

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 640**

BY SENATORS KESSLER, CARMICHAEL, STOLLINGS,

PREZIOSO AND PLYMALE

[Introduced February 20, 2016;

Referred to the Committee on Health and Human  
Resources; and then to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §16-8A-1, §16-8A-2, §16-8A-3, §16-8A-4, §16-8A-5, §16-8A-6, §16-8A-7,  
 3 §16-8A-8, §16-8A-9, §16-8A-10, §16-8A-11, §16-8A-12, §16-8A-13, §16-8A-14, §16-8A-  
 4 15, §16-8A-16, §16-8A-17, §16-8A-18, §16-8A-19, §16-8A-20, §16-8A-21, §16-8A-22,  
 5 §16-8A-23 and §16-8A-24, all relating to creating the Compassionate Use Act for Medical  
 6 Cannabis; providing for protections for the medical use of cannabis; limitations of article;  
 7 prohibiting discrimination; authorizing addition of debilitating medical conditions;  
 8 registering qualifying patients and designated caregivers; issuing registry identification  
 9 cards; affirmative defense and dismissal for medical marihuana; providing misdemeanor  
 10 offense and criminal penalties for disclosing certain information; and otherwise providing  
 11 for the enforcement of this article.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 article, designated §16-8A-1, §16-8A-2, §16-8A-3, §16-8A-4, §16-8A-5, §16-8A-6, §16-8A-7, §16-  
 3 8A-8, §16-8A-9, §16-8A-10, §16-8A-11, §16-8A-12, §16-8A-13, §16-8A-14, §16-8A-15, §16-8A-  
 4 16, §16-8A-17, §16-8A-18, §16-8A-19, §16-8A-20, §16-8A-21, §16-8A-22, §16-8A-23 and §16-  
 5 8A-24, all to read as follows:

**ARTICLE 8A. THE COMPASSIONATE USE ACT FOR MEDICAL CANNABIS.**

**§16-8A-1. Findings.**

1 (a) Marihuana's recorded use as a medicine goes back nearly five thousand years.  
 2 Modern medical research has confirmed the beneficial uses for marihuana in treating or alleviating  
 3 the pain, nausea and other symptoms associated with a variety of debilitating medical conditions,  
 4 including cancer, multiple sclerosis and HIV/AIDS, as found by the National Academy of Sciences'  
 5 Institute of Medicine in March 1999.

6 (b) Studies, published since the 1999 Institute of Medicine report, have continued to show  
 7 the therapeutic value of marihuana in treating a wide array of debilitating medical conditions.

8 These include relief of the neuropathic pain caused by multiple sclerosis, HIV/AIDS and other  
9 illnesses and injuries that often fail to respond to conventional treatments and relief of nausea,  
10 vomiting and other side effects of drugs used to treat HIV/AIDS and hepatitis C, increasing the  
11 chances of patients continuing on life-saving treatment regimens.

12 (c) Marihuana has many currently accepted medical uses in the United States, having  
13 been recommended by thousands of licensed physicians to more than one million patients in  
14 states with medical marihuana laws. Marihuana's medical utility has been recognized by a wide  
15 range of medical and public health organizations, including the American Academy of HIV  
16 Medicine, the American College of Physicians, the American Nurses Association, the American  
17 Public Health Association, the Leukemia & Lymphoma Society and many others.

18 (d) Data from the Federal Bureau of Investigation's Uniform Crime Reports and the  
19 Compendium of Federal Justice Statistics show that approximately ninety-nine out of every one  
20 hundred marihuana arrests in the United States are made under state law, rather than under  
21 federal law. Consequently, changing state law will have the practical effect of protecting from  
22 arrest the vast majority of seriously ill patients who have a medical need to use marihuana.

23 (e) Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine,  
24 Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico,  
25 Oregon, Vermont, Rhode Island, Washington state and the District of Columbia have removed  
26 state-level criminal penalties from the medical use and cultivation of marihuana. West Virginia  
27 joins in this effort for the health and welfare of its citizens.

28 (f) States are not required to enforce federal law or prosecute people for engaging in  
29 activities prohibited by federal law. Therefore, compliance with this article does not put the State  
30 of West Virginia in violation of federal law.

31 (g) State law should make a distinction between the medical and nonmedical uses of  
32 marihuana. Hence, the purpose of this article is to protect patients with debilitating medical

33 conditions, as well as their practitioners and providers, from arrest and prosecution, criminal and  
34 other penalties and property forfeiture, if the patients engage in the medical use of marihuana.

**§16-8A-2. Definitions.**

1 For purposes of this article, unless the context otherwise requires:

2 (a) "Bona fide practitioner-patient relationship" means:

3 (1) A practitioner and patient have a treatment or consulting relationship, during the course  
4 of which the physician has completed a full assessment of the patient's medical history and  
5 current medical condition, including an appropriate personal physical examination;

6 (2) The practitioner has consulted with the patient with respect to the patient's debilitating  
7 medical condition; and

8 (3) The physician is available to or offers to provide follow-up care and treatment to the  
9 patient, including, but not limited to, patient examinations.

10 (b) "Cardholder" means a qualifying patient or a designated caregiver who has been  
11 issued and possesses a valid registry identification card.

12 (c) "Compassion center agent" means a principal officer, board member, employee or  
13 agent of a registered compassion center who is twenty-one years of age or older and has not  
14 been convicted of a disqualifying felony offense.

15 (d) "Debilitating medical condition" means:

16 (1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired  
17 immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease,  
18 agitation of Alzheimer's disease, Parkinson's disease, post-traumatic stress disorder, depression,  
19 anxiety, addiction to opiates or amphetamines or the treatment of these conditions;

20 (2) A chronic or debilitating disease or medical condition or its treatment that produces  
21 one or more of the following: Cachexia or wasting syndrome; severe or chronic pain; severe  
22 nausea; seizures; or severe and persistent muscle spasms, including, but not limited to, those  
23 characteristic of multiple sclerosis; or

24 (3) Any other medical condition or its treatment added by the department, as provided in  
25 section six of this article.

26 (e) "Department" means the West Virginia Department of Health and Human Resources  
27 or its successor agency.

28 (f) "Designated caregiver" means a person who:

29 (1) Is at least twenty-one years of age;

30 (2) Has agreed to assist with a patient's medical use of marihuana;

31 (3) Has not been convicted of a disqualifying felony offense; and

32 (4) Assists no more than five qualifying patients with their medical use of marihuana.

33 (g) "Disqualifying felony offense" means:

34 (1) A violent crime that was classified as a felony in the jurisdiction where the person was  
35 convicted; or

36 (2) A violation of a state or federal controlled substance law that was classified as a felony  
37 in the jurisdiction where the person was convicted, not including:

38 (A) An offense for which the sentence, including any term of probation, incarceration or  
39 supervised release was completed ten or more years earlier; or

40 (B) An offense that consisted of conduct for which this article would likely have prevented  
41 a conviction, but the conduct either occurred prior to the enactment of this article or was  
42 prosecuted by an authority other than the State of West Virginia.

43 (h) "Enclosed, locked facility" means a closet, room, greenhouse, building or other  
44 enclosed area that is equipped with locks or other security devices that permit access only by the  
45 cardholder allowed to cultivate the plants or, in the case of a registered compassion center, the  
46 compassion center agents working for the registered compassion center. Two or more registered  
47 qualifying patients or registered designated caregivers who reside in the same dwelling and have  
48 a registry identification card that removes state penalties for marihuana cultivation may share one  
49 enclosed, locked facility for cultivation.

50 (i) "Marihuana" has the meaning given that term in section one hundred one, article one,  
51 chapter sixty-a of this code.

52 (j) "Mature marihuana plant" means a marihuana plant with one or more of the following  
53 characteristics:

54 (1) The plant has flowers;

55 (2) The plant is twelve or more inches in height; or

56 (3) The plant is twelve inches or greater in diameter.

