

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 3129

BY DELEGATES HORNBUCKLE AND HIGGINBOTHAM

[Introduced February 12, 2019; Referred
to the Committee on the Judiciary then Finance.]

1 A BILL to repeal §16A-5-10 the Code of West Virginia, 1931, as amended; to amend said code
2 by adding thereto a new article, designated §5B-8-1, §5B-8-2, §5B-8-3, §5B-8-4, §5B-8-
3 5, §5B-8-6, §5B-8-7, §5B-8-8, §5B-8-9, §5B-8-10, §5B-8-11, §5B-8-12, §5B-8-13, §5B-8-
4 14, §5B-8-15, and §5B-8-16; to amend and reenact §16A-15-4 of said code; and to amend
5 said code by adding thereto a new section, designated §60A-7-708, all relating to
6 decriminalizing cannabis; providing a short title; providing legislative purpose and findings;
7 providing for definitions; permitting the possession of cannabis and cannabis products by
8 adults; permitting production and adult use of cannabis; restricting public smoking of
9 cannabis; prohibiting false identification to obtain cannabis; providing for the unlawful
10 extraction of cannabis; providing for the lawful operation of a cannabis facility; permitting
11 growing and possession of cannabis by adults; providing procedure for municipalities to
12 enact an ordinance to permit cannabis production and sales; regulating market activity for
13 the production, sales, transfer and transport of cannabis; establishing diversity licensing
14 goals for minority, women, and veteran owned businesses; establishing mechanisms for
15 permitting and licensing production and sales facilities by the Department of Commerce
16 and localities; authorizing the department to promulgate rules, establish licensing and
17 administrative penalties relating to the production, sales, transfer and transport cannabis
18 in authorizing counties; authorizing the Department of Revenue to promulgate rules and
19 administer tax collections; authorizing localities to regulate manufacturing and sales
20 locations; providing for safety warning and inserts on cannabis products; authorizing a
21 special excise tax on cannabis; creating a new fund and dedicating proceeds of the fund
22 to additional funds; creating new funds for excise tax deposits; providing for a portion of
23 tax collected benefit municipal governments where market activity occurs; providing
24 current laws relating to employment, vehicle operation, underage use or private property
25 use preserved; providing for background checks to employ anyone in a cannabis
26 establishment; establishing certain conditions for employees to pass background checks;

27 providing that no medical cannabis provisions are affected; expanding protections to
 28 employees relating to employment and the use of medical cannabis; and prohibiting asset
 29 forfeiture.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 8. THE B.E.S.T. ACT.

§5B-8-1. Short title.

1 This article may be known and cited as the “Be Exceptional Starting Today Act” or the
 2 “BEST Act.”

§5B-8-2. Purpose and findings.

1 (a) In the interest of allowing law enforcement to focus on violent and property crimes,
 2 generating revenue for education and other public purposes, and individual freedom, the
 3 Legislature of the State of West Virginia finds that the use of cannabis should be legal for a person
 4 21 years of age or older and taxed in a manner similar to alcohol.

5 (b) In the interest of the health and public safety of our citizenry, the Legislature further
 6 finds and declares that cannabis should be regulated in a manner similar to alcohol so that
 7 individuals will have to show proof of age before purchasing cannabis; selling, distributing, or
 8 transferring cannabis to minors and other individuals under the age of 21 shall remain illegal;
 9 driving under the influence of cannabis shall remain illegal; legitimate, taxpaying business people,
 10 and not criminal actors, will conduct sales of cannabis; cannabis sold in this state will be tested,
 11 labeled, and subject to additional regulations to ensure that consumers are informed and
 12 protected; and in the interest of enacting rational policies for the treatment of all variations of the
 13 cannabis plant, hemp should be regulated separately from strains of cannabis with higher delta-
 14 9 tetrahydrocannabinol (THC) concentrations.

15 (c) The Legislature further finds that in light of the provisions of this article, any nonviolent

16 drug offender who is currently in the prison system, probation, or other correctional proceeding
17 with a cannabis offense shall be granted clemency and all cannabis related offenses shall be
18 removed from the persons criminal background history upon passage of this article.

§5B-8-3. Definitions.

