contractual staff, in accordance with the funds provided in the annual state budget.

(g) The commission may set reasonable fees to cover the costs of operating the commission.

(h)(1) There is hereby created in the State Treasury a separate special revenue account, which shall be an interest-bearing account, to be known as the West Virginia Medical Cannabis Commission Fund.

(2) The commission shall administer the fund.

(3) Any balance remaining in the fund at the end of any state fiscal year reverts to the
General Revenue Fund.

45 (4) The fund shall be subject to an audit by the West Virginia Legislative Auditor’s Office.

46 (5) The Treasurer shall pay out money from the fund as directed by the commission.

47 (6) The fund consists of:

48 (A) Any money appropriated by the Legislature to the fund;

49 (B) Any other money from any other source accepted for the benefit of the fund, in accordance with any conditions adopted by the commission for the acceptance of donations or gifts to the fund; and

50 (C) Any fees collected by the commission under this article.


1 (a) The commission shall register as a certifying physician an individual who:

2 (1) Meets the requirements of this article; and

3 (2) Submits application materials that meet the requirements of this article.

4 (b) To be registered as a certifying physician, a physician shall submit a proposal to the commission that includes:

5 (1) The reasons for including a patient under the care of the physician for the purposes of this article, including the patient’s qualifying medical conditions;

6 (2) An attestation that a standard patient evaluation will be completed, including a history, a physical examination, a review of symptoms, and other pertinent medical information; and

7 (3) The physician’s plan for the ongoing assessment and follow-up care of a patient and for collecting and analyzing data.

8 (c) The commission may not require an individual to meet requirements in addition to the requirements listed in subsections (a) and (b) of this section to be registered as a certifying physician.

9 (d)(1) The commission is encouraged to approve physician applications for the following medical conditions:
(A) A chronic or debilitating disease or medical condition that results in a patient being admitted into hospice or receiving palliative care; or

(B) A chronic or debilitating disease or medical condition or the treatment of a chronic or debilitating disease or medical condition that produces:

(i) Cachexia, anorexia, or wasting syndrome;

(ii) Severe or chronic pain that does not find effective relief through standard pain medication;

(iii) Severe nausea;

(iv) Seizures; or

(v) Severe or persistent muscle spasms.

(2) The commission may not limit treatment of a particular medical condition to one class of physicians.

(e) The commission may approve applications that include any other condition that is severe and for which other medical treatments have been ineffective if the symptoms reasonably can be expected to be relieved by the medical use of cannabis.

(f)(1) A certifying physician or the spouse of a certifying physician may not receive any gifts from or have an ownership interest in a medical cannabis grower, a processor, or a dispensary.

(2) A certifying physician may receive compensation from a medical cannabis grower, a processor, or dispensary if the certifying physician:

(A) Obtains the approval of the commission before receiving the compensation; and

(B) Discloses the amount of compensation received from the medical cannabis grower, processor, or dispensary to the commission.

(g)(1) A qualifying patient may be a patient of the certifying physician or may be referred to the certifying physician.

(2) A certifying physician shall provide each written certification to the commission.
(3) On receipt of a written certification provided under subdivision (2) of this subsection, the commission shall issue an identification card to each qualifying patient or caregiver named in the written certification.

(4) A certifying physician may discuss medical cannabis with a patient.

(5)(A) Except as provided in paragraph (B) of this subdivision, a qualifying patient or caregiver may obtain medical cannabis only from a medical cannabis grower licensed by the commission or a dispensary licensed by the commission.

(B) A qualifying patient under the age of eighteen years may obtain medical cannabis only through the qualifying patient’s caregiver.

(6)(A) A caregiver may serve no more than five qualifying patients at any time.

(B) A qualifying patient may have no more than two caregivers.

(h)(1) A certifying physician may register biennially.

(2) The commission shall grant or deny a renewal of a registration for approval based on the physician’s performance in complying with regulations adopted by the commission.

§16-8A-5. Reporting requirement.

On or before January 31 each year, the commission shall report to the Governor and the Joint Committee on Government and Finance on physicians certified under this article.

§16-8A-6. Medical cannabis growers and grower agents.

(a) (1) The commission shall license medical cannabis growers that meet all requirements established by the commission to operate in the state to provide cannabis to:

(A) Processors licensed by the commission under this article;

(B) Dispensaries licensed by the commission under this article;

(C) Qualifying patients and caregivers; and

(D) Independent testing laboratories registered with the commission under this article.

(2)(A) Except as provided in paragraph (B) of this subdivision, the commission may license no more than fifteen medical cannabis growers.
(B) Beginning June 1, 2019, the commission may issue the number of licenses necessary
to meet the demand for medical cannabis by qualifying patients and caregivers issued
identification cards under this article in an affordable, accessible, secure, and efficient manner.

