

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

**Introduced**

### **House Bill 2376**

**FISCAL  
NOTE**

BY DELEGATE HORNBUCKLE

[Introduced January 14, 2019; Referred  
to the Committee on Health and Human Resources  
then then Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §11-16A-1, §11-16A-2, §11-16A-3, §11-16A-4, §11-16A-5, §11-16A-6, §11-  
3 16A-7, §11-16A-8, §11-16A-9, §11-16A-10, §11-16A-11, §11-16A-12, §11-16A-13, §11-  
4 16A-14, §11-16A-15, §11-16A-16, §11-16A-17, §11-16A-18 and §11-16A-19, all relating  
5 to the legalization of marijuana; providing legislative findings; defining terms; allowing  
6 persons 21 years or older to use marijuana; authorizing personal cultivation in limited  
7 amounts; establishing prohibitions; establishing criminal penalties for underage sales,  
8 public consumption and use in a vehicle; requiring licensing for commercial growth and  
9 extraction; establishing requirements for sales and production establishments; allowing  
10 lawful possession, manufacture and sale of certain accessories; allowing commercial  
11 transport; prohibiting certain financial interests; requiring safety and warning labels for  
12 commercial sales; allowing local government to regulate and tax facilities; providing  
13 requirements for cultivation facilities; requiring certain state agencies to regulate and  
14 license various aspects of production, distribution and testing; establishing identification  
15 for purchase requirements; and providing that certain contracts are enforceable.

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

**ARTICLE 16A. LEGAL POSSESSION, MANUFACTURE AND SALE OF MARIJUANA.**

**§11-16A-1. Legislative Findings.**

1 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 marijuana should be legal for a  
4 person 21 years of age or older and taxed in a manner similar to alcohol. In the interest of the  
5 health and public safety of our citizenry, the Legislature further finds and declares that marijuana  
6 should be regulated in a manner similar to alcohol so that individuals will have to show proof of  
7 age before purchasing marijuana; selling, distributing, or transferring marijuana to minors and  
8 other individuals under the age of 21 shall remain illegal; driving under the influence of marijuana

9 shall remain illegal; legitimate, taxpaying business people, and not criminal actors, will conduct  
10 sales of marijuana; marijuana sold in this state will be tested, labeled, and subject to additional  
11 regulations to ensure that consumers are informed and protected; and in the interest of enacting  
12 rational policies for the treatment of all variations of the Cannabis plant, hemp should be regulated  
13 separately from strains of Cannabis with higher delta-9 tetrahydrocannabinol (THC)  
14 concentrations.

**§11-16A-2. Definitions.**

1 For the purposes of this article:

2 “Alternative treatment center” means a not-for-profit entity that acquires, possesses,  
3 cultivates, manufactures, delivers, transfers, transports, sells, supplies, and dispenses Cannabis,  
4 and related supplies and educational materials, to qualifying patients and alternative treatment  
5 centers.

6 “Consumer” means a person 21 years of age or older who purchases marijuana or  
7 marijuana products for personal use by a person 21 years of age or older, but not for resale.

8 “Department” means the State Tax Department;

9 “Disqualifying offense” means a violent crime that was classified as a felony in the  
10 jurisdiction in which the person was convicted; or a violation of a state or federal controlled  
11 substances law that was classified as a felony in the jurisdiction in which the person was  
12 convicted.

13 “Hemp” means the plant of the genus Cannabis and any part of such plant, whether  
14 growing or not, with a delta-9 tetrahydrocannabinol concentration that does not exceed three-  
15 tenths percent on a dry weight basis of any part of the plant Cannabis, or per volume or weight of  
16 the marijuana product, or the combined percent of delta-9 tetrahydrocannabinol and  
17 tetrahydrocannabinolic acid in any part of the plant Cannabis regardless of moisture content.

18 “Immature marijuana plant” means a marijuana plant that has not flowered and which  
19 does not have buds that may be observed by visual examination.

20 “Marijuana” means all parts of the plant of the genus Cannabis whether growing or not,  
21 the seeds thereof, the resin extracted from any part of the plant, and every compound,  
22 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including  
23 marijuana concentrate. “Marijuana” shall not include hemp, fiber produced from the stalks, oil, or  
24 cake made from the seeds of the plant, sterilized seed of the plant which is incapable of  
25 germination, or the weight of any other ingredient combined with marijuana to prepare topical or  
26 oral administrations, food, drink, or another product.