1 (a) As used in this article, unless the context otherwise requires:

2 (1) "Cannabis" means all parts of the plant of the genus cannabis whether growing or
3 flowering or not, the seeds thereof, the resin extracted from any part of the plant, and every
4 compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its
5 resin, including marijuana concentrate. Cannabis does not include industrial hemp, nor does it
6 include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized
7 seed of the plant which is incapable of germination, or the weight of any other ingredient combined
8 with cannabis to prepare topical or oral administrations, food, drink, or other product;

9 (2) "Cannabis accessories" means any equipment, products, or materials of any kind
10 which are used, intended for use, or designed for use in planting, propagating, cultivating,
11 growing, harvesting, composting, manufacturing, compounding, converting, producing,
12 processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or
13 containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis into the human
14 body;

15 (3) "Cannabis cultivation facility" means an entity licensed to cultivate, prepare, and
16 package cannabis and sell cannabis to retail cannabis stores, to cannabis product manufacturing
17 facilities, and to other cannabis cultivation facilities, but not to consumers;

18 (4) "Cannabis establishment" means a cannabis cultivation facility, a cannabis testing
19 facility, a cannabis product manufacturing facility, or a retail cannabis store;

20 (5) "Cannabis market activity" means growing, harvesting, marketing, producing, or selling
21 cannabis for remuneration;

22 (6) "Cannabis product manufacturing facility" means an entity licensed to purchase

23 cannabis; manufacture, prepare, and package cannabis products; and sell cannabis and cannabis
24 products to other cannabis product manufacturing facilities and to retail cannabis stores, but not
25 to consumers;

26 (7) "Cannabis products" means concentrated cannabis products and cannabis products
27 that are comprised of cannabis and other ingredients and are intended for use or consumption,
28 such as, but not limited to, edible products, ointments, and tinctures;

29 (8) "Cannabis testing facility" means the Department of Agriculture or an entity contracted
30 to analyze and certify the safety and potency of cannabis;

31 (9) "Consumer" means a person 21 years of age or older who purchases cannabis or
32 cannabis products for personal use by persons 21 years of age or older, but not for resale to
33 others;

34 (10) "Department" means the Department of Commerce or its assigned or successor
35 agency;

36 (11) "Industrial hemp" means the plant of the genus cannabis and any part of such plant,
37 whether growing or not, as authorized pursuant to §19-12E-1 et seq., of this code;

38 (12) "Personal use" means possessing, manufacturing, transporting, consuming, or giving
39 away cannabis without remuneration;

40 (13) "Retail cannabis store" means an entity licensed to purchase cannabis from cannabis
41 cultivation facilities and cannabis products from cannabis product manufacturing facilities and to
42 sell cannabis and cannabis products to consumers; and

43 (13) "Secretary" means the Secretary of the Department of Commerce.

44 (14) "Unreasonably impracticable" means that the measures necessary to comply with the
45 requirements of this article to require such a high investment of risk, money, time, or any other
46 resource or asset that the operation of a cannabis establishment is not worthy of being carried
47 out in practice by a reasonably prudent businessperson.

§5B-8-4. Personal use of cannabis.

1 Notwithstanding any other provision of this code, the following acts are not unlawful and
2 may not be an offense under state law or be a basis for seizure or forfeiture of assets under state
3 law for persons 21 years of age or older:

4 (1) Possession of one ounce or less of dry leaf cannabis;

5 (2) Consumption and use of cannabis, including any form of derivatives of the plant, fibers,
6 oils, seeds, and includes providing another adult 21 years of age or older with up to one ounce
7 without remuneration: *Provided*, That this article does not permit consumption that is conducted
8 in a manner that endangers others: *Provided, however*, That state and local governments may
9 prohibit cannabis use on government owned property;

10 (3) Notwithstanding a municipal referendum pursuant to §5B-8-9 of this code,
11 manufacturing, displaying, purchasing, transporting and sales of up to one ounce of cannabis is
12 approved to persons 21 years or older in substantial compliance with the cannabis market activity
13 requirements of this code; or

14 (4) Assisting another person who is 21 years of age or older in any of the acts described
15 in this section.