57 (k) "Medical use" includes the acquisition, administration, cultivation or manufacture in an  
58 enclosed, locked facility, delivery, possession, transfer, transportation or use of marihuana or  
59 paraphernalia relating to the administration of marihuana to treat or alleviate a registered  
60 qualifying patient's debilitating medical condition or symptoms associated with the patient's  
61 debilitating medical condition. It does not include cultivation by a visiting qualifying patient or  
62 cultivation by a registered designated caregiver or registered qualifying patient who is not  
63 designated as being allowed to cultivate.

64 (l) "Practitioner" means a person who is licensed with authority to prescribe drugs to  
65 humans under the provisions of section one-b, article five, chapter thirty of this code, except as  
66 otherwise provided in this subsection. If the qualifying patient's debilitating medical condition is  
67 post-traumatic stress disorder, the practitioner must be a licensed psychiatrist. In relation to a  
68 visiting qualifying patient, "practitioner" means a person who is licensed with authority to prescribe  
69 drugs to humans in the state of the patient's residence.

70 (m) "Qualifying patient" means a person who has been diagnosed by a practitioner as  
71 having a debilitating medical condition.

72 (n) "Registered compassion center" means a not-for-profit entity registered pursuant to  
73 section fourteen of this article that acquires, possesses, cultivates, manufactures, delivers,  
74 transfers, transports, sells, supplies or dispenses marihuana, paraphernalia or related supplies  
75 and educational materials to registered qualifying patients.

76 (o) "Registry identification card" means a document issued by the department that  
77 identifies a person as a registered qualifying patient or registered designated caregiver.

78 (p) "Registered safety compliance facility" means an entity registered under section fifteen  
79 by the department to provide one or more of the following services:

80 (1) Testing marihuana produced for medical use, including for potency and contaminants;

81 and

82 (2) Training cardholders and compassion center agents. The training may include, but  
83 need not be limited to, information related to one or more of the following:

84 (A) The safe and efficient cultivation, harvesting, packaging, labeling and distribution of  
85 marihuana;

86 (B) Security and inventory accountability procedures; and

87 (C) Up-to-date scientific and medical research findings related to medical marihuana.

88 (q) "Safety compliance facility agent" means a principal officer, board member, employee  
89 or agent of a registered safety compliance facility who is twenty-one years of age or older and  
90 has not been convicted of a disqualifying felony offense.

91 (r) "Seedling" means a marihuana plant that has no flowers, is less than twelve inches in  
92 height and is less than twelve inches in diameter.

93 (s) "Usable marihuana" means the flowers of the marihuana plant and any mixture or  
94 preparation thereof, but does not include the seeds, stalks and roots of the plant. It does not  
95 include the weight of any nonmarihuana ingredients combined with marihuana, including  
96 ingredients added to prepare a topical administration, food or drink.

97 (t) "Verification system" means a phone or Web-based system established and maintained  
98 by the department that is available to law-enforcement personnel and compassion center agents  
99 on a twenty-four-hour basis for verification of registry identification cards.

100 (u) "Visiting qualifying patient" means a person who:

101 (1) Has been diagnosed with a debilitating medical condition;

102 (2) Possesses a valid registry identification card, or its equivalent, that was issued  
 103 pursuant to the laws of another state, district, territory, commonwealth, insular possession of the  
 104 United States or country recognized by the United States that allows the person to use marihuana  
 105 for medical purposes in the jurisdiction of issuance; and

106 (3) Is not a resident of West Virginia or who has been a resident of West Virginia for less  
 107 than thirty days.

108 (v) "Written certification" means a document dated and signed by a practitioner, stating  
 109 that in the practitioner's professional opinion the patient is likely to receive therapeutic or palliative  
 110 benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical  
 111 condition or symptoms associated with the debilitating medical condition. A written certification  
 112 shall affirm that it is made in the course of a bona fide practitioner-patient relationship and shall  
 113 specify the qualifying patient's debilitating medical condition.

**§16-8A-3. Protections for the medical use of cannabis.**

1 (a) A registered qualifying patient is not subject to arrest, prosecution or denial of any right  
 2 or privilege including, but not limited to, civil penalty or disciplinary action by a court or  
 3 occupational or professional licensing board or bureau, for the medical use of marihuana pursuant  
 4 to this article, if the registered qualifying patient does not possess more than:

5 (1) Six ounces of usable marihuana; and

6 (2) Twelve mature marihuana plants and twelve seedlings, if the qualifying patient has not  
 7 specified that a designated caregiver will be allowed under state law to cultivate marihuana for  
 8 the qualifying patient.

9 (b) A registered designated caregiver is not subject to arrest, prosecution or denial of any  
 10 right or privilege including, but not limited to, civil penalty or disciplinary action by a court or  
 11 occupational or professional licensing board or bureau:

12 (1) For assisting a registered qualifying patient to whom he or she is connected through  
13 the department's registration process with the medical use of marihuana if the designated  
14 caregiver does not possess more than:

15 (A) Six ounces of usable marihuana for each qualifying patient to whom the registered  
16 caregiver is connected through the department's registration process; and

17 (B) Twelve mature marihuana plants and twelve seedlings for each registered qualifying  
18 patient who has specified that the designated caregiver will be allowed under state law to cultivate  
19 marihuana for the qualifying patient.

20 (2) For receiving compensation for costs associated with assisting a registered qualifying  
21 patient's medical use of marihuana if the registered designated caregiver is connected to the  
22 registered qualifying patient through the department's registration process.

23 (c) All mature marihuana plants and seedlings possessed pursuant to this section must  
24 be kept in an enclosed, locked facility, unless they are being transported to a permissible location,  
25 including because the cardholder is moving, the registered qualifying patient has changed his or  
26 her designation of who can cultivate or the plants are being given to someone allowed to possess  
27 them pursuant to this article.

28 (d) A visiting qualifying patient is not subject to arrest, prosecution or denial of any right or  
29 privilege including, but not limited to, civil penalty or disciplinary action by a court or occupational  
30 or professional licensing board or bureau, for the medical use of marihuana pursuant to this article  
31 if the visiting qualifying patient does not possess more than six ounces of usable marihuana.

32 (e) A registered qualifying patient, visiting qualifying patient or registered designated  
33 caregiver is not subject to arrest, prosecution or denial of any right or privilege including, but not  
34 limited to, civil penalty or disciplinary action by a court or occupational or professional licensing  
35 board or bureau for:

36 (1) Possession of marihuana that is incidental to medical use, but is not mature marihuana  
37 plants, seedlings or usable marihuana as defined in this article;

38 (2) Selling, transferring, or delivering marihuana seeds produced by the registered  
39 qualifying patient, visiting qualifying patient or registered designated caregiver to a registered  
40 compassion center;

41 (3) Transferring marihuana to a registered safety compliance facility for testing; or

42 (4) Giving marihuana to a registered qualifying patient, a registered compassion center or  
43 a registered designated caregiver for a registered qualifying patient's medical use where nothing  
44 of value is transferred in return or for offering to do this, if the person giving the marihuana does  
45 not knowingly cause the recipient to possess more marihuana than is permitted by this section.

46 (f) (1) There is a presumption that a qualifying patient is engaged in, or a designated  
47 caregiver is assisting with, the medical use of marihuana in accordance with this article if the  
48 qualifying patient or designated caregiver:

49 (A) Is in possession of a valid registry identification card or, in the case of a visiting  
50 qualifying patient, its equivalent; and

51 (B) Is in possession of an amount of marihuana that does not exceed the amount allowed  
52 under the provisions of this section.

53 (2) The presumption may be rebutted by evidence that conduct related to marihuana was  
54 not for the purpose of treating or alleviating the qualifying patient's debilitating medical condition  
55 or symptoms associated with the debilitating medical condition in compliance with this article.