27 “Marijuana accessories” means any equipment, products, or materials of any kind which  
28 are used, intended for use, or designed for use in planting, propagating, cultivating, growing,  
29 harvesting, composting, manufacturing, compounding, converting, producing, processing,  
30 preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing  
31 marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

32 “Marijuana cultivation facility” means an entity registered to cultivate, prepare, and  
33 package marijuana, and sell marijuana to retail marijuana stores, to marijuana product  
34 manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers. A  
35 marijuana cultivation facility may not produce marijuana concentrates, tinctures, extracts, or other  
36 marijuana products.

37 “Marijuana establishment” means a marijuana cultivation facility, a marijuana testing  
38 facility, a marijuana product manufacturing facility, or a retail marijuana store.

39 “Marijuana product manufacturing facility” means an entity registered to purchase  
40 marijuana and to manufacture, prepare, and package marijuana products, and sell marijuana and  
41 marijuana products to other marijuana product manufacturing facilities and to retail marijuana  
42 stores, but not to consumers.

43 “Marijuana products” means concentrated marijuana products and marijuana products  
44 that are comprised of marijuana and other ingredients and are intended for use or consumption,  
45 such as, but not limited to, edible products, ointments, and tincture.

46 “Marijuana testing facility” means an entity registered to test marijuana for potency and  
47 contaminants.

48 “Public place” means any place to which the general public has access.

49 “Regulatory agency” means: (A) The Alcohol Beverage Control Commission, in the  
50 context of a retail marijuana store or a prospective retail marijuana store; (B) the Department of  
51 Agriculture, in the context of a marijuana cultivation facility or a prospective marijuana cultivation  
52 facility; or (C) the Department of Health and Human Resources, in the context of a marijuana  
53 testing facility, a prospective marijuana testing facility, a marijuana product manufacturing facility,  
54 or a prospective marijuana product manufacturing facility.

55 “Retail marijuana store” means an entity registered to purchase marijuana from marijuana  
56 cultivation facilities, to purchase marijuana and marijuana products from marijuana product  
57 manufacturing facilities, and to sell marijuana and marijuana products to consumers.

### **§11-16A-3. Personal Use of Marijuana.**

1 Except as otherwise provided in this article, the following acts, if undertaken by a person  
2 21 years of age or older, shall not be illegal under state law or the law of any political subdivision  
3 of the state or be a basis for seizure or forfeiture of assets under state law:

4 (1) Possessing, consuming, using, displaying, obtaining, purchasing, or transporting  
5 marijuana accessories, or marijuana in the amount of one ounce or less including up to five grams  
6 of hashish, and the equivalent amount in marijuana products;

7 (2) Possessing, growing, processing, or transporting no more than six marijuana plants,  
8 with three or fewer being mature, flowering plants, and possession of the marijuana produced by  
9 the plants on the premises where the plants were grown;

10 (3) Transferring one ounce or less of marijuana and up to six immature marijuana plants  
11 to a person who is 21 years of age or older without remuneration;

12 (4) Transferring or selling marijuana seeds or up to six marijuana seedlings to marijuana  
13 cultivation facilities;

- 14           (5) Transferring marijuana or marijuana products to a marijuana testing facility;
- 15           (6) Controlling property where the acts described by this section occur; or
- 16           (7) Assisting another person who is 21 years of age or older in any of the acts described
- 17 in this section.

**§11-16A-4. Restrictions on Personal Cultivation; Penalty.**

- 1           (a) No person who is 21 years of age or older shall cultivate marijuana plants except as
- 2 provided in this section.
- 3           (b) Marijuana plants shall not be cultivated in a location where the plants are subject to
- 4 public view without the use of binoculars, aircraft, or other optical aids.
- 5           (c) A person who cultivates marijuana shall take reasonable precautions to ensure the
- 6 plants are secure from access by a person under 21 years of age. Cultivating marijuana in an
- 7 enclosed, locked space to which unauthorized persons do not have access, or other similar
- 8 security precautions, shall be prima facie evidence of reasonable precautions.
- 9           (d) Marijuana cultivation shall only occur on property the cultivator legally owns, leases,
- 10 or controls, or with the consent of the person who legally owns, leases, or controls the property.
- 11           (e) Any person who violates this section shall be guilty of a misdemeanor and, may be
- 12 fined not more than \$1,000 for each offense.