(C) The commission shall establish an application review process for granting medical
cannabis grower licenses in which applications are reviewed, evaluated, and ranked based on
criteria established by the commission.

(D) The commission may not issue more than one medical cannabis grower license to
each applicant.

(E) A grower shall pay an application fee in an amount to be determined by the commission
consistent with this article.

(3) The commission shall set standards for licensure as a medical cannabis grower to
ensure public safety and safe access to medical cannabis, which may include a requirement for
the posting of security.

(4) Each medical cannabis grower agent shall:

(A) Be registered with the commission before the agent may volunteer or work for a
licensed grower; and

(B) Obtain state and national criminal history records check in accordance with section
twelve of this article.

(5)(A) A licensed grower shall apply to the commission for a registration card for each
grower agent by submitting the name, address, and date of birth of the agent.

(B) Within one business day after a grower agent ceases to be associated with a grower,
the grower shall notify the commission and return the grower agent’s registration card to the
commission. On receipt of the notice, the commission shall immediately revoke the registration
card of the grower agent and, if the registration card was not returned to the commission, notify
the Superintendent of the West Virginia State Police.

(C) The commission may not register a person who has been convicted of a felony drug
offense as a grower agent.

(6)(A) A medical cannabis grower license is valid for four years on initial licensure.

(B) A medical cannabis grower license is valid for two years on renewal.

(7) An application to operate as a medical cannabis grower may be submitted in paper or electronic form.

(8)(A) The commission shall encourage licensing medical cannabis growers that grow strains of cannabis, including strains with high cannabidiol content, with demonstrated success in alleviating symptoms of specific diseases or conditions.

(B) The commission shall encourage licensing medical cannabis growers that prepare medical cannabis in a range of routes of administration.

(9)(A) The commission shall:

(i) Actively seek to achieve geographic diversity when licensing medical cannabis growers;

and

(ii) Encourage applicants who qualify as a minority-owned business, as that term is defined in section fifty-nine, article three, chapter five-a of this code.

(B) Beginning June 1, 2019, a grower licensed under this article to operate as a medical cannabis grower shall report annually to the commission on the minority owners and employees of the grower.

(10) An entity seeking licensure as a medical cannabis grower shall meet local zoning and planning requirements.

(b) An entity licensed to grow medical cannabis under this section may provide cannabis only to:

(1) Processors licensed by the commission under this article;

(2) Dispensaries licensed by the commission under this article;

(3) Qualified patients;

(4) Caregivers; and
(5) Independent testing laboratories registered with the commission under this article.

(c)(1) An entity licensed to grow cannabis under this section may dispense cannabis from a facility of a grower licensed as a dispensary.

(2) A qualifying patient or caregiver may obtain medical cannabis from a facility of a grower licensed as a dispensary.

(3) An entity licensed to grow medical cannabis under this section may grow and process medical cannabis on the same premises.

(d) An entity licensed to grow medical cannabis under this section shall ensure that safety precautions established by the commission are followed by any facility operated by the grower.

(e) The commission shall establish requirements for security and the manufacturing process that a grower must meet to obtain a license under this section, including a requirement for a product-tracking system.

(f) The commission may inspect a grower licensed under this section to ensure compliance with this article.

(g) The commission may impose penalties or rescind the license of a grower that does not meet the standards for licensure set by the commission.


(a) A dispensary shall be licensed by the commission.

(b) To be licensed as a dispensary, an applicant shall submit to the commission:

(1) An application fee in an amount to be determined by the commission consistent with this article; and

(2) An application that includes:

(A) The legal name and physical address of the proposed dispensary;

(B) The name, address, and date of birth of each principal officer and each director, none of whom may have served as a principal officer or director for a dispensary that has had its license revoked; and
(C) Operating procedures that the dispensary will use, consistent with commission regulations for oversight, including storage of cannabis and products containing cannabis only in enclosed and locked facilities.

(c) The commission shall:

(1) Establish an application review process for granting dispensary licenses in which applications are reviewed, evaluated, and ranked based on criteria established by the commission; and

(2) Actively seek to achieve geographic diversity when licensing dispensaries.

(d)(1) A dispensary license is valid for four years on initial licensure.

(2) A dispensary license is valid for two years on renewal.

(e) A dispensary licensed under this section or a dispensary agent registered under section eight of this article may not be penalized or arrested under state law for acquiring, possessing, processing, transferring, transporting, selling, distributing, or dispensing cannabis, products containing cannabis, related supplies, or educational materials for use by a qualifying patient or a caregiver.