56 (g) A practitioner is not subject to arrest, prosecution or penalty in any manner or denied  
57 any right or privilege including, but not limited to, civil penalty or disciplinary action by the West  
58 Virginia Board of Medicine or by any other occupational or professional licensing board or bureau,  
59 solely for providing written certifications or for otherwise stating that, in the practitioner's  
60 professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical  
61 use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or  
62 symptoms associated with the serious or debilitating medical condition: *Provided*, That nothing  
63 in this article prevents a practitioner from being sanctioned for:

64 (1) Issuing a written certification to a patient with whom the practitioner does not have a  
65 bona fide practitioner-patient relationship, or

66 (2) Failing to properly evaluate a patient's medical condition or otherwise violating the  
67 standard of care.

68 (h) A person is not subject to arrest, prosecution or denial of any right or privilege including,  
69 but not limited to, civil penalty or disciplinary action by a court or occupational or professional  
70 licensing board or bureau, for:

71 (1) Selling marihuana paraphernalia to a cardholder upon presentation of a registry  
72 identification card in the recipient's name that has not expired or to a compassion center agent or  
73 registered safety compliance facility agent upon presentation of an unexpired copy of the entity's  
74 registration certificate;

75 (2) Being in the presence or vicinity of the medical use of marihuana as allowed under this  
76 article; or

77 (3) Assisting a registered qualifying patient with using or administering marihuana. For  
78 purposes of illustration and not limitation, this includes preparing a vaporizer for a registered  
79 qualifying patient's use or brewing tea for a registered qualifying patient. It does not include  
80 providing marihuana to a patient that the patient did not already possess.

81 (i) A registered compassion center is not subject to prosecution under state or municipal  
82 law, search or inspection, except by the department pursuant to subsection (o) of this section,  
83 seizure or penalty in any manner or be denied any right or privilege including, but not limited to,  
84 civil penalty or disciplinary action by a court or business licensing board or entity, for acting  
85 pursuant to this article and department regulations to: Sell marihuana seeds to similar entities  
86 that are registered to dispense marihuana for medical use in other jurisdictions, acquire, possess,  
87 cultivate, manufacture, deliver, transfer, transport, supply, sell or dispense marihuana or related  
88 supplies and educational materials to registered qualifying patients and visiting qualifying patients  
89 who have designated the compassion center to provide for them, to registered designated

90 caregivers on behalf of the registered qualifying patients who have designated the registered  
91 compassion center or to other registered compassion centers.

92 (j) A registered compassion center agent is not subject to prosecution, search or penalty  
93 in any manner or be denied any right or privilege including, but not limited to, civil penalty or  
94 disciplinary action by a court or business licensing board or entity, for working for a registered  
95 compassion center pursuant to this article and department rules to acquire, possess, cultivate,  
96 manufacture, deliver, transfer, transport, supply, sell or dispense marihuana or related supplies  
97 and educational materials to registered qualifying patients who have designated the registered  
98 compassion center to provide for them, to registered designated caregivers on behalf of the  
99 registered qualifying patients who have designated the registered compassion center, or to other  
100 registered compassion centers.

101 (k) A registered safety compliance facility and registered safety compliance facility agents  
102 acting on behalf of a registered safety compliance facility are not subject to prosecution, search,  
103 except by the department pursuant to subsection (o) of this section, seizure or penalty in any  
104 manner or be denied any right or privilege including, but not limited to, civil penalty or disciplinary  
105 action by a court or business licensing board or entity, solely for acting in accordance with this  
106 article and department regulations to provide the following services:

107 (1) Acquiring or possessing marihuana obtained from registered cardholders or registered  
108 compassion centers;

109 (2) Returning the marihuana to registered cardholders or registered compassion centers;

110 (3) Transporting marihuana that was produced by registered cardholders and registered  
111 compassion centers to or from those registered cardholders and registered compassion centers;

112 (4) The production or sale of educational materials related to medical marihuana;

113 (5) The production, sale or transportation of equipment or materials other than marihuana  
114 to registered compassion centers or cardholders, including lab equipment and packaging  
115 materials, that are used by registered compassion centers and cardholders;

116 (6) Testing of medical marihuana samples, including for potency, pesticides, mold and  
117 contamination;

118 (7) Providing training to cardholders and prospective compassion center agents, provided  
119 that only cardholders may be allowed to possess or cultivate marihuana and any possession or  
120 cultivation of marihuana must occur on the location registered with the department; and

121 (8) Receiving compensation for actions allowed under this section.

122 (l) Any marihuana, marihuana paraphernalia, licit property or interest in licit property that  
123 is possessed, owned or used in connection with the medical use of marihuana as allowed under  
124 this article, or acts incidental to such use, may not be seized or forfeited. This article does not  
125 prevent the seizure or forfeiture of marihuana exceeding the amounts allowed under this article,  
126 nor does it prevent seizure or forfeiture if the basis for the action is unrelated to the marihuana  
127 that is possessed, manufactured, transferred, or used pursuant to this article.

128 (m) Mere possession of, or application for, a registry identification card or registration  
129 certificate does not constitute probable cause or reasonable suspicion, nor may it be used to  
130 support the search of the person, property or home of the person possessing or applying for the  
131 registry identification card. The possession of, or application for, a registry identification card does  
132 not preclude the existence of probable cause if probable cause exists on other grounds.

133 (n) For the purposes of West Virginia state law, the medical use of marihuana by a  
134 cardholder or registered compassion center shall be considered lawful as long as it is in  
135 accordance with this article.

136 (o) A law-enforcement officer may not be employed by an agency which receives state or  
137 local government funds nor may expend any state or local resources, including the officer's time,  
138 to effect any arrest or seizure of marihuana, or conduct any investigation, on the sole basis of  
139 activity the officer believes to constitute a violation of the federal Controlled Substances Act if the  
140 officer has reason to believe that such activity is in compliance with state medical marihuana laws,  
141 nor may any such officer expend any state or local resources, including the officer's time, to

142 provide any information or logistical support related to such activity to any federal law-  
143 enforcement authority or prosecuting entity.

144 (p) An attorney is not subject to disciplinary action by the state Bar Association or other  
145 professional licensing association for providing legal assistance to prospective or registered  
146 compassion centers, prospective or registered safety compliance facilities or others related to  
147 activity that is no longer subject to criminal penalties under state law pursuant to this article.

**§16-8A-4. Limitations.**

1 (a) This article does not authorize any person to engage in, and does not prevent the  
2 imposition of any civil, criminal, or other penalties for engaging in, the following conduct:

3 (1) Undertaking any task under the influence of marihuana, when doing so would  
4 constitute negligence or professional malpractice;

5 (2) Possessing marihuana, or otherwise engaging in the medical use of marihuana:

6 (A) In a school bus;

7 (B) On the grounds of any preschool or primary or secondary school; or

8 (C) In any correctional facility.

9 (3) Smoking marihuana:

10 (A) On any form of public transportation; or

11 (B) In any public place.

12 (4) Operating, navigating or being in actual physical control of any motor vehicle, aircraft  
13 or motorboat while under the influence of marihuana, except that a registered qualifying patient  
14 or visiting qualifying patient may not be considered to be under the influence of marihuana solely  
15 because of the presence of metabolites or components of marihuana that appear in insufficient  
16 concentration to cause impairment.

17 (5) Using marihuana, if that person does not have a serious or debilitating medical  
18 condition.

**§16-8A-5. Discrimination prohibited.**

1 (a) Except as provided in this article, a registered qualifying patient who uses marihuana  
2 for medical purposes shall be afforded all the same rights under state and local law, including  
3 those guaranteed under the provisions of article eleven, chapter five of this code relating to human  
4 rights, as the individual would have been afforded if he or she were solely prescribed  
5 pharmaceutical medications, as it pertains to:

6 (1) Any interaction with a person's employer;

7 (2) Drug testing by one's employer; or

8 (3) Drug testing required by any state or local law, agency, or government official.

9 (b) (1) The rights provided by this section do not apply to the extent that they conflict with  
10 an employer's obligations under federal law or regulations or to the extent that they would  
11 disqualify an employer from a monetary or licensing-related benefit under federal law or  
12 regulations.