**§11-16A-5. Public Smoking of Marijuana Prohibited.**

- 1           (a) No person shall smoke marijuana in a public place. Any person who violates this
- 2 prohibition shall be guilty of a misdemeanor and, may be fined not more than \$200.
- 3           (b) No person shall consume marijuana 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 not more
- 6 than \$500, or have his or her driver's license suspended for up to six months, or both.

**§11-16A-6. False Identification Prohibited.**

- 1           (a) A person who is under 21 years of age shall not present or offer to a marijuana

2 establishment or the marijuana establishment's agent or employee any written or oral evidence  
3 of 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 marijuana; or

6 (2) Gaining access to a marijuana 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.

**§11-16A-7. Unlawful Marijuana Extraction Prohibited.**

1 No person, other than a marijuana product manufacturer in compliance with this chapter  
2 and department rules, shall perform solvent-based extractions on marijuana 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.

**§11-16A-8. Lawful Operation of Marijuana-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 marijuana or marijuana products; obtaining or  
4 purchasing marijuana from a marijuana cultivation facility; delivering or transferring marijuana to  
5 a marijuana testing facility; obtaining or purchasing marijuana or marijuana products from a  
6 marijuana product manufacturing facility; or sale, delivery, or distribution of marijuana or  
7 marijuana products to an adult who is 21 years of age or older or to retail marijuana stores, if the  
8 person conducting the activities described in this paragraph has obtained a current, valid  
9 registration to operate a retail marijuana store or is acting in his or her capacity as an owner,  
10 employee, or agent of a registered retail marijuana store;

11 (2) Cultivating, harvesting, processing, packaging, transporting, displaying, or possessing  
12 marijuana; obtaining or purchasing marijuana seeds or seedlings or immature marijuana plants

13 from any adult 21 years of age or older; delivery or transfer of marijuana to a marijuana testing  
14 facility; selling or transferring marijuana that has not been processed into extracts, concentrates,  
15 or other preparations to a marijuana cultivation facility, a marijuana product manufacturing facility,  
16 or a retail marijuana store; or obtaining or purchasing marijuana from a marijuana cultivation  
17 facility, if the person conducting the activities described in this paragraph has obtained a current,  
18 valid registration to operate a marijuana cultivation facility or is acting in his or her capacity as an  
19 owner, employee, or agent of a registered marijuana cultivation facility;

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

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

**§11-16A-9. Marijuana Establishments; Background Checks Required.**

1 A marijuana 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 marijuana establishment shall employ any person who has been convicted of a disqualifying  
4 offense. No person convicted of a disqualifying offense shall serve in any capacity, or be affiliated  
5 in any manner, with a marijuana establishment.

**§11-16A-10. Marijuana Accessories Authorized.**

1 It shall not be illegal under state law or be a basis for seizure or forfeiture of assets under  
2 state law for a person 21 years of age or older to manufacture, possess, or purchase marijuana  
3 accessories, or to distribute or sell marijuana accessories to a person who is 21 years of age or  
4 older. A person who is 21 years of age or older is authorized to manufacture, possess, obtain,  
5 and purchase marijuana accessories, and may distribute, deliver, or sell marijuana accessories  
6 to a person who is 21 years of age or older.

**§11-16A-11. Common Carriers.**

1 (a) No common carrier or other person acting in a capacity as an employee or agent of a  
2 common carrier shall be subject to state prosecution, including civil penalty or disciplinary action  
3 by a court, business licensing board, or entity, or be denied a right or privilege, for transporting or  
4 possessing marijuana or marijuana products from one marijuana establishment to another, from  
5 a marijuana establishment to an alternative treatment center, or from a retail marijuana store or  
6 alternative treatment center to consumers.

7 (b) No common carrier or other person, acting in a capacity as an employee or agent of a  
8 common carrier, shall be subject to state prosecution, including civil penalty or disciplinary action  
9 by a court, business licensing board, or entity, or be denied a right or privilege, for transporting or

10 possessing marijuana seeds.

**§11-16A-12. Financial Interests Prohibited.**

1 (a) No marijuana testing facility or owner of a marijuana testing facility may have a direct  
2 or indirect financial interest in a marijuana retail store, a marijuana cultivation facility, or a  
3 marijuana product manufacturing facility.