§5B-8-5. Public Smoking of Marijuana Prohibited.

1 (a) No person shall smoke cannabis in a public place. Any person who violates this
2 prohibition shall be guilty of a misdemeanor and, may be fined not more than \$250.

3 (b) No person shall consume cannabis while operating or driving a motor vehicle, boat,
4 vessel, aircraft, or other motorized device used for transportation. Any person who operates a
5 vehicle in violation of this subsection shall be guilty of a traffic violation and may be fined: (1) Not
6 more than \$500 for a first offense; (2) not more than \$1,000 for a second and each subsequent
7 offense; or (3) have his or her driver's license suspended for up to six months, or both.

§5B-8-6. False Identification Prohibited.

1 (a) A person who is under 21 years of age shall not present or offer to a cannabis
2 establishment or the cannabis establishment's agent or employee any written or oral evidence of

3 age that is false, fraudulent, or not actually the minor's own, for the purpose of:

4 (1) Purchasing, attempting to purchase, or otherwise procuring or attempting to procure
5 cannabis; or

6 (2) Gaining access to a cannabis establishment.

7 (b) Any person who violates this section shall be guilty of a misdemeanor and, may be
8 fined not less than \$400 and not more than \$800.

§5B-8-7. Unlawful Cannabis Extraction Prohibited.

1 No person, other than a cannabis product manufacturer in compliance with this chapter
2 and department rules, shall perform solvent-based extractions on cannabis using solvents other
3 than water or vegetable glycerin. Any person who violates this section shall be guilty of a felony
4 and, shall be subject to imprisonment for not more than three years, a fine of up to \$5,000, or
5 both.

§5B-8-8. Lawful Operation of Cannabis-Related Facilities.

1 If undertaken by a person 21 years of age or older, the following acts shall not be illegal
2 under state law or be a basis for seizure or forfeiture of assets under state law:

3 (1) Possessing, displaying, or transporting cannabis or cannabis products; obtaining or
4 purchasing cannabis from a cannabis cultivation facility; delivering or transferring cannabis to a
5 cannabis testing facility; obtaining or purchasing cannabis or cannabis products from a cannabis
6 product manufacturing facility; or sale, delivery, or distribution of cannabis or cannabis products
7 to an adult who is 21 years of age or older or to retail cannabis stores, if the person conducting
8 the activities described in this paragraph has obtained a current, valid registration to operate a
9 retail cannabis store or is acting in his or her capacity as an owner, employee, or agent of a
10 registered retail cannabis store;

11 (2) Cultivating, harvesting, processing, packaging, transporting, displaying, or possessing
12 cannabis; obtaining or purchasing cannabis seeds or seedlings or immature cannabis plants from
13 any adult 21 years of age or older; delivery or transfer of cannabis to a cannabis testing facility;

14 selling or transferring cannabis that has not been processed into extracts, concentrates, or other
15 preparations to a cannabis cultivation facility, a cannabis product manufacturing facility, or a retail
16 cannabis store; or obtaining or purchasing cannabis from a cannabis cultivation facility, if the
17 person conducting the activities described in this paragraph has obtained a current, valid
18 registration to operate a cannabis cultivation facility or is acting in his or her capacity as an owner,
19 employee, or agent of a registered cannabis cultivation facility;

20 (3) Packaging, processing, transporting, manufacturing, displaying, or possessing
21 cannabis or cannabis products; delivery or transfer of cannabis or cannabis products to a
22 cannabis testing facility; selling cannabis or cannabis products to a retail cannabis store or a
23 cannabis product manufacturing facility; purchasing or obtaining cannabis from a cannabis
24 cultivation facility; or purchasing or obtaining cannabis or cannabis products from a cannabis
25 product manufacturing facility, if the person conducting the activities described in this paragraph
26 has obtained a current, valid registration to operate a cannabis product manufacturing facility or
27 is acting in his or her capacity as an owner, employee, or agent of a registered cannabis product
28 manufacturing facility;

29 (4) Possessing, obtaining, cultivating, processing, storing, transporting, receiving, or
30 displaying cannabis or cannabis products if the person has obtained a current, valid registration
31 to operate a cannabis testing facility or is acting in his or her capacity as an owner, employee, or
32 agent of a registered cannabis testing facility;

