

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5488**

By Delegates Howell, Willis, Fehrenbacher, Kump,

Martin, Horst, Petitto, and Campbell

[Introduced February 06, 2024; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §16A-5-1 of the Code of West Virginia, 1931, as amended; to amend  
 2 and reenact §16A-8-3 of said Code; and to amend and reenact §61-7-7 of said Code, all  
 3 relating to giving notice to medical marijuana patients of the Gun Control Act of 1968's  
 4 prohibition against users of controlled substances, specifically marijuana, from shipping,  
 5 transporting, receiving, or possessing a firearm or ammunition.

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

**CHAPTER 16A. MEDICAL CANNABIS ACT.**

**ARTICLE 5. PATIENTS.**

**§16A-5-1. Identification cards.**

1 (a) *Issuance.* — The bureau may issue an identification card to a patient who has a  
 2 certification approved by the bureau and to a caregiver designated by the patient. An identification  
 3 card issued to a patient shall authorize the patient to obtain and use medical cannabis as  
 4 authorized by this act. An identification card issued to a caregiver shall authorize the caregiver to  
 5 obtain medical cannabis on behalf of the patient.

6 (b) *Procedure for issuance.* — The bureau shall develop and implement procedures for:

- 7 (1) Review and approval of applications for identification cards.
- 8 (2) Issuance of identification cards to patients and caregivers.
- 9 (3) Review of the certification submitted by the practitioner and the patient.

10 (c) *Application.* — A patient or a caregiver may apply, in a form and manner prescribed by  
 11 the bureau, for issuance or renewal of an identification card. A caregiver must submit a separate  
 12 application for issuance or renewal. Each application must include:

- 13 (1) The name, address and date of birth of the patient.
- 14 (2) The name, address and date of birth of a caregiver.
- 15 (3) The certification issued by the practitioner.
- 16 (4) The name, address and telephone number of the practitioner and documentation from

17 the practitioner that all of the requirements of subsection (a), section three, article four of this  
18 chapter have been met.

19 (5) A \$50 processing fee. The bureau may waive or reduce the fee if the applicant  
20 demonstrates financial hardship.

21 (6) The signature of the applicant and date signed, and a separate signature  
22 acknowledging that the qualifying patient or the patient's representative has read and understands  
23 the following notice:

24 (A) Each application for a registry identification card and each application for a card  
25 renewal must include a notice that:

26 (i) The Gun Control Act of 1968, 18 U.S.C. §922 prohibits any person who is an unlawful  
27 user of or addicted to any controlled substance, as defined by the Controlled Substances Act of  
28 1970, 21 U.S.C. §801, et seq. from shipping, transporting, receiving, or possessing a firearm or  
29 ammunition.

30 (ii) Until marijuana is legalized under federal law, an individual who is a current user of  
31 marijuana is, under federal law, an unlawful user of a controlled substance; and

32 (iii) Federal law does not exempt the use of marijuana for medicinal purposes.

33 (7) Other information required by the bureau.

34 (d) *Forms.* — Application and renewal forms shall be available on the bureau's publicly  
35 accessible Internet website. Forms will include the notice described in §16A-5-1(c)(6) on a  
36 separate page and require a separate signature acknowledging the requirements contained  
37 therein.

38 (e) *Expiration.* — An identification card of a patient or caregiver shall expire within one  
39 year from the date of issuance, upon the death of the patient, or as otherwise provided in this  
40 section.

41 (f) *Separate cards to be issued.* — The bureau shall issue separate identification cards for  
42 patients and caregivers as soon as reasonably practicable after receiving completed applications,

43 unless it determines that an application is incomplete or factually inaccurate, in which case it shall  
44 promptly notify the applicant.

45 (g) *Change in name or address.* — A patient or caregiver who has been issued an  
46 identification card shall notify the bureau within ten days of any change of name or address. In  
47 addition, the patient shall notify the bureau within ten days if the patient no longer has the serious  
48 medical condition noted on the certification.