13 (2) An employer is not required to allow the ingestion of marihuana in any workplace or to  
14 allow any employee to work while under the influence of marihuana. A registered qualifying patient  
15 may not be considered to be under the influence of marihuana solely because of the presence of  
16 metabolites or components of marihuana that appear in insufficient concentration to cause  
17 impairment.

18 (c) A school or landlord may not refuse to enroll or lease to, or otherwise penalize, a person  
19 solely for his or her status as a registered qualifying patient or a registered designated caregiver,  
20 unless failing to do so would violate federal law or regulations or cause the school or landlord to  
21 lose a monetary or licensing-related benefit under federal law or regulations.

22 (d) For the purposes of medical care, including organ transplants, a registered qualifying  
23 patient's authorized use of marihuana in accordance with this article is the equivalent of the  
24 authorized use of any other medication used at the direction of a physician, and does not  
25 constitute the use of an illicit substance or otherwise disqualify a qualifying patient from needed  
26 medical care.

27 (e) A person otherwise entitled to custody of or visitation or parenting time with a minor  
28 may not be denied such a right and there is no presumption of neglect or child endangerment for  
29 conduct allowed under this article unless the person's actions in relation to marihuana were such  
30 that they created an unreasonable danger to the safety of the minor as established by clear and  
31 convincing evidence.

32 (f) A school, landlord or employer may not be penalized or denied any benefit under state  
33 law for enrolling, leasing to or employing a cardholder.

**§16-8A-6. Addition of debilitating medical conditions.**

1 Any citizen may petition the department to add conditions or treatments to the list of  
2 debilitating medical conditions listed in section two (d) of this article. The department shall  
3 consider petitions in the manner required by department rule, including public notice and hearing.  
4 The department shall approve or deny a petition within one hundred eighty days of its submission.  
5 The approval or denial of any petition is a final decision of the department subject to judicial  
6 review. Jurisdiction and venue are vested in the circuit court.

**§16-8A-7. Acts not required; acts not prohibited.**

1 (a) Nothing in this article requires:

2 (1) A government medical assistance program or private insurer to reimburse a person for  
3 costs associated with the medical use of marihuana, or

4 (2) Any person or establishment in lawful possession of property to allow a guest, client,  
5 customer or other visitor to smoke marihuana on or in that property.

6 (b) Nothing in this article prohibits an employer from disciplining an employee for ingesting  
7 marihuana in the workplace or working while under the influence of marihuana.

**§16-8A-8. Registration of qualifying patients and designated caregivers.**

1 (a) The department shall issue registry identification cards to qualifying patients who  
2 submit the following, in accordance with the department's rules:

- 3           (1) A written certification issued by a practitioner within ninety days immediately preceding  
4 the date of an application;
- 5           (2) If the patient is not a visiting qualifying patient, documentation required by department  
6 rules to reasonably establish proof of residency in West Virginia;
- 7           (3) If the patient is a visiting qualifying patient, a copy of his or her registry identification  
8 card or its equivalent that was issued pursuant to the laws of the jurisdiction of the person's  
9 residence;
- 10           (4) The application or renewal fee;
- 11           (5) The name, address and date of birth of the qualifying patient, except that if the applicant  
12 is homeless no address is required;
- 13           (6) The name, address and telephone number of the qualifying patient's practitioner;
- 14           (7) The name, address and date of birth of the designated caregiver, if any, chosen by the  
15 qualifying patient, except that a visiting qualifying patient may not have a designated caregiver;
- 16           (8) The name of the registered compassion center the qualifying patient designates, if any;
- 17           (9) If the qualifying patient designates a designated caregiver, a designation as to whether  
18 the qualifying patient or designated caregiver will be allowed under state law to possess and  
19 cultivate marihuana plants for the qualifying patient's medical use;
- 20           (10) A statement signed by the qualifying patient, pledging not to divert marihuana to  
21 anyone who is not allowed to possess marihuana pursuant to this article; and
- 22           (11) A signed statement from the designated caregiver, if any, agreeing to be designated  
23 as the patient's designated caregiver and pledging not to divert marihuana to anyone who is not  
24 allowed to possess marihuana pursuant to this article.
- 25           (b) The application for qualifying patients' registry identification cards shall ask whether  
26 the patient would like the department to notify him or her of any clinical studies needing human  
27 subjects for research on the medical use of marihuana. The department shall notify interested  
28 patients if it is notified of studies that will be conducted in the United States.

**§16-8A-9. Issuance of registry identification cards.**

1 (a) Except as provided in subsection (b) of this section, the department shall:

2 (1) Verify the information contained in an application or renewal submitted pursuant to this  
3 article, and approve or deny an application or renewal, within fifteen days of receiving a completed  
4 application or renewal application;

5 (2) Issue registry identification cards to a qualifying patient and his or her designated  
6 caregiver, if any, within five days of approving the application or renewal. A designated caregiver  
7 must have a registry identification card for each of his or her qualifying patients; and

8 (3) Enter the registry identification number of the registered compassion center the patient  
9 designates into the verification system.

10 (b) The department may not issue a registry identification card to a qualifying patient who  
11 is younger than eighteen years of age unless:

12 (1) The qualifying patient's practitioner has explained the potential risks and benefits of  
13 the medical use of marihuana to the custodial parent or legal guardian with responsibility for health  
14 care decisions for the qualifying patient; and

15 (2) The custodial parent or legal guardian with responsibility for health care decisions for  
16 the qualifying patient consents in writing to:

17 (A) Allow the qualifying patient's medical use of marihuana;

18 (B) Serve as the qualifying patient's designated caregiver; and

19 (C) Control the acquisition of the marihuana, the dosage and the frequency of the medical  
20 use of marihuana by the qualifying patient.

**§16-8A-10. Denial of registry identification cards.**

1 (a) The department may deny an application or renewal of a qualifying patient's registry  
2 identification card only if the applicant:

3 (1) Did not provide the required information or materials;

4 (2) Previously had a registry identification card revoked; or

5 (3) Provided false or falsified information.

6 (b) The department may deny an application or renewal for a designated caregiver chosen  
7 by a qualifying patient whose registry identification card was granted only if:

8 (1) The designated caregiver does not meet the requirements of subsection (f) of section  
9 two of this article;

10 (2) The applicant did not provide the information required;

11 (3) The designated caregiver previously had a registry identification card revoked; or

12 (4) The applicant or the designated caregiver provides false or falsified information.

13 (c) The department may conduct a background check of the prospective designated  
14 caregiver in order to carry out this provision.

15 (d) The department shall notify the qualifying patient who has designated someone to  
16 serve as his or her designated caregiver if a registry identification card will not be issued to the  
17 designated caregiver.

18 (e) Denial of an application or renewal is considered a final department action, subject to  
19 judicial review. Jurisdiction and venue for judicial review are vested in the circuit court.

**§16-8A-11. Registry identification cards.**

1 (a) Registry identification cards shall contain all of the following:

2 (1) The name of the cardholder;

3 (2) A designation of whether the cardholder is a designated caregiver or qualifying patient;

4 (3) The date of issuance and expiration date of the registry identification card;

5 (4) A random ten-digit alphanumeric identification number, containing at least four  
6 numbers and at least four letters, that is unique to the cardholder;

7 (5) If the cardholder is a designated caregiver, the random ten-digit alphanumeric  
8 identification number of the qualifying patient the designated caregiver is receiving the registry  
9 identification card to assist;

10 (6) A clear designation as to whether the cardholder will be allowed under state law to  
11 possess the marihuana plants for the qualifying patient's medical use, which shall be determined  
12 based solely on the qualifying patient's preference;

13 (7) A photograph of the cardholder, if the department's regulations require one; and

14 (8) The phone number or Web address for the verification system.

15 (b) (1) Except as provided in this subsection, the expiration date shall be one year after  
16 the date of issuance.

17 (2) If the practitioner stated in the written certification that the qualifying patient would  
18 benefit from marihuana until a specified earlier date, then the registry identification card shall  
19 expire on that date.

20 (c) The department may electronically store in the card all of the information listed in  
21 subsection (a), along with the address and date of birth of the cardholder, to allow it to be read by  
22 law-enforcement agents.