4 (b) No marijuana establishment shall operate, nor shall a prospective marijuana  
5 establishment apply for a registration, if it would be located within 1,000 feet of the property line  
6 of a preexisting public or private school, or a location that sells alcohol for consumption.

**§11-16A-13. Safety Inserts and Warning Labels.**

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

3 (b) All marijuana and marijuana products sold by a retail marijuana 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 marijuana products sold by a retail marijuana 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.

**§11-16A-14. 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.

**§11-16A-15. Regulation of Marijuana.**

1 (a) Not later than June 1, 2020, the department shall propose legislative rules pursuant to  
2 §29A-3-1 et seq. of this code for the registration, regulation, and taxation of marijuana cultivation  
3 facilities. The rules shall include, at a minimum, the following:

4 (1) Procedures for the issuance, denial, renewal, suspension, and revocation of a  
5 registration for a marijuana cultivation facility;

6 (2) A \$250 application fee for a marijuana cultivation facility, which shall be renewable  
7 every two years, and a \$250 renewal fee;

8 (3) Qualifications for registration or renewal that are directly related to the applicant being  
9 able to collect and pay taxes in a timely fashion, including demonstrating that the applicant is in  
10 good standing for any professional or business registrations, and, setting standards for the  
11 applicant's criminal history and providing for a criminal background check, provided applicants  
12 may only apply if they have already been previously issued a marijuana cultivation facility  
13 registration by the Department of Agriculture, markets, and food;

14 (4) Procedures to collect taxes from a marijuana cultivation facility;

15 (5) Record keeping requirements for a marijuana cultivation facility;

16 (6) Requirements for the transportation of marijuana by a marijuana cultivation facility,  
17 including documentation that shall accompany any marijuana being transported by marijuana  
18 cultivation facilities;

19 (7) A schedule of civil fines for violations of this chapter and department of tax  
20 administration rules; and

21 (8) Procedures for hearings on civil fines and suspensions and revocations of a marijuana  
22 cultivation facility's registration.

23 (b) No later than June 1, 2020, the Department of Agriculture shall propose legislative  
24 rules, pursuant to §29A-3-1 et seq. of this code, for the registration and regulation of marijuana  
25 cultivation facilities. The rules shall include, at a minimum, the following:

26 (1) Procedures for the issuance, denial, annual renewal, suspension, and revocation of a  
27 cultivation registration to operate a marijuana cultivation facility;

28 (2) A schedule of civil fines for violations of department rules by a marijuana cultivation  
29 facility;

30 (3) Procedures for hearings on civil fines, suspension, and revocation of a marijuana  
31 cultivation facility registration; and

32 (4) A schedule of application, registration, and annual renewal fees: *Provided*, That the  
33 nonrefundable portion of application fees shall not exceed \$1,000, adjusted annually for inflation;

34 (5) Qualifications for registration that are directly and demonstrably related to the operation  
35 of a marijuana cultivation facility;

36 (6) Security requirements for a marijuana cultivation facility, including:

37 (A) Video surveillance requirements;

38 (B) Requirements that marijuana be cultivated in secure locations that are registered with  
39 the Department of Agriculture; and

40 (C) Lighting, alarm, and physical security requirements;

41 (7) Establishing the number of marijuana cultivation facility registrations that will be issued:

42 *Provided*, That unless the number of qualified marijuana cultivation facility applicants is fewer than  
43 20, the number of marijuana cultivation facility registrations may not be fewer than 20. If the  
44 number of qualified applicants is fewer than 20, each qualified applicant shall be granted  
45 registration;

46 (8) Health and safety rules for the cultivation of marijuana, including the packaging and

47 preparing of marijuana, seeding, and restricting the use of pesticides that may be dangerous to  
48 marijuana consumers;

49 (9) Restrictions on the advertising, signage, marketing, and display of marijuana,  
50 including, but not limited to, a prohibition on mass-market campaigns that have a high likelihood  
51 of reaching minors, and any other restrictions to prevent marijuana from being marketed to  
52 minors; and

53 (10) Restrictions on where a marijuana cultivation facility may be located, consistent with  
54 the provisions of this chapter.

