

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **House Bill 4436**

BY DELEGATE HORNBUCKLE

[Introduced on January 31, 2022;

referred to the Committee on Health and Human

Resources then the Judiciary then Finance]

1 A BILL to repeal §16A-5-10 of the Code of West Virginia, 1931, as amended; to amend said code  
2 by adding thereto a new article, designated §5B-11-1, §5B-11-2, §5B-11-3, §5B-11-4,  
3 §5B-11-5, §5B-11-6, §5B-11-7, §5B-11-8, §5B-11-9, §5B-11-10, §5B-11-11, §5B-11-12,  
4 §5B-11-13, §5B-11-14, §5B-11-15, and §5B-11-16; to amend and reenact §16A-15-4 of  
5 said code; and to amend said code by adding thereto a new section, designated §60A-7-  
6 709, all relating to decriminalizing cannabis; providing a short title; providing legislative  
7 purpose and findings; providing for definitions; permitting the possession of cannabis and  
8 cannabis products by adults; permitting production and adult use of cannabis; restricting  
9 public smoking of cannabis; prohibiting false identification to obtain cannabis; providing  
10 for the unlawful extraction of cannabis; providing for the lawful operation of a cannabis  
11 facility; permitting growing and possession of cannabis by adults; providing procedure for  
12 municipalities to enact an ordinance to permit cannabis production and sales; regulating  
13 market activity for the production, sales, transfer and transport of cannabis; establishing  
14 diversity licensing goals for minority, women, and veteran owned businesses; establishing  
15 mechanisms for permitting and licensing production and sales facilities by the Department  
16 of Commerce and localities; authorizing the department to promulgate rules, establish  
17 licensing and administrative penalties relating to the production, sales, transfer and  
18 transport cannabis in authorizing counties; authorizing the Department of Revenue to  
19 promulgate rules and administer tax collections; authorizing localities to regulate  
20 manufacturing and sales locations; providing for safety warning and inserts on cannabis  
21 products; authorizing a special excise tax on cannabis; creating a new fund and dedicating  
22 proceeds of the fund to additional funds; creating new funds for excise tax deposits;  
23 providing for a portion of tax collected benefit municipal governments where market  
24 activity occurs; providing current laws relating to employment, vehicle operation, underage  
25 use or private property use preserved; providing for background checks to employ anyone  
26 in a cannabis establishment; establishing certain conditions for employees to pass

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

*Be it enacted by the Legislature of West Virginia:*

**CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

**ARTICLE 11. THE B.E.S.T. ACT.**

**§5B-11-1. Short title.**

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

**§5B-11-2. 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 person's criminal background history upon passage of this article.

**§5B-11-3. Definitions.**

1 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 (14) "Secretary" means the Secretary of the Department of Commerce.

44 (15) "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-11-4. 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-10-9 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-11-5. 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-11-6. 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-11-7. 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, upon conviction thereof, shall be imprisoned in a state correctional facility for not more than  
5 three years, fined up to \$5,000, or both fined and imprisoned.

**§5B-11-8. 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-11-9. 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-11-10. 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 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 to:  
53 (i) Total number of license cannabis retailers or businesses engaged in cannabis market activity;  
54 (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-11-11. Regulation of cannabis; rule-making authority.**

1 (a) On or before June 1, 2021, 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, 2021;

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-11-12. 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-11-13. 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-11-14. 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-11-15. 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-11-16. Medical cannabis provisions unaffected.**

1 Nothing in this article shall be construed to limit any privileges or rights of a medical  
 2 cannabis patient, caregiver, or other lawfully authorize activity pursuant to the Medical Cannabis  
 3 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-7-709. 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-10-1 *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.