49 (h) *Lost or defaced card.* — In the event of a lost, stolen, destroyed or illegible  
50 identification card, the patient or caregiver shall apply to the bureau within ten business days of  
51 discovery of the loss or defacement of the card for a replacement card. The application for a  
52 replacement card shall be on a form furnished by the bureau and accompanied by a \$25 fee. The  
53 bureau may establish higher fees for issuance of second and subsequent replacement  
54 identification cards. The bureau may waive or reduce the fee in cases of demonstrated financial  
55 hardship. The bureau shall issue a replacement identification card as soon as practicable. A  
56 patient or caregiver may not obtain medical cannabis until the bureau issues the replacement  
57 card.

**ARTICLE 8. DISPENSARIES.**

**§16A-8-3. Posting.**

1 A dispensary shall post a copy of its permit in a location within its facility in a manner that is  
2 easily observable by patients, caregivers, law enforcement officers and agents of the bureau.  
3 Additionally, the dispensary must post, in a conspicuous and easily observable location, the notice  
4 contained in §16A-5-1(c)(6) in a font that is easily readable from a distance and of no less than 48  
5 pt. \_\_\_\_\_ size.

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

**ARTICLE 7. DANGEROUS WEAPONS.**

**§61-7-7. Persons prohibited from shipping, transporting, receiving, or possessing**

**firearms; classifications; right of nonprohibited persons over twenty-one years of age to carry concealed deadly weapons; offenses and penalties; reinstatement of rights to possess; offenses; penalties.**

1 (a) Except as provided in this section, no person shall ship, receive, transport, or possess a  
2 firearm, as such is defined in section two of this article, who:

3 (1) Has been convicted in any court of a crime punishable by imprisonment for a term  
4 exceeding one year;

5 (2) Is habitually addicted to alcohol;

6 (3) Is an unlawful user of or habitually addicted to any controlled substance;

7 (4) Has been adjudicated to be mentally incompetent or who has been involuntarily  
8 committed to a mental institution pursuant to the provisions of §27-1-1 *et seq.* of this code or in  
9 similar law of another jurisdiction: *Provided*, That once an individual has been adjudicated as a  
10 mental defective or involuntarily committed to a mental institution, he or she shall be duly notified  
11 that they are to immediately surrender any firearms in their ownership or possession: *Provided*,  
12 *however*, That the mental hygiene commissioner or circuit judge shall first make a determination of  
13 the appropriate public or private individual or entity to act as conservator for the surrendered  
14 property;

15 (5) Is an alien illegally or unlawfully in the United States;

16 (6) Has been discharged from the armed forces under dishonorable conditions;

17 (7) Is subject to a domestic violence protective order that:

18 (A) Was issued after a hearing of which such person received actual notice and at which  
19 such person had an opportunity to participate;

20 (B) Restrains such person from harassing, stalking, or threatening an intimate partner of  
21 such person or child of such intimate partner or person, or engaging in other conduct that would  
22 place an intimate partner in reasonable fear of bodily injury to the partner or child; and

23 (C)(i) Includes a finding that such person represents a credible threat to the physical safety

24 of such intimate partner or child; or

25 (ii) By its terms explicitly prohibits the use, attempted use or threatened use of physical  
26 force against such intimate partner or child that would reasonably be expected to cause bodily  
27 injury; or

28 (8) Has been convicted of a misdemeanor offense of assault or battery either under the  
29 provisions of §61-2-28 of this code or the provisions of subsection (b) or (c) of §61-2-9 of this code  
30 or a federal or state statute with the same essential elements in which the victim was a current or  
31 former spouse, current or former sexual or intimate partner, person with whom the defendant has a  
32 child in common, person with whom the defendant cohabits or has cohabited, a parent or  
33 guardian, the defendant's child or ward or a member of the defendant's household at the time of  
34 the offense or has been convicted in any court of any jurisdiction of a comparable misdemeanor  
35 crime of domestic violence.