55 (c) No later than September 1, 2020, the Alcohol Beverage Control Commission shall  
56 propose legislative rules, pursuant to §29A-3-1 et seq. of this code for the registration and  
57 regulation of retail marijuana stores. The rules shall include the following:

58 (1) Procedures for the issuance, denial, annual renewal, suspension, and revocation of a  
59 registration to operate a retail marijuana store;

60 (2) A schedule of application, registration, and renewal fees: *Provided, That the*  
61 nonrefundable portion of any application fees shall not exceed \$1,000, adjusted annually for  
62 inflation;

63 (3) Qualifications for registration that are directly and demonstrably related to the operation  
64 of a retail marijuana store;

65 (4) Security requirements for retail marijuana stores, including lighting, physical security,  
66 video, and alarm requirements;

67 (5) Establishing the number of retail marijuana store registrations that will be issued:  
68 *Provided, That:*

69 (A) The number of retail marijuana stores shall be no fewer than one retail marijuana store  
70 for every 10 retail liquor stores, except that the number may be reduced by an amount that is  
71 proportionate to the population of any municipality that does not allow retail marijuana stores  
72 within its borders or that limits the number of retail marijuana stores within its borders. The number

73 may also be reduced if there are not a sufficient number of qualified applicants for retail marijuana  
74 store registration; and

75 (B) The liquor commission may establish the number of retail marijuana stores allowed in  
76 each county or municipality that has not prohibited retail marijuana stores or established a lower  
77 numerical limit on retail marijuana stores pursuant to this chapter.

78 (6) A schedule of civil fines for violations of the liquor commission rules by a retail  
79 marijuana store;

80 (7) Procedures for hearings on civil fines, suspensions, and revocations of a retail  
81 marijuana store registration;

82 (8) Restrictions on the advertising, signage, marketing and display of marijuana, including,  
83 but not limited to, a prohibition on mass-market campaigns that have a high likelihood of reaching  
84 minors, and any other restrictions to prevent marijuana from being marketed to minors;

85 (9) Restrictions on where a retail marijuana store may be located, consistent with the  
86 provisions of this chapter;

87 (10) Restrictions on the hours of sale when a retail marijuana store may sell marijuana  
88 and marijuana products, provided the regulations shall not allow retailers to begin sales before  
89 6:00 a.m. or to sell marijuana or marijuana products after 11:45 p.m.; and

90 (11) Requirements for the transportation of marijuana by a retail marijuana store, including  
91 documentation that shall accompany any marijuana being transported by a retail marijuana store.

92 (d) Not later than August 1, 2020, the Department of Health and Human Services shall  
93 propose legislative rules pursuant to §29A-3-1 et seq. of this code for the registration and  
94 regulation of marijuana product manufacturing facilities. Such rules shall include:

95 (1) Procedures for the issuance, denial, annual renewal, suspension, and revocation of a  
96 registration to operate a marijuana product manufacturing facility;

97 (2) A schedule of application, registration, and renewal fees: *Provided*, That the  
98 nonrefundable portion of any application fees shall not exceed \$1,000 adjusted annually for

99 inflation;

100 (3) A schedule of civil fines for violations of department rules by a marijuana product  
101 manufacturing facility;

102 (4) Procedures for hearings on civil fines, suspensions, and revocations of a marijuana  
103 product manufacturing facility registration;

104 (5) Qualifications for registration that are directly and demonstrably related to the operation  
105 of a marijuana product manufacturing facility;

106 (6) Security requirements to operate a marijuana product manufacturing facility, including  
107 lighting, physical security, video, and alarm requirements;

108 (7) The number of marijuana product manufacturing facility registrations to be issued  
109 consistent with the provisions of this chapter;

110 (8) Labeling requirements for marijuana products sold or distributed by a marijuana  
111 product manufacturing facility, including:

112 (A) Disclosing the THC content of each product;

113 (B) Restrictions on packaging to ensure it is not designed to appeal to minors; and

114 (C) Establishing the amount of THC that may be included in each serving of a marijuana  
115 product; and

116 (9) Health and safety rules and standards for the manufacture of marijuana products,  
117 including:

118 (A) Restrictions or prohibitions on additives to products that are toxic, designed to make  
119 the product more addictive, designed to make the product more appealing to children, or  
120 misleading to consumers; and

121 (B) Safety standards regulating the manufacture of marijuana extracts and concentrates;  
122 and

123 (10) Requirements for the transportation of marijuana by a marijuana product  
124 manufacturing facility, including documentation that shall accompany any marijuana being

125 transported by a marijuana product manufacturing facility.