33 (5) Leasing or otherwise allowing the use of property owned, occupied, or controlled by
34 any person, corporation, or other entity for any of the activities conducted lawfully in accordance
35 with this section; or

36 (6) Obtaining or purchasing cannabis from a cannabis cultivation facility; delivering or
37 transferring cannabis to a cannabis testing facility; or obtaining or purchasing cannabis or
38 cannabis products from a cannabis product manufacturing facility if the person conducting the
39 activities described in this paragraph possesses a valid registration to operate an alternative

40 treatment center or is acting in his or her capacity as an owner, employee, or agent of a registered
41 alternative treatment center.

§5B-8-9. Enactment of Municipal Ordinances.

1 A municipality may enact an ordinance prohibiting or limiting the number and type of
2 marijuana establishments that may be permitted within the municipality, and regulating the time,
3 place, and manner of operation of a marijuana establishment which is permitted within the
4 municipality. A municipality may enact an ordinance specifying the entity within the municipality
5 that shall be responsible for reviewing applications submitted for a registration to operate a
6 marijuana establishment within the municipality. The entity designated by the municipality shall
7 be responsible for indicating whether the application is in compliance with local ordinances.

§5B-8-10. Lawful operation of cannabis market activity and related facilities; diversity
licensing goals.

1 (a) Pursuant to the permit restrictions and the regulations as authorized and required
2 pursuant to this article, it shall be lawful to:

3 (1) Manufacture, possess, or purchase cannabis, cannabis products and accessories or
4 sell cannabis products and accessories to a person who is 21 years of age or older;

5 (2) Possess, display, or transport cannabis or cannabis products; purchase cannabis from
6 a cannabis cultivation facility; purchase cannabis or cannabis products from a cannabis product
7 manufacturing facility; or sell cannabis or cannabis products to consumers, if the person
8 conducting the activities described in this section has obtained a current, valid, permit, certification
9 or other appropriate license to operate a retail cannabis store or is acting in his or her capacity as
10 an owner, employee or agent of a licensed retail cannabis store;

11 (3) Cultivate, harvest, process, package, transport, display, or possess cannabis; deliver
12 or transfer of cannabis to a cannabis testing facility; sell cannabis to a cannabis cultivation facility,
13 a cannabis product manufacturing facility, or a retail cannabis store; or purchase cannabis from
14 a cannabis cultivation facility, if the person conducting the activities described in this section has

15 obtained a current, valid license to operate a cannabis cultivation facility or is acting in his or her
16 capacity as an owner, employee, or agent of a licensed cannabis cultivation facility;

17 (4) Package, process, transport, manufacture, display, or possess cannabis or cannabis
18 products; deliver or transfer of cannabis or cannabis products to a cannabis testing facility; sell
19 cannabis or cannabis products to a retail cannabis store or a cannabis product manufacturing
20 facility; purchase cannabis from a cannabis cultivation facility; or purchase cannabis or cannabis
21 products from a cannabis product manufacturing facility, if the person conducting the activities
22 described in this section has obtained a current, valid license to operate a cannabis product
23 manufacturing facility or is acting in his or her capacity as an owner, employee, or agent of a
24 licensed cannabis product manufacturing facility;

25 (5) Posses, cultivate, process, repackage, store, transport, display, transfer or deliver
26 cannabis or cannabis products if the person has obtained a current, valid license to operate a
27 cannabis testing facility or is acting in his or her capacity as an owner, employee, or agent of a
28 licensed cannabis testing facility; or

29 (6) Leasing or otherwise allowing the use of property owned, occupied or controlled by
30 any person, corporation or other entity for any of the activities conducted lawfully in accordance
31 with this section.

32 (b) In municipalities that have rejected the referendum to allow commercial cannabis
33 activity, it shall none-the-less be lawful for the residents of those municipalities to posses up to
34 one ounce of dry leaf and flowering cannabis, manufacture, transport, and use personal cannabis
35 in any form, and may give away without remuneration up to one ounce of cannabis to an adult
36 over the age of 21.