**§16-8A-12. Notifications to department and responses; civil penalty.**

1 (a) The following notifications and department responses are required:

2 (1) A registered qualifying patient shall notify the department of any change in his or her  
3 name or address, or if the registered qualifying patient ceases to have his or her debilitating  
4 medical condition, within ten days of the change.

5 (2) A registered designated caregiver shall notify the department of any change in his or  
6 her name or address, or if the designated caregiver becomes aware the qualifying patient passed  
7 away, within ten days of the change.

8 (3) Before a registered qualifying patient changes his or her designated caregiver, the  
9 qualifying patient must notify the department.

10 (4) When a registered qualifying patient changes his or her preference as to who may  
11 cultivate marihuana for the qualifying patient, the qualifying patient must notify the department.

12 (5) If a cardholder loses his or her registry identification card, he or she shall notify the  
13 department within ten days of becoming aware the card has been lost.

14 (b) When a cardholder notifies the department of items listed in subsection (a), but remains  
15 eligible under this article, the department shall issue the cardholder a new registry identification  
16 card with a new random ten-digit alphanumeric identification number within ten days of receiving  
17 the updated information and a \$20 fee. If the person notifying the department is a registered  
18 qualifying patient, the department shall also issue his or her registered designated caregiver a  
19 new registry identification card within ten days of receiving the updated information.

20 (c) If a registered qualifying patient ceases to be a registered qualifying patient or changes  
21 his or her registered designated caregiver, the department shall promptly notify the designated  
22 caregiver. The registered designated caregiver's protections under this article as to that qualifying  
23 patient shall expire fifteen days after notification by the department.

24 (d) A cardholder who fails to make a notification to the department that is required by this  
25 section is subject to a civil infraction punishable by a penalty of no more than \$150.

26 (e) A registered qualifying patient shall notify the department before changing his or her  
27 designated registered compassion center and pay a \$20 fee. The department shall, within five  
28 business days of receiving the notification, update the registered qualifying patient's entry in the  
29 identification registry system to reflect the change in designation and notify the patient that the  
30 change has been processed.

31 (f) If the registered qualifying patient's certifying practitioner notifies the department in  
32 writing that either the registered qualifying patient has ceased to suffer from a debilitating medical  
33 condition or that the practitioner no longer believes the patient would receive therapeutic or  
34 palliative benefit from the medical use of marihuana, the card becomes void. However, the  
35 registered qualifying patient has fifteen days to dispose of or give away his or her marihuana.

**§16-8A-13. Affirmative defense and dismissal for medical marihuana.**

1 (a) Except as provided in section four of this article and this section, an individual may  
2 assert a medical purpose for using marihuana as a defense to any prosecution of an offense  
3 involving marihuana intended for the patient's medical use and this defense shall be presumed  
4 valid and the prosecution shall be dismissed where the evidence shows that:

5 (1) A practitioner states that, in the practitioner's professional opinion, after having  
6 completed a full assessment of the individual's medical history and current medical condition  
7 made in the course of a bona fide practitioner-patient relationship, the patient is likely to receive  
8 therapeutic or palliative benefit from marihuana;

9 (2) To treat or alleviate the individual's serious or debilitating medical condition or  
10 symptoms associated with the individual's serious or debilitating medical condition; or

11 (b) To treat any other illness for which marihuana provides relief that, in the practitioner's  
12 professional opinion the potential benefits of the medical use of marihuana would likely outweigh  
13 the health risks for the qualifying patient and would likely be superior to treatment without the  
14 medical use of marihuana; and

15 (1) The individual and the individual's designated caregiver were collectively in possession  
16 of a quantity of marihuana that was not more than was reasonably necessary to ensure the  
17 uninterrupted availability of marihuana for the purpose of treating or alleviating the individual's  
18 serious or debilitating medical condition or symptoms associated with the individual's serious or  
19 debilitating medical condition or other illness for which marihuana was providing relief; and

20 (2) The individual was engaged in the acquisition, possession, cultivation, manufacture,  
21 use or transportation of marihuana, paraphernalia, or both marihuana and paraphernalia, relating  
22 to the administration of marihuana to treat or alleviate the individual's serious or debilitating  
23 medical condition or symptoms associated with the individual's serious or debilitating medical  
24 condition or other illness for which marihuana was providing relief; and

25 (3) Any cultivation of marihuana occurred in an enclosed, locked area that only the person  
26 asserting the defense could access.

27 (c) The defense and motion to dismiss may not prevail if either of the following are proven:

28 (1) The individual had a registry identification card revoked for misconduct; or

29 (2) The purposes for the possession or cultivation of marihuana were not solely for  
30 palliative or therapeutic use by the individual with a serious or debilitating medical condition who  
31 raised the defense.

32 (d) An individual is not required to possess a registry identification card to raise the  
33 affirmative defense set forth in this section.

34 (e) If an individual demonstrates the individual's medical purpose for using marihuana  
35 pursuant to this section, except as provided in section four of this article, the individual is not  
36 subject to the following for the individual's use of marihuana for medical purposes:

37 (1) Disciplinary action by an occupational or professional licensing board or bureau; or

38 (2) Forfeiture of any interest in or right to nonmarihuana, licit property.

**§16-8A-14. Registration of compassion centers.**

1 (a) Compassion centers may only operate if they have been issued a valid registration  
2 certificate from the department. When applying for a compassion center registration certificate,  
3 the applicant shall submit the following in accordance with department rules:

4 (1) A nonrefundable application fee in an amount determined by the department's rules,  
5 not to exceed \$4,000.

6 (2) The proposed legal name of the compassion center.

7 (3) The proposed physical address of the compassion center and the proposed physical  
8 address of any additional locations where marihuana will be cultivated, harvested, packaged,  
9 labeled or otherwise prepared for distribution by the compassion center.

10 (4) The name, address and date of birth of each principal officer and board member of the  
11 compassion center. All such individuals shall be at least twenty-one years of age.

12 (5) Any instances in which a business or not-for-profit that any of the prospective board  
13 members managed or served on the board of was convicted, fined, censured or had a registration  
14 or license suspended or revoked in any administrative or judicial proceeding.

15 (6) Any information required by the department to evaluate the applicant pursuant to the  
16 competitive bidding process described in subsection (b) of this section.

17 (b) The department shall evaluate applications for compassion center registration  
18 certificates using an impartial and numerically scored competitive bidding process developed by  
19 the department in accordance with this article. The registration considerations consist of the  
20 following criteria:

21 (1) The suitability of the proposed location or locations, including compliance with any local  
22 zoning laws and the geographic convenience to patients from throughout the State of West  
23 Virginia to compassion centers if the applicant were approved.

24 (2) The principal officer and board members' character and relevant experience, including  
25 any training or professional licensing related to medicine, pharmaceuticals, natural treatments,  
26 botany or marihuana cultivation and preparation and their experience running businesses or not-  
27 for-profits.

28 (3) The proposed compassion center's plan for operations and services, including its  
29 staffing and training plans, whether it has sufficient capital to operate and its ability to provide an  
30 adequate supply of medical marihuana to the registered patients in the state.

31 (4) The sufficiency of the applicant's plans for record keeping.

32 (5) The sufficiency of the applicant's plans for safety, security and the prevention of  
33 diversion, including proposed locations and security devices employed.

34 (6) The applicant's plan for making medical marihuana available on an affordable basis to  
35 registered qualifying patients enrolled in Medicaid or receiving Supplemental Security Income or  
36 Social Security Disability Insurance.

37 (7) The applicant's plan for safe and accurate packaging and labeling of medical  
38 marihuana, including the applicant's plan for ensuring that all medical marihuana is free of  
39 contaminants.

40 (c) No later than one year after the effective date of this article, provided that at least five  
41 applications have been submitted, the department shall issue compassion center registration  
42 certificates to the five highest-scoring applicants, except that the department may divide the state  
43 into geographical areas and grant a registration to the highest scoring applicant in each  
44 geographical area.