36 Any person who violates the provisions of this subsection shall be guilty of a misdemeanor  
37 and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in  
38 the county jail for not less than ninety days nor more than one year, or both.

39 (b) Notwithstanding the provisions of subsection (a) of this section, any person:

40 (1) Who has been convicted in this state or any other jurisdiction of a felony crime of  
41 violence against the person of another or of a felony sexual offense; or

42 (2) Who has been convicted in this state or any other jurisdiction of a felony controlled  
43 substance offense involving a Schedule I controlled substance ~~other than marijuana~~, a Schedule II  
44 or a Schedule III controlled substance as such are defined in §60A-2-204, §60A-2-205, and §60A-  
45 2-206 of this code and who possesses a firearm as such is defined in section two of this article  
46 shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional  
47 facility for not more than five years or fined not more than \$5,000, or both. The provisions of  
48 subsection (f) of this section shall not apply to persons convicted of offenses referred to in this  
49 subsection or to persons convicted of a violation of this subsection.

50           (3) The Gun Control Act of 1968, 18 U.S.C. §922 prohibits any person who is an unlawful  
51 user of or addicted to any controlled substance, as defined by the Controlled Substances Act of  
52 1970, 21 U.S.C. §801, et seq. from shipping, transporting, receiving, or possessing a firearm or  
53 ammunition.

54           (4) Until marijuana is legalized under federal law, an individual who is a current user of  
55 marijuana is, under federal law, an unlawful user of a controlled substance and federal law does  
56 not exempt the use of marijuana for medicinal purposes.

57           (c) Any person may carry a concealed deadly weapon without a license therefor who is:

58           (1) At least twenty-one years of age;

59           (2) A United States citizen or legal resident thereof;

60           (3) Not prohibited from possessing a firearm under the provisions of this section; and

61           (4) Not prohibited from possessing a firearm under the provisions of 18 U. S. C. §922(g) or

62 (n).

63           (d) As a separate and additional offense to the offense provided for in subsection (a) of this  
64 section, and in addition to any other offenses outlined in this code, and except as provided by  
65 subsection (e) of this section, any person prohibited by subsection (a) of this section from  
66 possessing a firearm who carries a concealed firearm is guilty of a felony and, upon conviction  
67 thereof, shall be confined in a state correctional facility for not more than three years or fined not  
68 more than \$5,000, or both.

69           (e) As a separate and additional offense to the offense described in subsection (b) of this  
70 section, and in addition to any other offenses outlined in this code, any person prohibited by  
71 subsection (b) of this section from possessing a firearm who carries a concealed firearm is guilty of  
72 a felony and, upon conviction thereof, shall be confined in a state correctional facility for not more  
73 than ten years or fined not more than \$10,000, or both.

74           (f) Any person prohibited from possessing a firearm by the provisions of subsection (a) of  
75 this section may petition the circuit court of the county in which he or she resides to regain the

76 ability to possess a firearm and if the court finds by clear and convincing evidence that the person  
77 is competent and capable of exercising the responsibility concomitant with the possession of a  
78 firearm, the court may enter an order allowing the person to possess a firearm if such possession  
79 would not violate any federal law: *Provided*, That a person prohibited from possessing a firearm by  
80 the provisions of subdivision (4), subsection (a) of this section may petition to regain the ability to  
81 possess a firearm in accordance with the provisions of §61-7A-5 of this code.

82 (g) Any person who has been convicted of an offense which disqualifies him or her from  
83 possessing a firearm by virtue of a criminal conviction whose conviction was expunged or set  
84 aside or who subsequent thereto receives an unconditional pardon for said offense shall not be  
85 prohibited from possessing a firearm by the provisions of the section.

NOTE: The purpose of this bill is to codify that The Gun Control Act of 1968 prohibits unlawful users of drugs and those addicted to controlled substances, specifically marijuana, may not ship, receive, or possess a firearm.

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