(f) The commission shall establish requirements for security and product handling procedures that a dispensary must meet to obtain a license under this section, including a requirement for a product-tracking system.

(g) The commission may inspect a dispensary licensed under this section to ensure compliance with this article.

(h) The commission may impose penalties or rescind the license of a dispensary that does not meet the standards for licensure set by the commission.

(i)(1) Each dispensary licensed under this section shall submit to the commission a quarterly report.

(2) The quarterly report shall include:

(A) The number of patients served;
(B) The county of residence of each patient served;

(C) The medical condition for which medical cannabis was recommended;

(D) The type and amount of medical cannabis dispensed; and

(E) If available, a summary of clinical outcomes, including adverse events and any cases of suspected diversion.

(3) The quarterly report may not include any personal information that identifies a patient.


(a) A dispensary agent shall:

(1) Be at least twenty-one years old;

(2) Be registered with the commission before the agent may volunteer or work for a dispensary; and

(3) Obtain state and national criminal history records check in accordance with section twelve of this article.

(b) A dispensary shall apply to the commission for a registration card for each dispensary agent by submitting the name, address, and date of birth of the agent.

(c)(1) Within one business day after a dispensary agent ceases to be associated with a dispensary, the dispensary shall:

(A) Notify the commission; and

(B) Return the dispensary agent’s registration card to the commission.

(2) On receipt of a notice described in subdivision (1) of this subsection, the commission shall:

(A) Immediately revoke the registration card of the dispensary agent; and

(B) If the registration card was not returned to the commission, notify the Superintendent of the West Virginia State Police.

(d) The commission may not register an individual who has been convicted of a felony drug offense as a dispensary agent.

(a) A processor shall be licensed by the commission.

(b) To be licensed as a processor, an applicant shall submit to the commission:

(1) An application fee in an amount to be determined by the commission in accordance with this article; and

(2) An application that includes:

(A) The legal name and physical address of the proposed processor;

(B) The name, address, and date of birth of each principal officer and director, none of whom may have served as a principal officer or director for a licensee under this article that has had its license revoked; and

(C) Operating procedures that the processor will use, consistent with commission regulations for oversight, including storage of cannabis, extracts, and products containing cannabis only in enclosed and locked facilities.

(c) The commission shall establish an application review process for granting processor licenses in which applications are reviewed, evaluated, and ranked based on criteria established by the commission.

(d)(1) A processor license is valid for four years on initial licensure.

(2) A processor license is valid for two years on renewal.

(e) A processor licensed under this section or a processor agent registered section ten of this article may not be penalized or arrested under state law for acquiring, possessing, processing, transferring, transporting, selling, distributing, or dispensing cannabis, products containing cannabis, related supplies, or educational materials for use by a licensee under this article or a qualifying patient or a caregiver.

(f) The commission shall establish requirements for security and product handling procedures that a processor must meet to obtain a license under this section, including a requirement for a product-tracking system.
(g) The commission may inspect a processor licensed under this section to ensure compliance with this article.

(h) The commission may impose penalties or rescind the license of a processor that does not meet the standards for licensure set by the commission.


(a) A processor agent shall:

(1) Be at least twenty-one years old;

(2) Be registered with the commission before the agent may volunteer or work for a processor; and

(3) Obtain state and national criminal history records check in accordance with section twelve of this article.

(b) A processor agent shall apply to the commission for a registration card for each processor agent by submitting the name, address, and date of birth of the agent.

(c)(1) Within one business day after a processor agent ceases to be associated with a processor, the processor shall:

(A) Notify the commission; and

(B) Return the processor agent’s registration card to the commission.

(2) On receipt of a notice described in subdivision (1) of this subsection, the commission shall:

(A) Immediately revoke the registration card of the processor agent; and

(B) If the registration card was not returned to the commission, notify the Superintendent of the West Virginia State Police.

(d) The commission may not register an individual who has been convicted of a felony drug offense as a processor agent.


(a) The commission shall register, a public criminal justice agency as the primary testing
laboratory to test cannabis and products containing cannabis that are to be sold in the state.

(b) The commission may register additional private independent testing laboratories to test cannabis and products containing cannabis that are to be sold in the state.

(c) To be registered as an independent testing laboratory, a laboratory shall:

(1) Meet the application requirements established by the commission;

(2) Pay any applicable fee required by the commission; and

(3) Meet the standards and requirements for accreditation, inspection, and testing established by the commission.

(d) The commission shall adopt regulations that establish:

(1) The standards and requirements to be met by an independent laboratory to obtain a registration;

(2) The standards of care to be followed by all testing laboratories;

(3) The initial and renewal terms for an independent laboratory registration and the renewal procedure; and

(4) The bases and processes for denial, revocation, and suspension of a registration of an independent testing laboratory.