45 (d) No later than two years after the effective date of this article, the department shall issue  
46 registration certifications to at least one compassion center registration certificate for each two  
47 hundred thousand residents of the state of the highest scoring applicants not already awarded a  
48 registration certificate: *Provided*, That a sufficient number of additional applications have been  
49 submitted. The need to ensure an adequate geographic distribution may supersede the  
50 requirement that the approved applicants be granted registration certificates based solely on  
51 which applicants receive the highest scores. If the department determines, after reviewing the  
52 report issued pursuant to section twenty-two of this article, that additional compassion centers are  
53 needed to meet the needs of registered qualifying patients throughout the state, the department  
54 shall issue registration certificates to the corresponding number of applicants who score the  
55 highest.

56 (e) (1) At any time after two years after the effective date of this article the number of  
57 outstanding and valid registered compassion center certificates is lower than the number of  
58 registration certificates the department is required to issue pursuant to subsections (c) and (d) of  
59 this section, the department shall accept applications for compassion centers and issue  
60 registration certificates to the corresponding number of additional applicants who score the  
61 highest or that score the highest in given geographic areas.

62 (2) Notwithstanding the provisions of subsections (c), (d), and (e) of this section, an  
63 application for a compassion center registration certificate must be denied if any of the following  
64 conditions are met:

65 (A) The applicant failed to submit the materials required by this section, including if the  
66 applicant's plans do not satisfy the security, oversight or record keeping rules issued by the  
67 department;

68 (B) The applicant would not be in compliance with local zoning regulations issued in  
69 accordance with the provisions of section seventeen of this article;

70 (C) The applicant does not meet the requirements of section twenty;

71 (D) One or more of the prospective principal officers or board members has been  
72 convicted of a disqualifying felony offense;

73 (E) One or more of the prospective principal officers or board members has served as a  
74 principal officer or board member for a registered compassion center that has had its registration  
75 certificate revoked; and

76 (F) One or more of the principal officers or board members is younger than twenty-one  
77 years of age.

78 (f) After a compassion center is approved, but before it begins operations, it shall submit  
79 a registration fee to the department in the amount determined by the department's rules and, if a  
80 physical address had not been finalized when it applied, it shall submit a complete listing of all its  
81 physical addresses.

82 (g) The department shall issue each compassion center one copy of its registration  
83 certificate for each compassion center location. Registration certificates must include the  
84 compassion center's identification number. The department shall also provide each registered  
85 compassion center with the contact information for the verification system.

86 (h) Sales tax and special fund. – State sales tax at the rate imposed under article fifteen,  
87 chapter eleven of this code shall be imposed on all sales of marihuana in this state. However, all

88 revenue collected pursuant to this sales tax is to be deposited into the “Drug and Abuse  
89 Prevention Fund” which is hereby created. This fund is to be held by the State Treasurer. The  
90 Commissioner of the Bureau for Public Health may distribute proceeds from this fund for drug  
91 prevention and substance abuse programs in schools including, but not limited to, after school  
92 programs, sports and extracurricular educational opportunities; to offer community grants for  
93 substance abuse treatment facilities; and to offer grants for community improvement projects  
94 including, but not limited to, playgrounds, public parks and local farmers’ markets.

**§16-8A-15. Registration and certification of safety compliance facilities.**

1 (a) Safety compliance facilities may only operate if they have been issued a valid  
2 registration certificate from the department. When applying for a safety compliance facility  
3 registration certificate, the applicant shall submit the following in accordance with department  
4 rules:

5 (1) A nonrefundable application fee in an amount determined by the department's rules,  
6 not to exceed \$4,000;

7 (2) The proposed legal name of the safety compliance facility;

8 (3) The proposed physical address of the safety compliance facility;

9 (4) The name, address and date of birth of each principal officer and board member of the  
10 safety compliance facility. All such individuals shall be at least twenty-one years of age;

11 (5) Any instances in which a business or not-for-profit that any of the prospective board  
12 members managed or served on the board of was convicted, fined, censured or had a registration  
13 or license suspended or revoked in any administrative or judicial proceeding; and

14 (6) Any information required by the department to evaluate the applicant pursuant to the  
15 competitive bidding process described in subsection (b) of this section.

16 (b) The department shall evaluate applications for safety compliance facility registration  
17 certificates using an impartial and numerically scored competitive bidding process developed by

18 the department in accordance with this article. The registration considerations shall consist of the  
19 following criteria:

20 (1) The proposed principal officers' and board members' relevant experience, including  
21 any training or professional licensing related to analytical testing, medicine, pharmaceuticals,  
22 natural treatments, botany or marihuana cultivation, preparation and testing and their experience  
23 running businesses or not-for-profits;

24 (2) The suitability of the proposed location, including compliance with any local zoning  
25 laws and the geographic convenience to cardholders and registered compassion centers from  
26 throughout the State of West Virginia to registered safety compliance facilities if the applicant  
27 were approved;

28 (3) The sufficiency of the applicant's plans for safety, security and the prevention of  
29 diversion, including proposed locations and security devices employed; and

30 (4) The proposed safety compliance facility's plan for operations and services, including  
31 its staffing and training plans, and whether it has sufficient capital to operate.

32 (c) The department shall issue at least one safety compliance facility registration certificate  
33 to the highest scoring applicant within one year of the effective date of this article.

34 (d) (1) The department may issue additional safety compliance facility registration  
35 certificates to the highest scoring applicant or applicants or to the highest applicant or applicants  
36 in a given geographic area. If the department determines, after reviewing the report issued  
37 pursuant to section twenty-two of this article, that additional safety compliance facilities are  
38 needed to meet the needs of cardholders and registered compassion centers throughout the  
39 state, the department shall issue registration certificates to the corresponding number of  
40 applicants who score the highest overall or in a geographic area.

41 (2) Notwithstanding the provisions of subsections (c) and (d) of this section, an application  
42 for a safety compliance facility registration certificate must be denied if any of the following  
43 conditions are met:

44 (A) The applicant failed to submit the materials required by this section, including if the  
45 plans do not satisfy the security, oversight, or record keeping rules issued by the department;

46 (B) The applicant would not be in compliance with local zoning regulations issued in  
47 accordance with the provisions of section seventeen of this article;

48 (C) The applicant does not meet the requirements of section nineteen of this article;

49 (D) One or more of the prospective principal officers or board members has been  
50 convicted of a disqualifying felony offense;

51 (E) One or more of the prospective principal officers or board members has served as a  
52 principal officer or board member for a registered safety compliance facility or registered  
53 compassion center that has had its registration certificate revoked; and

54 (F) One or more of the principal officers or board members is younger than twenty-one  
55 years of age.

56 (e) After a safety compliance facility is approved, but before it begins operations, it shall  
57 submit a registration fee paid to the department in the amount determined by department rule  
58 and, if a physical address had not been finalized when it applied, its physical address.

59 (f) The department shall issue each safety compliance facility a registration certificate,  
60 which must include an identification number for the safety compliance facility. The department  
61 shall also provide the registered safety compliance facility with the contact information for the  
62 verification system.

**§16-8A-16. Compassion center and safety compliance facilities suspension and**  
**revocation.**

1 (a) The department may on its own motion or on complaint, after investigation and  
2 opportunity for a public hearing at which the compassion center or safety compliance facility has  
3 been afforded an opportunity to be heard, suspend or revoke a registration certificate for multiple  
4 or serious violations by the registrant or any of its agents of this article or any rules promulgated  
5 pursuant to it.

6 (b) The department shall provide notice of suspension, revocation, fine or other sanction,  
7 as well as the required notice of the hearing, by mailing the same in writing to the registration at  
8 the address on the registration certificate. A suspension may not be for a longer period than six  
9 months.

10 (c) A registered compassion center may continue to cultivate and possess marihuana  
11 plants during a suspension, but it may not dispense, transfer or sell marihuana.

