

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2091

FISCAL
NOTE

By Delegate Walker

[Introduced January 11, 2023; Referred to the
Committee on Health and Human Resources then the
Judiciary then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §16A-17-1, §16A-17-2, §16A-17-3, §16A-17-4, §16A-17-5, and §16A-17-6, all
 3 relating to the decriminalization and legalization of cannabis; providing for a legislative
 4 purpose and findings; defining certain terms; legalizing the possession of one ounce or
 5 less of cannabis and cannabis products by adults; authorizing a special excise tax on
 6 cannabis; creating a new fund and dedicating proceeds of the fund, including funding for
 7 PEIA, for orphan roads, and for the Herbert Henderson Office of Minority Affairs; providing
 8 current laws relating to employment, vehicle operation, underage use or private property
 9 use preserved; and that the operation of this article is not intended to alter the West Virginia
 10 Medical Cannabis Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. LEGAL ADULT CONSUMPTION OF CANNABIS.

§16A-17-1. Purpose and findings.

1 (a) In the interest of the efficient use of law-enforcement resources, enhancing revenue for
 2 public purposes, and individual freedom, the Legislature finds and declares that the use of
 3 cannabis should be legal for persons 21 years of age or older.

4 (b) In the interest of the health and public safety of our citizenry, the Legislature further
 5 finds and declares that cannabis should be regulated in a manner similar to alcohol so that:

6 (1) Individuals will have to show proof of age before purchasing cannabis;

7 (2) Selling, distributing, or transferring cannabis to minors and other individuals under the
 8 age of 21 remains illegal;

9 (3) Driving under the influence of cannabis remains illegal;

10 (4) Legitimate, taxpaying businesspeople, and not criminal actors, will conduct sales of
 11 cannabis; and

12 (5) Cannabis sold in this state will be labeled and subject to additional regulations to
 13 ensure that consumers are informed and protected.

14 (c) The Legislature finds and declares that it is necessary to ensure consistency and
15 fairness in the application of this article throughout the state and that the matters addressed by this
16 article are, except as specified herein, matters of statewide concern.

§16A-17-2.

Definitions.

1 As used in this article, unless the context otherwise requires,

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

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

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

17 "Cannabis establishment" means a cannabis cultivation facility, a cannabis testing facility,
18 a cannabis product manufacturing facility, or a retail cannabis store;

19 "Cannabis product manufacturing facility" means an entity licensed to purchase cannabis;
20 manufacture, prepare, and package cannabis products; and sell cannabis and cannabis products
21 to other cannabis product manufacturing facilities and to retail cannabis stores, but not to
22 consumers;

23 "Cannabis products" means concentrated cannabis products and cannabis products that
24 are comprised of cannabis and other ingredients and are intended for use or consumption, such
25 as, but not limited to, edible products, ointments, and tinctures;

26 "Cannabis testing facility" means an entity licensed to analyze and certify the safety and
27 potency of cannabis;

28 "Consumer" means a person 21 years of age or older who purchases cannabis or
29 cannabis products for personal use by persons 21 years of age or older, but not for resale to
30 others;

31 "Industrial hemp" means the plant of the genus cannabis and any part of such plant,
32 whether growing or not, as authorized pursuant to §19-12D-1 et seq. of this code;

33 "Retail cannabis store" means an entity licensed to purchase cannabis from cannabis
34 cultivation facilities and cannabis and cannabis products from cannabis product manufacturing
35 facilities and to sell cannabis and cannabis products to consumers; and

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

§16A-17-3. Personal use of cannabis.

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

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

5 (2) Consumption of cannabis: *Provided*, That this article does not permit consumption that
6 is conducted openly and publicly or in a manner that endangers others, and for state and local
7 governments to prohibit use on government owned property;

8 (3) Assisting another person who is 21 years of age or older in any of the acts described in

9 this section.

§16A-17-4. Cannabis excise tax and sales tax; distribution of funds.

1 (a) There shall be an excise tax to be levied upon cannabis sold or otherwise transferred by
2 a cannabis cultivation facility to a cannabis product manufacturing facility or to a retail cannabis
3 store at a rate of 15 percent of the sales price. The excise tax shall be deposited in the Cannabis
4 Transfer Tax Fund created in this section and allocated pursuant to the provisions of this section.

5 (b) There is created a special fund in the State Treasury which shall be designated and
6 known as the "Cannabis Transfer Tax Fund." All revenues received from licensees pursuant to
7 §16A-17-7(a) of this code shall be deposited with the State Treasurer and placed in the Cannabis
8 Transfer Tax Fund. The fund shall be an interest-bearing account with interest to be credited to and
9 deposited in the fund. The department shall establish procedures for the collection of all taxes
10 levied and may promulgate legislative rules, pursuant to §29A-3-1 et seq. of this code, necessary
11 to administer collection and enforcement of tax collections, on a monthly basis, as follows:

12 (1) Fifty percent of the revenue shall be deposited into the Public Employees Insurance
13 Agency (PEIA) Stability Fund and expended pursuant to §11B-2-32 of this code;

14 (2) The remaining fifty percent of the revenue shall be used for the following:

15 (A) For improvement of West Virginia infrastructure and infrastructure projects, including
16 but not limited to childcare assistance;

17 (B) To create a program to assist with orphan roads throughout the state that shall be given
18 assistance from the West Virginia Division of Highways (WVDOH) every 5 years;

19 (C) To increase the budget for Hebert Henderson of Minority Affairs to an additional
20 \$100,000 per year; and

21 (D) To add a budget line item for the Minority Office of Health to \$250,000 for every year.

§16A-17-5. 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 the

3 workplace or to affect the ability of employers to have policies restricting the use of cannabis by
4 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.

§16A-17-6. Medical cannabis provisions unaffected.

1 Nothing in this article:

2 (1) Limits any privileges or rights of a medical cannabis patient, primary caregiver, or
3 licensed entity as provided by this chapter;

4 (2) Permits a medical cannabis center to distribute cannabis to a person who is not a
5 medical cannabis patient;

6 (3) Permits a medical cannabis center licensed pursuant to this article to operate on the
7 same premises as a retail cannabis store; or

8 (4) Discharges the bureau or the department or the from their statutory and constitutional
9 duties to regulate medical cannabis pursuant to this chapter.

NOTE: The purpose of this bill is to legalize the personal use and possession of cannabis by adults. The bill provides for a legislative purpose and findings. The bill defines certain terms. The bill legalizes the possession of one ounce or less of cannabis and cannabis

products by adults. The bill authorizes a special excise tax on cannabis. The bill creates a new fund and dedicates proceeds of the fund, including funding for PEIA, for orphan roads, and for the Herbert Henderson Office of Minority Affairs. The bill provides that current laws relating to employment, vehicle operation, underage use or private property use are preserved. Finally, the bill is not intended to alter the West Virginia Medical Cannabis Act.

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