126 (e) No later than August 1, 2020, the Department of Health and Human Resources shall  
127 develop a safety insert, which shall include:

128 (1) Methods for administering marijuana, and how long marijuana may impair a person  
129 after it is ingested in each manner; and

130 (2) How to recognize problematic usage of marijuana and how to obtain appropriate  
131 services or treatment for problematic usage.

132 (f) No later than August 1, 2020, the Department of Health and Human Resources shall  
133 propose legislative rules pursuant to §29A-3-1 et seq. of this code for the registration and  
134 regulation of marijuana testing facilities. Such rules shall include:

135 (1) Procedures for the issuance, annual renewal, suspension, and revocation of a  
136 registration to operate a marijuana testing facility;

137 (2) Standards for the operation of testing laboratories, including requirements for  
138 equipment and qualifications for personnel;

139 (3) A schedule of application, registration, and renewal fees: *Provided*, That the  
140 nonrefundable portion of any application fees shall not exceed \$1,000 adjusted annually for  
141 inflation;

142 (4) A schedule of civil fines for violations of department rules by a marijuana testing facility;

143 (5) Procedures for hearings on civil fines and suspensions and revocations of a marijuana  
144 testing facility registration;

145 (6) Qualifications for registration that are directly and demonstrably related to the operation  
146 of a marijuana testing facility;

147 (7) Security requirements for a marijuana testing facility;

148 (8) The number of marijuana testing facility registrations to be issued, which may not be  
149 fewer than four unless the number of qualified applicants is fewer than four, in which case every  
150 qualified applicant shall be granted a registration;



151 (9) Restrictions on where marijuana testing facilities may be located, consistent with the  
152 provisions of this chapter, and requiring that all testing shall be conducted on the registered  
153 marijuana testing facility premises;

154 (10) Requirements for the transportation of marijuana by a marijuana testing facility  
155 including documentation that shall accompany any marijuana being transported by a marijuana  
156 testing facility; and

157 (11) Requirements for the testing of marijuana, including:

158 (A) Requirements to ensure at a minimum that products sold for human consumption do  
159 not contain contaminants that are injurious to health and to ensure correct labeling;

160 (B) That testing shall include, but not be limited to, analysis for residual solvents, poisons,  
161 or toxins; harmful chemicals; dangerous molds or mildew; filth; dangerous pesticides and harmful  
162 microbials such as E. coli or salmonella and pesticides;

163 (C) Requirements that, in the event that test results indicate the presence of quantities of  
164 any substance determined to be injurious to health, such products shall be immediately  
165 quarantined and immediate notification to the department shall be made. The adulterated product  
166 shall be documented and properly destroyed;

167 (D) That testing shall also verify THC potency representations for correct labeling;

168 (E) That the department shall determine an acceptable variance for potency  
169 representations and procedures to address potency misrepresentations; and

170 (F) That the department shall determine the protocols and frequency of marijuana testing  
171 by a marijuana testing facility.

#### **§11-16A-16. Registration Procedures for Marijuana Establishments.**

1 (a) Each application for a registration to operate a marijuana establishment shall be  
2 submitted to the regulatory authority. Each application shall include both the fee established by  
3 the commission and a \$500 fee for the municipality to review the application. The regulatory  
4 agency shall:

5 (1) Accept and process applications beginning June 1, 2020, for marijuana cultivation  
6 facilities, beginning August 1, 2020, for marijuana product manufacturing facilities and marijuana  
7 testing facilities, and beginning September 1, 2020, for marijuana retail stores;

8 (2) Immediately forward a copy of each application and the \$500 municipality fee to the  
9 municipality in which the applicant desires to operate the marijuana establishment; and

10 (3) Issue a registration to the applicant between 45 and 90 days after receipt of an  
11 application unless:

12 (A) The regulatory agency finds the applicant is not in compliance with the requirements  
13 of this chapter or rules adopted thereunder; or

14 (B) The regulatory agency is notified by the relevant municipality that the applicant is not  
15 in compliance with an ordinance adopted pursuant to this chapter and in effect at the time of  
16 application; or

17 (C) More qualified applicants have applied than the number of registrations available in  
18 the state or the municipality, and the applicant was not selected.