**§16-8A-17. Local ordinances.**

1 Local governments are not prohibited from enacting ordinances or regulations not in  
2 conflict with this article or with department rule regulating the time, place and manner of registered  
3 compassion center operations and registered safety compliance facilities: *Provided, That a local*  
4 government may not prohibit registered compassion center operation altogether, either expressly  
5 or though the enactment of ordinances, rules or regulations which make a registered compassion  
6 center and registered safety compliance facility operation unreasonably impracticable in the  
7 jurisdiction.

**§16-8A-18. Compassion center and safety compliance facility agents.**

1 (a) Registered compassion centers and registered safety compliance facilities shall  
2 conduct a background check into the criminal history of every person seeking to become a  
3 principal officer, board member, agent, volunteer or employee before the person begins working  
4 at the registered compassion centers or registered safety compliance facility. A registered  
5 compassion center may not employ any person who:

6 (1) Was convicted of a disqualifying felony offense; or

7 (2) Is under twenty-one years of age.

8 (b) A registered compassion center or safety compliance facility agent must have  
9 documentation when transporting marihuana on behalf of the registered safety compliance facility  
10 or registered compassion center that specifies the amount of marihuana being transported, the  
11 date the marihuana is being transported, the registry ID certificate number of the registered

12 compassion center or registered safety compliance facility and a contact number to verify that the  
13 marihuana is being transported on behalf of the registered compassion center or registered safety  
14 compliance facility.

**§16-8A-19. Requirements, prohibitions, penalties.**

1 (a) A registered compassion center shall be operated on a not-for-profit basis. The bylaws  
2 of a registered compassion center shall contain such provisions relative to the disposition of  
3 revenues to establish and maintain its not-for-profit character. A registered compassion center  
4 need not be recognized as tax-exempt by the Internal Revenue Service and is not required to  
5 incorporate pursuant to the provisions of chapter thirty-one-e of this code.

6 (b) The operating documents of a registered compassion center shall include procedures  
7 for the oversight of the registered compassion center and procedures to ensure accurate record  
8 keeping.

9 (c) A registered compassion center and a registered safety compliance facility shall  
10 implement appropriate security measures to deter and prevent the theft of marihuana and  
11 unauthorized entrance into areas containing marihuana.

12 (d) A registered compassion center and a registered safety compliance facility may not be  
13 located within one thousand feet of the property line of a preexisting public or private school.

14 (e) A registered compassion center is prohibited from acquiring, possessing, cultivating,  
15 manufacturing, delivering, transferring, transporting, supplying or dispensing marihuana for the  
16 purposes of distributing marihuana to any person except registered qualifying patients directly or  
17 through their designated caregivers.

18 (f) All cultivation of marihuana for registered compassion centers must take place in an  
19 enclosed, locked location at the physical address or addresses provided to the department during  
20 the registration process, which can only be accessed by compassion center agents working on  
21 behalf of the registered compassion center.

22 (g) A registered compassion center may not acquire usable marihuana or mature  
23 marihuana plants from any person other than another registered compassion center, a registered  
24 qualifying patient or a registered designated caregiver. A registered compassion center is only  
25 allowed to acquire usable marihuana or mature marihuana plants from a registered qualifying  
26 patient or a registered designated caregiver if the registered qualifying patient or registered  
27 designated caregiver receives no compensation for the marihuana.

28 (h) Before marihuana may be dispensed to a designated caregiver or a registered  
29 qualifying patient, a registered compassion center agent must make a diligent effort to verify each  
30 of the following:

31 (1) That the registry identification card presented to the registered compassion center is  
32 valid, including by checking the verification system if it is operational;

33 (2) That the person presenting the card is the person identified on the registry identification  
34 card presented to the registered compassion center agent, including by examining government-  
35 issued photo identification; and

36 (3) That the registered compassion center the compassion center agent is working for is  
37 the designated compassion center for the registered qualifying patient who is obtaining the  
38 marihuana directly or via his or her designated caregiver.

39 (i) A registered compassion center may not dispense more than three ounces of  
40 marihuana to a registered qualifying patient, directly or via a designated caregiver, in any  
41 fourteen-day period. Registered compassion centers shall ensure compliance with this limitation  
42 by maintaining internal, confidential records that include records specifying how much marihuana  
43 is being dispensed to the registered qualifying patient and whether it was dispensed directly to  
44 the registered qualifying patient or to the designated caregiver. Each entry must include the date  
45 and time the marihuana was dispensed.

46 (j) A registered compassion center or registered compassion center agent may only  
47 dispense marihuana to a visiting qualifying patient if he or she possesses a valid West Virginia  
48 registry identification card and if the procedures in subsections (h) and (i) are followed.

49 (k) A person may not advertise medical marihuana sales in printed materials, on radio or  
50 television or by paid in-person solicitation of customers. This does not prevent appropriate signs  
51 on the property of the registered compassion center, listings in business directories including  
52 phone books, listings in marihuana-related or medical publications or the sponsorship of health  
53 or not-for-profit charity or advocacy events.

54 (l) A registered compassion center may not share office space with nor refer patients to a  
55 practitioner.

56 (m) A practitioner may not refer patients to a registered compassion center or registered  
57 designated caregiver, advertise in a registered compassion center or, if the practitioner issues  
58 written certifications, hold any financial interest in a registered compassion center.

59 (n) Any person who has been convicted of a disqualifying felony offense may not be a  
60 registered compassion center agent.

61 (o) Registered compassion centers and registered safety compliance facilities must  
62 display their registration certificates on the premises at all times.

63 (p) The department may issue a civil fine of up to \$3,000 for violations of this section.

64 (q) The suspension or revocation of a certificate is a final department action, subject to  
65 judicial review. Jurisdiction and venue for judicial review are vested in the circuit court.

66 (r) Any cardholder who sells marihuana to a person who is not allowed to possess  
67 marihuana for medical purposes under this article shall have his or her registry identification card  
68 revoked and is subject to other penalties for the unauthorized sale of marihuana.

69 (s) The department may revoke the registry identification card of any cardholder who  
70 knowingly commits multiple or serious violations of this article.

71 (t) Registered compassion centers are subject to reasonable inspection by the  
72 department. The department shall give a reasonable notice of an inspection under this paragraph.

**§16-8A-20. Confidentiality.**

1 (a) The following information received and records kept by department rules for purposes  
2 of administering this article are confidential and exempt from the West Virginia Freedom of  
3 Information Act, and not subject to disclosure to any individual or public or private entity, except  
4 as necessary for authorized employees of the department to perform official duties pursuant to  
5 this article:

6 (1) Applications and renewals, their contents and supporting information submitted by  
7 qualifying patients and designated care givers, including information regarding their designated  
8 caregivers and practitioners.

9 (2) Applications and renewals, their contents and supporting information submitted by or  
10 on behalf of compassion centers and safety compliance facilities in compliance with this article,  
11 including their physical addressees.

12 (3) The individual names and other information identifying persons to whom the  
13 department has issued registry identification cards.

14 (4) Any dispensing information required to be kept under the provisions of section nineteen  
15 of this article or department rule shall identify cardholders and registered compassion centers by  
16 their registry identification numbers and may not contain names or other personal identifying  
17 information.

18 (5) Any department hard drives or other data-recording media that are no longer in use  
19 and that contain cardholder information must be destroyed.

20 (6) Data subject to this section may not be combined or linked in any manner with any  
21 other list or database and it may not be used for any purpose not provided in this article.

22 (b) Nothing in this section precludes the following:

23 (1) Department employees may notify state or local law enforcement about falsified or  
24 fraudulent information submitted to the department or of other apparently criminal violations of  
25 this article if the employee who suspects that falsified or fraudulent information has been  
26 submitted conferred with his or her supervisor and both agree that circumstances exist that  
27 warrant reporting.

28 (2) Department employees may notify the West Virginia Board of Medicine if the  
29 department has reasonable suspicion to believe a practitioner did not have a bona fide  
30 practitioner-patient relationship with a patient for whom he or she signed a written certification, if  
31 the department has reasonable suspicion to believe the practitioner violated the standard of care,  
32 or for other suspected violations of this article by a practitioner.