37 (c) No person in substantial compliance with the provisions of this article may be subjected
38 to, nor may any lawful act engaged in pursuant to this article be considered an offense under
39 state law or be a basis for the seizure or forfeiture of assets, including pursuant to the provisions
40 of §60A-7-1 et seq. of this code.

41 (d) The department shall adopt diversity licensing goals that provide meaningful
42 participation of communities disproportionately affected by cannabis prohibition and enforcement,
43 including minority business enterprises, women business enterprises, and veteran business
44 enterprises. The department may consult or designate authority to another governmental entity
45 to create training programs designed and implemented to achieve meaningful participation by
46 minority persons, women, and veterans. These programs shall include, but not be limited to: (i)
47 Recruitment of minority-owned, women-owned, or veteran-owned business enterprises to
48 become licensed in cannabis-related business; (ii) development of workforce training for
49 minorities, women, and veterans to enter into cannabis-related businesses; (iii) creation of
50 employer training to attract minorities, women, and veterans into the workforce; and (iv) outreach
51 to disadvantaged groups, including consultations with state agencies and providing education and
52 training opportunities. The department shall prepare an annual report including, but not limited
53 to: (i) Total number of license cannabis retailers or businesses engaged in cannabis market
54 activity; (ii) number and percentage of licenses provided to minority, women, and veteran owned
55 businesses; (iii) total number and percentage of minority, women, and veteran employees in the
56 cannabis industry; and (iv) recommendations on reducing or eliminating any identified barriers to
57 entry, including access to capital in the cannabis industry. The reports shall be submitted to the
58 Joint Committee on Government and Finance, the clerks of the House and Senate, and the
59 Governor.

§5B-8-11. Regulation of cannabis; rule-making authority.

1 (a) On or before June 1, 2019, the secretary shall promulgate legislative rules necessary
2 for implementation of the provisions of this article.

3 (b) Rules regulating cannabis market activity may not prohibit or restrict the growing,
4 manufacturing, transporting, possessing or use of cannabis by adults 21 years old or older, for
5 personal use without remuneration as authorized pursuant to the provisions of this article.

6 (c) Legislative rules providing for the regulation of cannabis market activity shall include

7 the permitting requirements for the operation of cannabis establishments, and shall include:

8 (1) Procedures for the issuance, renewal, suspension, and revocation of a license to
9 operate a cannabis establishment;

10 (2) A schedule of application, licensing and renewal fees: *Provided*, That application fees
11 may not exceed \$1,000, for farmers who are residents of this state growing less than 100
12 continuous acres, nor exceed \$10,000 for commercial market activity with production greater than
13 100 acres.

14 (3) Qualifications for licensure that are directly and demonstrably related to the operation
15 of a cannabis establishment;

16 (4) Security requirements for cannabis establishments;

17 (5) Requirements to prevent the sale or diversion of cannabis and cannabis products to
18 persons under the age of 21;

19 (6) Labeling requirements for cannabis and cannabis products sold or distributed by a
20 cannabis establishment;

21 (7) Health and safety regulations and standards for the cultivation and manufacture of
22 cannabis products;

23 (8) Restrictions on the advertising and display of cannabis and cannabis products; and

24 (9) Civil penalties for the failure to comply with rules made pursuant to this article.

25 (d) In order to ensure that individual privacy is protected, the department may not require
26 a consumer to provide a retail cannabis store with personal information other than government-
27 issued identification to determine the consumer's age, and a retail cannabis store may not be
28 required to acquire and record personal information about consumers other than information
29 typically acquired in a financial transaction conducted at a retail store.

30 (e) A municipality may enact ordinances, not in conflict with this state's law or with rules
31 enacted pursuant to this article, governing the times of operation, locations, manner, and number
32 of cannabis establishment operations.