(d) The commission may inspect any independent testing laboratory registered under this section to ensure compliance with this article.


(a) The commission and the State Police shall enter into a memorandum of understanding regarding criminal records checks that include, at a minimum, the following:

(1) Any applicant is required to submit to the State Police all information necessary to complete a nationwide background check consisting of inquiries of the National Instant Criminal Background Check System, the West Virginia criminal history record responses and the National Interstate Identification Index;

(2) The applicant is required to pay all fees associated with the background checks;
(3) The State Police shall complete the background checks promptly upon receipt of all necessary information and fees.

(4) The State Police shall forward to the commission and to the applicant the criminal history record information of the applicant forthwith.

(b) Information obtained from the background checks required under this section shall be:

(1) Confidential and may not be disseminated other than as authorized in this section; and

(2) Used only for the registration purpose authorized by this article.

(c) The subject of a criminal history records check under this section may appeal the contents of the printed statement issued, as authorized by relevant criminal history database.


(a) Any of the following persons acting in accordance with the provisions of this article may not be subject to arrest, prosecution, or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege, for the medical use of cannabis:

(1) A qualifying patient:

(A) In possession of an amount of medical cannabis determined by the commission to constitute a thirty–day supply; or

(B) In possession of an amount of medical cannabis that is greater than a thirty–day supply if the qualifying patient’s certifying physician stated in the written certification that a thirty–day supply would be inadequate to meet the medical needs of the qualifying patient;

(2) A grower licensed under section six of this article or a grower agent registered under section six of this article;

(3) A certifying physician;

(4) A caregiver;

(5) A dispensary licensed under section seven of this article or a dispensary agent registered under section eight of this article;
(6) A processor licensed under section nine of this article or a processor agent registered under section ten of this article; or

(7) A hospital, medical facility, or hospice program where a qualifying patient is receiving treatment.

(b)(1) A person may not distribute, possess, manufacture, or use cannabis that has been diverted from a qualifying patient, a caregiver, a licensed grower, or a licensed dispensary.

(2) A person who violates this subsection is guilty of a felony and, on conviction is subject to confinement not exceeding five years or a fine not exceeding $10,000, or both fined and confined.

(3) The penalty under this section is in addition to any penalties that a person may be subject to for manufacture, possession, or distribution of marijuana under this code.


(a) This article may not be construed to authorize any individual to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for, the following:

(1) Undertaking any task under the influence of marijuana or cannabis, when doing so would constitute negligence or professional malpractice;

(2) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or boat while under the influence of marijuana or cannabis;

(3) Smoking marijuana or cannabis in any public place;

(4) Smoking marijuana or cannabis in a motor vehicle; or

(5) Except as provided in subsection (b) of this section, smoking marijuana or cannabis on a private property that:

(A)(i) Is rented from a landlord; and

(ii) Is subject to a policy that prohibits the smoking of marijuana or cannabis on the property; or

(B) Is subject to a policy that prohibits the smoking of marijuana or cannabis on the
property of an attached dwelling adopted by the council of unit owners, as defined in chapter thirty-six-a of this code, or the executive board of a unit owners association, as defined in chapter thirty-six-b of this code.

(b) The provisions of subdivision (5), subsection (a) of this section do not apply to vaporizing cannabis.

(c) This article may not be construed to provide immunity to a person who violates the provisions of this article from criminal prosecution for a violation of any law prohibiting or regulating the use, possession, dispensing, distribution, or promotion of controlled dangerous substances, dangerous drugs, detrimental drugs, or harmful drugs, or any conspiracy or attempt to commit any of those offenses.

(d) This article may not be construed to require a hospital, medical facility, or hospice program to report to the commission any disciplinary action taken by the hospital, medical facility, or hospice program against a certifying physician, including the revocation of privileges, after the registration of the certifying physician by the commission.

(e) This article may not be construed to prohibit a person from being concurrently licensed by the commission as a grower, a dispensary, or a processor.


(a) Notwithstanding any provision of this code to the contrary, a state employee who incurs counsel fees in connection with a federal criminal investigation or prosecution solely related to the employee’s good faith discharge of public responsibilities under this article is eligible for reimbursement of counsel fees.

(b) The Governor may suspend implementation of this article upon making a formal determination that there is a reasonable chance of federal prosecution of state employees for involvement with implementation of this article.


On or before September 15, 2018, the commission shall promulgate emergency rules
pursuant to the provisions of section fifteen, article three, chapter twenty-nine of this code to
implement the provisions of this article and shall subsequently propose rules for legislative
approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

NOTE: The purpose of this bill is to authorize medicinal cannabis in West Virginia.

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