

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 2318**

By Delegate Pushkin

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

1 A BILL to amend and reenact §16A-2-1 of the Code of West Virginia, 1931, as amended; and to  
2 further amend §16A-11-1 of said code, all relating to certification of a patient’s eligibility for  
3 medical cannabis; amending a definition; and revising eligibility qualifications for patients  
4 to receive medical cannabis.

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

**ARTICLE 2. DEFINITIONS.**

**§16A-2-1. Definitions.**

1 (a) The following words and phrases when used in this chapter shall have the meanings  
2 given to them in this section unless the context clearly indicates otherwise:

3 (1) "Act" means the West Virginia Medical Cannabis Act and the provisions contained in  
4 §60A-1-101 *et seq.* of this code.

5 (2) "Advisory board" means the advisory board established under §16A-11-1 *et seq.* of this  
6 code.

7 (3) "Bureau" means the Bureau for Public Health within the West Virginia Department of  
8 Health and Human Resources.

9 (4) "Caregiver" means the individual designated by a patient or, if the patient is under 18  
10 years of age, an individual authorized under §16A-5-1 *et seq.* of this code, to deliver medical  
11 cannabis.

12 (5) "Certified medical use" means the acquisition, possession, use, or transportation of  
13 medical cannabis by a patient, or the acquisition, possession, delivery, transportation, or  
14 administration of medical cannabis by a caregiver, for use as part of the treatment of the patient’s  
15 serious medical condition, as authorized in a certification under this act, including enabling the  
16 patient to tolerate treatment for the serious medical condition.

17 (6) "Change in control" means the acquisition by a person or group of persons acting in  
18 concert of a controlling interest in an applicant or permittee either all at one time or over the span of  
19 a 12-consecutive-month period.

20 (7) "Commissioner" means the Commissioner of the Bureau for Public Health.

21 (8) "Continuing care" means treating a patient, in the course of which the practitioner has  
22 completed a full assessment of the patient's medical history and current medical condition,  
23 including an in-person consultation with the patient, and is able to document and make a medical  
24 diagnosis based upon the substantive treatment of the patient.

25 (9) "Controlling interest" means:

26 (A) For a publicly traded entity, voting rights that entitle a person to elect or appoint one or  
27 more of the members of the board of directors or other governing board or the ownership or  
28 beneficial holding of five percent or more of the securities of the publicly traded entity.

29 (B) For a privately held entity, the ownership of any security in the entity.

30 (10) "Dispensary" means a person, including a natural person, corporation, partnership,  
31 association, trust, or other entity, or any combination thereof, which holds a permit issued by the  
32 bureau to dispense medical cannabis. The term does not include a health care medical cannabis  
33 organization as defined in §16A-13-1 *et seq.* of this code.

34 (11) "Family or household member" means the same as defined in §48-27-204 of this  
35 code.

36 (12) "Financial backer" means an investor, mortgagee, bondholder, note holder, or other  
37 source of equity, capital, or other assets, other than a financial institution.

38 (13) "Financial institution" means a bank, a national banking association, a bank and trust  
39 company, a trust company, a savings and loan association, a building and loan association, a  
40 mutual savings bank, a credit union, or a savings bank.

41 (14) "Form of medical cannabis" means the characteristics of the medical cannabis  
42 recommended or limited for a particular patient, including the method of consumption and any  
43 particular dosage, strain, variety and quantity, or percentage of medical cannabis or particular  
44 active ingredient.

45 (15) "Fund" means the Medical Cannabis Program Fund established in §16A-9-2 of this

46 code.

47 (16) "Grower" means a person, including a natural person, corporation, partnership,  
48 association, trust, or other entity, or any combination thereof, which holds a permit from the bureau  
49 under this act to grow medical cannabis. The term does not include a health care medical  
50 cannabis organization as defined in §16-13-1 *et seq.* of this code.

51 (17) "Grower/processor" means either a grower or a processor.

52 (18) "Identification card" means a document issued under §16A-5-1 *et seq.* of this code  
53 that authorizes access to medical cannabis under this act.

54 (19) "Individual dose" means a single measure of medical cannabis.

55 (20) "Medical cannabis" means cannabis for certified medical use as set forth in this act.