33 (f) Each application for an annual license to operate a cannabis establishment shall be
34 submitted to the department. The department shall:

35 (1) Begin accepting and processing applications by October 1, 2019;

36 (2) Immediately forward a copy of each application and half of the license application fee
37 to the county and municipality pursuant to the provisions of this article, in which the applicant
38 desires to operate the cannabis establishment;

39 (3) Issue a license to an applicant no more than 90 days after receipt of an application
40 unless the department has not received the fee or is notified by the relevant municipality that the
41 applicant is not in compliance with applicable laws, rules and regulations at the time of application:

42 Provided, That where a municipality has enacted a numerical limit on the number of cannabis
43 establishments and a greater number of applicants seek licenses, the department shall solicit and
44 consider input from the municipality as to its' preference or preferences for licensure; and

45 (4) Upon denial of an application, notify the applicant in writing of the specific reason for
46 its denial and of the right to remedy any discrepancy or how to appeal the decision of the
47 department.

§5B-8-12. Safety Inserts and Warning Labels.

1 (a) A retail cannabis store shall include a safety insert designed by the Department of
2 Health and Human Resources with all cannabis and cannabis products sold to consumers.

3 (b) All cannabis and cannabis products sold by a retail cannabis store shall include
4 warning labels that provide the following information:

5 (1) "Warning: This product has intoxicating effects."

6 (2) "For use by adults 21 and older. Keep out of reach of children."

7 (c) All cannabis products sold by a retail cannabis store shall include:

8 (1) A warning label that provides, "Caution: When eaten or swallowed, the intoxicating
9 effects of this product may be delayed by two or more hours";

10 (2) A disclosure of ingredients and possible allergens;

11 (3) A nutritional fact panel; and

12 (4) Opaque, child-resistant packaging, which must be designed or constructed to be
13 significantly difficult for children under five years of age to open and not difficult for normal adults
14 to use properly.

§5B-8-13. Cannabis excise tax and sales tax; distribution.

1 (a) There shall be an excise tax to be levied upon cannabis sold or otherwise transferred
2 by a cannabis cultivation facility to a cannabis product manufacturing facility or to a retail cannabis
3 store at a rate of 17.5 percent of the sales price. The excise tax shall be deposited in the Cannabis
4 Transfer Tax Fund created in subsection (b) of this section and allocated pursuant to the
5 provisions of this section.

6 (b) There is hereby created a special fund in the State Treasury which shall be designated
7 and known as the "Cannabis Transfer Tax Fund." All revenues received from licensees pursuant
8 to this article shall be deposited with the State Treasurer and placed in the Cannabis Transfer
9 Tax Fund: *Provided*, That the department may deduct a portion of the funds to recover operating
10 costs associated with implementing the provisions of this article. The fund shall be an interest-
11 bearing account with interest to be credited to and deposited in the fund. The department shall
12 establish procedures for the collection of all taxes levied and may promulgate legislative rules,
13 pursuant to §29A-3-1 *et seq.*, of this code, necessary to administer collection and enforcement of
14 tax collections, on a monthly basis, and the amount in the Cannabis Transfer Tax Fund shall remit
15 funds to the following special revenue funds as follows:

16 (1) There is hereby created a special fund in the State Treasury designated and known as
17 the "Teacher Compensation and Public Employees Insurance Agency Fund" that shall be an
18 interest bearing account with interest credited and deposited into the fund, 25 percent of the
19 monthly revenue in the Cannabis Tax Transfer Fund shall be deposited into the Teacher
20 Compensation and Public Employees Insurance Agency Fund to be used for the specific
21 purposes of providing teachers in this state additional compensation and assisting public

22 employees maintain insurance and all moneys deposited into this fund remain within the fund and
23 are not transferred to the state's General Revenue Fund;

24 (2) There is hereby created a special fund in the State Treasury designated and known as
25 the "Best Virginia Infrastructure Fund" that shall be an interest-bearing account with interest
26 credited and deposited into the fund, 35 percent of the monthly revenue in the Cannabis Tax
27 Transfer Fund shall be deposited into the Best Virginia Infrastructure Fund for the specific
28 purposes of funding projects relating to infrastructure improvement such as roads, highways,
29 water and gas lines, and technology and all moneys deposited into this fund remain within the
30 fund and are not transferred to the state's General Revenue Fund;

