

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 2238**

By Delegate Pushkin

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

1 A BILL to amend and reenact §16A-3-2 and §16A-3-3 of the Code of West Virginia, 1931, as  
 2 amended; and to amend said code by adding thereto a new section, designated §16A-5-  
 3 11, all relating to the cultivation of medical cannabis; allowing patients and their caregivers  
 4 to cultivate medical cannabis for patients' personal consumption.

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

**ARTICLE 3. MEDICAL CANNABIS PROGRAM.**

**§16A-3-2. Lawful use of medical cannabis.**

1 (a) Notwithstanding any provision of law to the contrary, the use or possession of medical  
 2 cannabis as set forth in this act is lawful within this state, subject to the following conditions:

3 (1) Medical cannabis may only be dispensed to:

4 (A) a patient who receives a certification from a practitioner and is in possession of a valid  
 5 identification card issued by the bureau; and

6 (B) a caregiver who is in possession of a valid identification card issued by the bureau.

7 (2) Subject to rules promulgated under this act, medical cannabis may only be dispensed  
 8 to a patient or caregiver in the following forms:

9 (A) Pill;

10 (B) Oil;

11 (C) Topical forms, including gels, creams, or ointments;

12 (D) A form medically appropriate for administration by vaporization or nebulization;  
 13 ~~excluding dry leaf or plant form until dry leaf or plant forms become acceptable under rules~~  
 14 ~~adopted by the bureau~~

15 (E) Tincture;

16 (F) Liquid; or

17 (G) Dermal patch;

18 (H) Dry leaf; or

19 (I) Plant form.

20 ~~(3) Unless otherwise provided in rules adopted by the bureau under section two, article~~  
 21 ~~eleven of this chapter, medical cannabis may not be dispensed to a patient or a caregiver in dry~~  
 22 ~~leaf or plant form~~

23 (4) ~~(3)~~ An individual may not act as a caregiver for more than five patients.

24 ~~(5)~~ (4) A patient may designate up to two caregivers at any one time.

25 ~~(6)~~ (5) Medical cannabis that has not been used by the patient shall be kept in the original  
 26 package in which it was dispensed.

27 ~~(7)~~ (6) A patient or caregiver shall possess an identification card whenever the patient or  
 28 caregiver is in possession of medical cannabis.

29 ~~(8)~~ (7) Products packaged by a grower/processor or sold by a dispensary shall only be  
 30 identified by the name of the grower/processor, the name of the dispensary, the form and species  
 31 of medical cannabis, the percentage of tetrahydrocannabinol and cannabitol contained in the  
 32 product.

**§16A-3-3. Unlawful use of medical cannabis.**

1 (a) Except as provided in §16A-3-2, §16A-7-4, §16A-13-1 et seq., or §16A-14-1 et seq. of  
 2 this code, the use of medical cannabis is unlawful and shall, in addition to any other penalty  
 3 provided by law, be ~~deemed~~ considered a violation of the Uniform Controlled Substances Act  
 4 under chapter 60A of this code.

5 (b) It ~~shall be~~ is unlawful to:

6 ~~(1) Smoke medical cannabis~~

7 ~~(2)~~ (1) Except as provided under subsection (c) of this section, incorporate medical  
 8 cannabis into edible form or sell in edible form.

9 ~~(3)~~ (2) Grow medical cannabis for commercial purposes unless the grower/processor has  
 10 received a permit from the bureau under this act.

11 ~~(4)~~ (3) Grow or Dispense medical cannabis unless authorized as a health care medical  
 12 cannabis organization under §16A-13-1 et seq. of this code.

13           ~~(5)~~ (4) Dispense medical cannabis unless the dispensary has received a permit from the  
14 bureau under this act.

15           (c) *Edible medical cannabis*. — Nothing in this act shall may be construed to preclude the  
16 incorporation of medical cannabis into edible form by a patient or a caregiver in order to aid  
17 ingestion of the medical cannabis by the patient.

**ARTICLE 5. PATIENTS.**

**§16A-5-11. Growth and cultivation for personal consumption.**

1           Notwithstanding any provision of law to the contrary, a patient who receives certification  
2 from a practitioner and is in possession of a valid identification card issued by the bureau or a  
3 caregiver who is in possession of a valid identification card issued by the bureau may grow  
4 medical cannabis in its plant form: *Provided*, That the medical cannabis may only be used by the  
5 patient in accordance with certification from a certifying physician: *Provided, however*, That the  
6 patient or caregiver may not grow more than 10 cannabis plants, no more than five of which may  
7 be mature, flowering plants.

NOTE: The purpose of this bill is to permit qualifying patients to grow and cultivate up to 10 cannabis plants for their own use with no more than five reaching maturity simultaneously.

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