56 (21) "Medical cannabis organization" means a dispensary, grower, or processor. The term  
57 does not include a health care medical cannabis organization as defined in §16A-13-1 *et seq.* of  
58 this code.

59 (22) "Patient" means an individual who:

60 (A) Has a serious medical condition;

61 (B) Has met the requirements for certification under this act; and

62 (C) Is a resident of this state.

63 (23) "Permit" means an authorization issued by the bureau to a medical cannabis  
64 organization to conduct activities under this act.

65 (24) "Physician" or "practitioner" means a doctor of allopathic or osteopathic medicine who  
66 is fully licensed pursuant to the provisions of either §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code  
67 to practice medicine and surgery in this state.

68 (25) "Post-traumatic stress disorder" means a diagnosis made as part of continuing care  
69 of a patient by a medical doctor, licensed counselor, or psychologist.

70 (26) "Prescription drug monitoring program" means the West Virginia Controlled  
71 Substances Monitoring Program under §60A-9-101 *et seq.* of this code.

72 (27) "Principal" means an officer, director, or person who directly owns a beneficial interest  
73 in or ownership of the securities of an applicant or permittee, a person who has a controlling  
74 interest in an applicant or permittee, or who has the ability to elect the majority of the board of  
75 directors of an applicant or permittee, or otherwise control an applicant or permittee, other than a  
76 financial institution.

77 (28) "Processor" means a person, including a natural person, corporation, partnership,  
78 association, trust, or other entity, or any combination thereof, which holds a permit from the bureau  
79 under this act to process medical cannabis. The term does not include a health care medical  
80 cannabis organization as defined in §16A-13-1 *et seq.* of this code.

81 (29) "Registry" means the registry established by the bureau for practitioners.

82 (30) "Serious medical condition" means a medical condition that a medical doctor, in his or  
83 her professional judgement, would benefit from the use of cannabis. ~~any of the following, as has~~  
84 ~~been diagnosed as part of a patient's continuing care:~~

85 ~~(A) Cancer.~~

86 ~~(B) Positive status for human immunodeficiency virus or acquired immune deficiency~~  
87 ~~syndrome.~~

88 ~~(C) Amyotrophic lateral sclerosis.~~

89 ~~(D) Parkinson's disease.~~

90 ~~(E) Multiple sclerosis.~~

91 ~~(F) Damage to the nervous tissue of the spinal cord with objective neurological indication of~~  
92 ~~intractable spasticity.~~

93 ~~(G) Epilepsy.~~

94 ~~(H) Neuropathies.~~

95 ~~(I) Huntington's disease.~~

96 ~~(J) Crohn's disease.~~

97 ~~(K) Post-traumatic stress disorder.~~

98 ~~(L) Intractable seizures.~~

99 ~~(M) Sickle cell anemia.~~

100 ~~(N) Severe chronic or intractable pain of neuropathic origin or severe chronic or intractable~~  
101 ~~pain.~~

102 ~~(O) Terminally ill.~~

103 ~~(31) "Terminally ill" means a medical prognosis of life expectancy of approximately one~~  
104 ~~year or less if the illness runs its normal course~~

**ARTICLE 11. MEDICAL CANNABIS ADVISORY BOARD.**

**§16A-11-1. Advisory board.**

1 (a) The Medical Cannabis Advisory Board is established within the bureau. The advisory  
2 board shall consist of the following members:

3 (1) The commissioner or a designee.

4 (2) The Superintendent of the West Virginia State Police or a designee.

5 (3) Four physicians licensed to practice in the state to be appointed by the State Medical  
6 Association with one from each of the following specialized medicine:

7 (A) Family Practice/Neurologist/General Practitioner.

8 (B) Pain Management.

9 (C) Oncologist/Palliative Care.

10 (D) Psychiatrist.

11 (4) Two physicians who are licensed pursuant to §30-14-1 *et seq.* of this code appointed by  
12 the West Virginia Osteopathic Association.

13 (5) One pharmacist licensed to practice in the state, to be designated by the Board of  
14 Pharmacy.

15 (6) One pharmacologist who has experience in the science of cannabis and a knowledge  
16 of the uses, effects, and modes of actions of drugs, to be appointed by the Governor.

