

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3205

BY DELEGATE FOSTER

[Introduced March 16, 2021; Referred to the
Committee on Workforce Development then the
Judiciary]

1 A BILL to amend and reenact §16A-15-4 of the Code of West Virginia, 1931, as amended, relating
 2 to medical marijuana; clarifying certain provisions relating to employment of individuals
 3 using medical marijuana that would otherwise be denied employment due to the use of
 4 marijuana; clarifying federal provisions for employers to prohibit the use of medical
 5 marijuana; preserving an employer’s right to continue or establish a drug-free workplace
 6 program or policy; and prohibiting a cause of action be brought against an employer for
 7 wrongful termination or discrimination due to an employee’s use of medical marijuana.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. MISCELLANEOUS PROVISIONS.

§16A-15-4. Protections for patients and caregivers.

1 (a) *Licensure.* — None of the following shall be subject to arrest, prosecution, or penalty
 2 in any manner, or denied any right or privilege, including civil penalty or disciplinary action by a
 3 state licensing board or commission, solely for lawful use of medical cannabis or manufacture or
 4 sale 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 thirteen of this chapter.

11 (6) A clinical registrant or academic clinical research center under article fourteen of this
 12 chapter.

13 (7) An employee, principal, or financial backer of a medical cannabis organization.

14 (8) An employee of a health care medical cannabis organization or an employee of a
 15 university participating in a research study under article thirteen of this chapter.

16 (9) An employee of a clinical registrant or an employee of an academic clinical research

17 center under article fourteen of this chapter.

18 (b) *Employment.* —

19 ~~(1) No employer may discharge, threaten, refuse to hire or otherwise discriminate or~~
20 ~~retaliate against an employee regarding an employee's compensation, terms, conditions, location~~
21 ~~or privileges solely on the basis of such employee's status as an individual who is certified to use~~
22 ~~medical cannabis.~~

23 ~~(2) Nothing in this act shall require an employer to make any accommodation of the use~~
24 ~~of medical cannabis on the property or premises of any place of employment. This act shall in no~~
25 ~~way limit an employer's ability to discipline an employee for being under the influence of medical~~
26 ~~cannabis in the workplace or for working while under the influence of medical cannabis when the~~
27 ~~employee's conduct falls below the standard of care normally accepted for that position.~~

28 ~~(3) Nothing in this act shall require an employer to commit any act that would put the~~
29 ~~employer or any person acting on its behalf in violation of federal law~~

30 (1) Nothing in this chapter requires an employer to commit any act that would put the
31 employer or any person acting on the employer's behalf in violation of federal law relating to
32 marijuana use, whether for medical use or not.

33 (2) Nothing in this chapter limits the ability of an employer to establish, continue, or enforce
34 a drug-free workplace program or policy.

35 (3) Nothing in this chapter requires an employer to accommodate the medical use of
36 marijuana.

37 (4) Nothing in this chapter requires an employer to allow an employee to work under the
38 influence of medical marijuana.

39 (5) Nothing in this chapter creates a cause of action against an employer for wrongful
40 discharge or discrimination due to the employees use of medical marijuana.

41 (6) Nothing in this chapter impairs the ability of any owner, tenant, or the agent of such
42 owner or tenant to restrict or prohibit the use of medical marijuana on his or her private property.

NOTE: The purpose of this bill is to clarify provisions relating to medical marijuana as applied to employers in this state and to clarify federal requirements of certain employers to permit employees to work while using medical marijuana when the employee would otherwise be denied employment for marijuana use.

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