31 (3) There is hereby created a special fund in the State Treasury designated and known as
32 the "Law-Enforcement and Community Fund" that shall be an interest-bearing account with all
33 interest credited and deposited into the fund, 15 percent of the monthly revenue in the Cannabis
34 Tax Transfer Fund shall be deposited into the Law-Enforcement and Community Fund for the
35 specific purposes of providing grants to law-enforcement agencies and low-income diminished or
36 impoverished communities to provide enhanced community services and all moneys deposited
37 into this fund shall remain within the fund and are not transferred to the state's General Revenue
38 Fund;

39 (4) There is hereby created a special fund in the State Treasury designated and known as
40 the "Entrepreneur and Small Business Fund" that shall be an interest-bearing account with all
41 interest credited and deposited into the fund, 15 percent of the monthly revenue in the Cannabis
42 Tax Transfer Fund shall be deposited into the Entrepreneur and Small Business Fund for the
43 specific purposes of providing grants or loans to entrepreneurs or small businesses: *Provided,*
44 That such loans be repaid, with interest at a favorable rate at or below that of the free market
45 interest rate. The State Treasurer shall transfer any amount over \$3 million at the end of each
46 fiscal year to the state's General Revenue Fund; and

47 (5) There is hereby created a special fund in the State Treasury designated and known as

48 the “Respect Your Elders Fund” that shall be an interest-bearing account with all interest credited
49 and deposited into the fund, 10 percent of the monthly revenue in the Cannabis Tax Transfer
50 Fund shall be deposited into the Respect Your Elders Fund for the purpose of aiding the public
51 employees retirement system by providing for cost-of-living adjustments, home repairs,
52 supplementing an emergency fund, and any other retirement purpose that is accessible by any
53 employee who has retired or reached the standard federal retirement age. The State Treasurer
54 shall transfer any amount over \$2 million at the end of each fiscal year to the state’s General
55 Revenue Fund.

56 (c) A local sales tax may be assessed on all cannabis derived products of six percent and
57 shall be collected at the point of sale by the licensed retail cannabis store. The municipality shall
58 receive all proceeds of the local sales tax within 30 days of collection.

59 (d) A municipality that has opted out of cannabis market activity pursuant to this article
60 may not receive any infrastructure money from the General Fund collected from the revenue
61 generated pursuant to this article.

§5B-8-14. Employers, driving, minors and control of property.

1 (a) Nothing in this article is intended to require an employer to permit or accommodate the
2 use, consumption, possession, transfer, display, transportation, sale or growing of cannabis in
3 the workplace or to affect the ability of employers to have policies restricting the use of cannabis
4 by employees.

5 (b) Nothing in this article is intended to allow driving under the influence of cannabis or
6 driving while impaired by cannabis or to supersede statutory laws related to driving under the
7 influence of cannabis or driving while impaired by cannabis, nor shall this article prevent the state
8 from enacting and imposing penalties for driving under the influence of or while impaired by
9 cannabis.

10 (c) Nothing in this article is intended to permit the transfer of cannabis, with or without
11 remuneration, to a person under the age of 21 or to allow a person under the age of 21 to

12 purchase, possess, use, transport, grow, or consume cannabis.

13 (d) Nothing in this article prohibits a person, employer, school, hospital, detention facility,
 14 corporation or any other entity who occupies, owns or controls a property from prohibiting or
 15 otherwise regulating the possession, consumption, use, display, transfer, distribution, sale,
 16 transportation, or growing of cannabis on or in that property.

§5B-8-15. Cannabis Establishments; Background Checks Required.

1 A cannabis establishment shall conduct a state and federal background check prior to
 2 making a final offer of employment to a prospective employee, agent, manager, or operator. No
 3 cannabis establishment shall employ any person who has been convicted of a violent offense. No
 4 person convicted of a violent offense shall serve in any capacity, or be affiliated in any manner,
 5 with a cannabis establishment.

§5B-8-16. Medical cannabis provisions unaffected.

6 Nothing in this article shall be construed to limit any privileges or rights of a medical
 7 cannabis patient, caregiver, or other lawfully authorize activity pursuant to the Medical Cannabis
 8 Act in §16A-1-1 et seq., of this code.

CHAPTER 16A. MEDICAL CANNABIS ACT.

ARTICLE 5. PATIENTS.

§16A-5-10. Prohibitions.

1 [Repealed.]

ARTICLE 15. MICELLANEOUS PROVISIONS.