17 (7) One member who is a horticulturalist, to be designated by the West Virginia  
18 Commissioner of Agriculture.

19 (8) One member designated by the West Virginia Association of Alcoholism and Drug  
20 Counselors.

21 (9) An attorney licensed in the state who is knowledgeable about medical cannabis laws.

22 (10) One member appointed by the West Virginia Prosecuting Attorneys Institute.

23 (11) One member appointed by the Governor, who shall be a patient, a family or household  
24 member of a patient, or a patient advocate.

25 (b) *Terms.* — Except as provided under subsection (g) of this section, the members shall  
26 serve a term of four years or until a successor has been appointed and qualified, but no longer  
27 than six months beyond the four-year period.

28 (c) *Chair.* — The commissioner, or a designee, shall serve as chair of the advisory board.

29 (d) *Voting; quorum.* — A majority of the members shall constitute a quorum for the purpose  
30 of organizing the advisory board, conducting its business, and fulfilling its duties. A vote of the  
31 majority of the members present shall be sufficient for all actions of the advisory board unless the  
32 bylaws require a greater number.

33 (e) *Attendance.* — A member of the advisory board who fails to attend three consecutive  
34 meetings shall be deemed vacant, unless the commissioner, upon written request from the  
35 member, finds that the member should be excused from a meeting for good cause. A member who  
36 cannot be physically present may attend meetings via electronic means, including video  
37 conference.

38 (f) *Governance.* — The advisory board shall have the power to prescribe, amend, and  
39 repeal bylaws governing the manner in which the business of the advisory board is conducted and  
40 the manner in which the duties granted to it are fulfilled. The advisory board may delegate  
41 supervision of the administration of advisory board activities to an administrative commissioner  
42 and other employees of the bureau as the commissioner shall appoint.

43 (g) *Initial terms.* — The initial terms of members appointed under subsection (a) of this  
44 section shall be for terms of one, two, three, or four years, the particular term of each member to be  
45 designated by the commissioner at the time of appointment. All other members shall serve for a  
46 term of four years.

47 (h) *Vacancy.* — In the event that any member appointed under subsection (a) of this  
48 section shall die or resign, or otherwise become disqualified during the member's term of office, a  
49 successor shall be appointed in the same way and with the same qualifications as set forth in this  
50 section and shall hold office for the unexpired term. An appointed member of the advisory board  
51 shall be eligible for reappointment.

52 (i) *Expenses.* — A member shall receive the amount of reasonable travel, hotel, and other  
53 necessary expenses incurred in the performance of the duties of the member in accordance with  
54 state rules but shall receive no other compensation for the member's service on the board.

55 (j) *Duties.* — The advisory board shall have the following duties:

56 (1) To examine and analyze the statutory and regulatory law relating to medical cannabis  
57 within this state.

58 (2) To examine and analyze the law and events in other states and the nation with respect  
59 to medical cannabis.

60 (3) To accept and review written comments from individuals and organizations about  
61 medical cannabis.

62 (4) To issue, two years after the effective date of this section, a written report to the  
63 Governor, the Senate, and the House of Delegates.

64 (5) The written report under subdivision (4) of this subsection shall include  
65 recommendations and findings as to the following:

66 (A) Whether to change the types of medical professionals who can issue certifications to  
67 patients.

68 ~~(B) Whether to change, add, or reduce the types of medical conditions which qualify as~~  
69 ~~serious medical conditions under this act~~

70 ~~(C)~~ (B) Whether to change the form of medical cannabis permitted under this act.

71 ~~(D)~~ (C) Whether to change, add, or reduce the number of growers, processors, or  
72 dispensaries.

73 ~~(E)~~ (D) How to ensure affordable patient access to medical cannabis.

74 ~~(F)~~ (E) Whether to permit medical cannabis to be dispensed in dry leaf or plant form, for  
75 administration by vaporization.

76 (6) The final written report under this section shall be adopted at a public meeting.

NOTE: The purpose of this bill is to grant authority to attending physicians to use his or her professional judgement to certify that a patient's serious medical condition would benefit from the use of medical cannabis.

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