19 (b) When considering an applicant for each type of marijuana establishment registration,  
20 the regulatory agency shall consider:

21 (1) Whether the applicant has experience operating as a marijuana establishment;

22 (2) Input provided by the government of the municipality in which the prospective  
23 marijuana establishment would operate, including information regarding compliance with any  
24 local zoning laws;

25 (3) The principal officers' and board members' character and relevant experience,  
26 including any training or professional licensing related to botany and their experience operating a  
27 nonprofit organization or business;

28 (4) Whether the principal officers, board members, and managers of the marijuana  
29 establishment have business experience in the State of West Virginia;

30 (5) The plan for record keeping, security, inventory control, and diversion prevention of the

31 applicant;

32 (6) Criminal, civil, or regulatory issues encountered by other entities that the applicant and  
33 managing officers of the applicant have controlled or managed;

34 (7) The financial history of the applicant and managing officers of the applicant, including  
35 any bankruptcy filings and any delinquent taxes; and

36 (8) Whether the entity possesses or has the right to use land, buildings, and equipment  
37 sufficient to properly carry out its duties as a marijuana establishment.

**§11-16A-17. Proof of Purchaser's Identity.**

1 (a) For the purposes of this chapter, any person making the sale of marijuana or marijuana  
2 accessories to any purchaser whose age is in question may accept any of the following  
3 documentation as proof that the purchaser is 21 years of age or over:

4 (1) A valid motor vehicle driver's license issued by the State of West Virginia, or a valid  
5 driver's license issued by another state, which bears the name, address, date of birth, and  
6 photograph of the purchaser;

7 (2) A valid identification card issued by the Director of Motor Vehicles, or any picture  
8 identification card issued by another state which bears the name, address, and date of birth of  
9 the purchaser;

10 (3) A valid armed services identification card showing the purchaser's name and date of  
11 birth; or

12 (4) A valid passport from a country with which the United States maintains diplomatic  
13 relations showing the purchaser's name, address, and date of birth.

14 (b) The appearance of the purchaser shall be consistent with the photographic  
15 identification presented under this section and the proof of identification shall be free of alteration,  
16 erasure, blemish, or other impairment.

**§11-16A-18. Employers; Driving; Minors; and Control of Property.**

1 (a) Nothing in this article shall be construed to require an employer to permit or

2 accommodate the use, consumption, possession, transfer, display, transportation, sale, or  
3 growing of marijuana in the workplace or to affect the ability of employers to have policies  
4 restricting the use of marijuana by employees.

5 (b) Nothing in this article shall be construed to permit driving or operating under the  
6 influence of drugs or liquor, nor shall this article prevent the state from enacting and imposing  
7 penalties for driving under the influence of or while impaired by marijuana.

8 (c) Nothing in this article shall be construed to permit the transfer of marijuana, with or  
9 without remuneration, to a person under the age of 21, or to allow a person under the age of 21  
10 to purchase, possess, use, transport, grow, or consume marijuana.

11 (d) Nothing in this article shall prohibit a state or county correctional facility from prohibiting  
12 the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing  
13 of marijuana on or in the correctional facility's property.

14 (e) Except as provided in this section, this chapter does not require any person,  
15 corporation, or any other entity that occupies, owns, or controls a property to allow the  
16 consumption, cultivation, display, sale, or transfer of marijuana on or in that property.

17 (f) In the case of the rental of a residential dwelling, a landlord may not prohibit the  
18 possession of marijuana or the consumption of marijuana by nonsmoked means unless:

19 (1) The tenant is a roomer who is not leasing the entire residential dwelling;

20 (2) The residence is incidental to detention or the provision of medical, geriatric,  
21 educational, counseling, religious, or similar service;

22 (3) The residence is a transitional housing facility; or

23 (4) Failing to prohibit marijuana possession or consumption would violate federal law or  
24 regulations or cause the landlord to lose a monetary or licensing-related benefit under federal law  
25 or regulations.

#### **§11-16A-19. Enforcement of Contracts.**

1 Contracts related to the operation of a marijuana establishment registered pursuant to this

2 chapter shall be enforceable under state law. No contract entered into by a registered marijuana  
3 establishment or its employees or agents as permitted pursuant to a valid registration, or by those  
4 who allow property to be used by an establishment, its employees, or its agents as permitted  
5 pursuant to a valid registration, shall be unenforceable on the basis that cultivating, obtaining,  
6 manufacturing, distributing, dispensing, transporting, selling, possessing, or using marijuana or  
7 hemp is prohibited by federal law.

NOTE: The purpose of this bill is to legalize the manufacture, sale and possession of marijuana and establish a regulatory program for growing, selling and testing of marijuana sold in West Virginia.

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