§16A-15-4. Protections for patients and caregivers.

1 (a) *Licensure.* — None of the following shall be subject to arrest, prosecution or penalty in
 2 any manner, or denied any right or privilege, including civil penalty or disciplinary action by a state
 3 licensing board or commission, solely for lawful use of medical cannabis or manufacture or sale
 4 or dispensing of medical cannabis, or for any other action taken in accordance with this act:

5 (1) A patient;
6 (2) A caregiver;
7 (3) A practitioner;
8 (4) A medical cannabis organization;
9 (5) A health care medical cannabis organization or university participating in a research
10 study under article 13 of this chapter;

11 (6) A clinical registrant or academic clinical research center under article 14 of this chapter;

12 (7) An employee, principal or financial backer of a medical cannabis organization;

13 (8) An employee of a health care medical cannabis organization or an employee of a
14 university participating in a research study under article 13 of this chapter;

15 (9) An employee of a clinical registrant or an employee of an academic clinical research
16 center under article 14 of this chapter.

17 (b) *Employment.* —

18 (1) No employer may discharge, threaten, refuse to hire or otherwise discriminate or
19 retaliate against an employee regarding an employee's compensation, terms, conditions, location
20 or privileges solely on the basis of such employee's status as an individual who is certified to use
21 medical cannabis.

22 (2) Nothing in this act shall require an employer to make any accommodation of the use
23 of medical cannabis on the property or premises of any place of employment. This act shall in no
24 way limit an employer's ability to discipline an employee for being under the influence of medical
25 cannabis in the workplace or for working while under the influence of medical cannabis when the
26 employee's conduct falls below the standard of care normally accepted for that position.

27 (3) Nothing in this act shall require an employer to commit any act that would put the
28 employer or any person acting on its behalf in violation of federal law.

29 (4) A patient may not operate or be in physical control of any of the following while under
30 the influence with a blood content of more than three nanograms of active tetrahydro cannabis

31 per milliliter of blood in serum:

32 (A) Chemicals which require a permit issued by the Federal Government or a state
33 government or an agency of the Federal Government.

34 (B) High-voltage electricity or any other public utility.

35 (C) Vehicle, aircraft, train, boat or heavy machinery.

36 (5) A patient may not perform any employment duties at heights or in confined spaces,
37 including, but not limited to, mining while under the influence of medical cannabis.

38 (6) A patient may be prohibited by an employer from performing any task which the
39 employer deems life-threatening, to either the employee or any of the employees of the employer,
40 while under the influence of medical cannabis. The prohibition shall not be deemed an adverse
41 employment decision even if the prohibition results in financial harm for the patient.

42 (7) A patient may be prohibited by an employer from performing any duty which could
43 result in a public health or safety risk while under the influence of medical cannabis. The
44 prohibition shall not be deemed an adverse employment decision even if the prohibition results in
45 financial harm for the patient.

46 (8) Certified medical cannabis users are subject to all provisions of §21-3E-1 et seq. of
47 this code: *Provided*, That a positive drug test indicating the presence of cannabis may not be
48 grounds for an adverse employment action unless testing indicated that the nanograms of active
49 tetrahydro cannabis per milliliter of blood in serum or urine exceeds those levels prescribed by
50 the medical cannabis user's registered practitioner.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 7. WEST VIRGINIA CONTRABAND FORFEITURE ACT.

§60A-7-708. Limitations of the contraband forfeiture act; penalties for noncompliance.

1 (a) No person may be subject to the West Virginia Contraband Forfeiture Act, pursuant to
2 the provisions of this article or any other provision of this code, including that a person may not
3 have any rights infringed upon including those as granted by the Second Amendment to the

- 4 Constitution of the United States of America, where the person is in substantial compliance with
5 the provisions of chapter §16A-1-1 *et seq.*, or §5B-8-1 *et seq.*, of this code.
6 (b) A person subject to asset forfeiture in violation of this section shall be entitled to triple
7 damages, including for legal fees and court costs in any court in this state.

NOTE: The purpose of this bill is to legalize cannabis, provide for taxation of cannabis, and allow cannabis market activity as regulated by the Department of Commerce.

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