33 (3) Compassion center agents may notify the department of a suspected violation or  
34 attempted violation of this article or the rules issued pursuant to it.

35 (4) The department may verify registry identification cards pursuant to section twenty-one  
36 of this article.

37 (5) The submission of the report to the Legislature required by the provisions of section  
38 twenty-two of this article.

39 (c) Any person, including an employee or official of the department or another state agency  
40 or local government, who breaches the confidentiality of information obtained pursuant to this  
41 article is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$1,000 or confined  
42 in jail up to one hundred eighty days, or both fined and confined.

**§16-8A-21. Registry identification and registration certificate verification.**

1 (a) The department shall maintain a confidential list of the persons to whom the  
2 department has issued registry identification cards and their addresses, phone numbers and  
3 registry identification numbers. This confidential list may not be combined or linked in any manner  
4 with any other list or database, nor may it be used for any purpose not provided in this article.

5        (b) Within one hundred twenty days of the effective date of this article, the department  
6 shall establish a verification system. The verification system must allow law-enforcement  
7 personnel, compassion center agents and safety compliance facility agents to enter a registry  
8 identification number to determine whether or not the number corresponds with a current, valid  
9 registry identification card. The system shall only disclose whether the identification card is valid;  
10 whether the cardholder is a registered qualifying patient or a registered designated caregiver;  
11 whether the cardholder is permitted to cultivate under this act; and the registry identification  
12 number of the registered compassion center designated to serve the registered qualifying patient  
13 who holds the card or the registry identification number of the patient who is assisted by the  
14 registered designated caregiver who holds the card.

15        (c) The department shall, at a cardholder's request, confirm his or her status as a  
16 registered qualifying patient or registered designated caregiver to a third party, such as a landlord,  
17 employer, school, medical professional or court.

18        (d) The department shall disclose the fact that a registry identification card was revoked  
19 to a prosecutor or court personnel in any case where the prosecutor or court personnel inquires  
20 about a specific person who is seeking to assert the protections of the provisions of section  
21 thirteen of this article. The prosecutor or court personnel must provide the department with the  
22 person's name and date of birth.

**§16-8A-22. Annual reports.**

1        (a)(1) The Legislature shall appoint a nine-member oversight committee comprised of:  
2 One member of the House of Delegates; one representative of the department; one member of  
3 the Senate; one physician with experience in medical marihuana issues; one nurse; one board  
4 member or principal officer of a registered safety compliance facility; one individual with  
5 experience in policy development or implementation in the field of medical marihuana; and three  
6 registered patients.

7           (2) The oversight committee shall meet at least two times a year for the purpose of  
8 evaluating and making recommendations to the Legislature and the Department of Health and  
9 Human Resources regarding:

10           (A) The ability of qualifying patients in all areas of the state to obtain timely access to high-  
11 quality medical marihuana.

12           (B) The effectiveness of the registered compassion centers, individually and together, in  
13 servicing the needs of qualifying patients, including the provision of educational and support  
14 services, the reasonableness of their fees, whether they are generating any complaints or security  
15 problems, and the sufficiency of the number operating to serve the registered qualifying patients  
16 of West Virginia.

17           (C) The effectiveness of the registered safety compliance facility or facilities, including  
18 whether a sufficient number are operating.

19           (D) The sufficiency of the regulatory and security safeguards contained in this article and  
20 adopted by the department to ensure that access to and use of marihuana cultivated is provided  
21 only to cardholders.

22           (E) Any recommended additions or revisions to the department rules or this article,  
23 including relating to security, safe handling, labeling and nomenclature.

24           (F) Any research studies regarding health effects of medical marihuana for patients.

25           (b) The department shall submit to the Legislature an annual report that does not disclose  
26 any identifying information about cardholders, registered compassion centers or practitioners, but  
27 does contain, at a minimum, all of the following information:

28           (1) The number of applications and renewals filed for registry identification cards;

29           (2) The number of registered qualifying patients who are residents of West Virginia at the  
30 time of the report;

31           (3) The number of registry identification cards that were issued to visiting qualifying  
32 patients at the time of the report;

- 33 (4) The nature of the debilitating medical conditions of the qualifying patients;
- 34 (5) The number of registry identification cards revoked for misconduct;
- 35 (6) The number of practitioners providing written certifications for qualifying patients; and
- 36 (7) The number of registered compassion centers.

**§16-8A-23. Department to issue rules.**

1 (a) Not later than one hundred twenty days after the effective date of this article, the  
 2 department shall propose rules for legislative approval in accordance with the provisions of article  
 3 three, chapter twenty-nine-a of this code, which rules shall include:

4 (1) Governing the manner in which the department shall consider petitions from the public  
 5 to add debilitating medical conditions or treatments to the list of debilitating medical conditions set  
 6 forth in section two-d of this article, including public notice of and an opportunity to comment in  
 7 public hearings on the petitions;

8 (2) Establishing the form and content of registration and renewal applications submitted  
 9 under this article;

10 (3) Governing the manner in which it shall consider applications for and renewals of  
 11 registry identification cards, which may include creating a standardized written certification form;  
 12 and

13 (4) Governing the following matters related to registered compassion centers, with the  
 14 goal of protecting against diversion and theft, without imposing an undue burden on the registered  
 15 compassion centers or compromising the confidentiality of cardholders:

16 (A) Oversight requirements for registered compassion centers;

17 (B) Record keeping requirements for registered compassion centers;

18 (C) Security requirements for registered compassion centers, which shall include, at a  
 19 minimum, lighting, video security, alarm requirements, on-site parking and measures to prevent  
 20 loitering;

21 (D) Electrical safety requirements;

22 (E) The competitive scoring process addressed in section fourteen of this article;

23 (F) Procedures for suspending or terminating the registration certificates or registry  
24 identification cards of cardholders, registered compassion centers and registered safety  
25 compliance facilities that commit multiple or serious violations of the provisions of this article or  
26 the rules promulgated pursuant to this section; and

27 (G) Labeling requirements for marihuana and marihuana products sold by compassion  
28 centers.

29 (5) Application and renewal fees for registry identification cards, and application and  
30 registration fees for compassion center and safety compliance facility certificates, according to  
31 the following:

32 (A) The total fees collected must generate revenues sufficient to offset all expenses of  
33 implementing and administering this article, except that fee revenue may be offset or  
34 supplemented by private donations: *Provided*, That any excess revenue from fees and private  
35 donations shall be distributed according to paragraph (D) of this subdivision;

36 (B) The department may establish a sliding scale of patient application and renewal fees  
37 based upon a qualifying patient's household income;

38 (C) The department may accept donations from private sources to reduce application and  
39 renewal fees; and

40 (D) Excess revenue from fees and private donations collected pursuant to this article, if  
41 any, shall be distributed as follows:

42 (i) Thirty percent shall be deposited into the Veterans Nursing Home Building Fund created  
43 in section nine-a, article twenty-two, chapter twenty-nine of this code; and

44 (ii) The remainder of the excess revenue shall be deposited into the Drug and Abuse  
45 Prevention Fund created in section fourteen of this article.

**§16-8A-24. Enforcement of this article.**

1           (a) If the department fails to promulgate rules to implement this article within the times  
2 provided in this article, any citizen may commence an action in circuit court to compel the  
3 department to perform the actions mandated pursuant to the provisions of this article.

4           (b) If the department fails to issue a valid registry identification card in response to a valid  
5 application or renewal submitted pursuant to this article within twenty days of its submission, the  
6 registry identification card shall be considered granted, and a copy of the registry identification  
7 application or renewal and proof of receipt of the mailing shall be deemed a valid registry  
8 identification card.

9           (c) If at any time after the one hundred forty days following the effective date of this article  
10 the department has not established a process for accepting and approving or denying  
11 applications, a notarized statement by a qualifying patient containing the information required in  
12 an application pursuant to section eight of this article, together with a written certification issued  
13 by a practitioner within ninety days immediately preceding the notarized statement, shall be  
14 considered a valid registry identification card for all purposes under this article.

NOTE: The purpose of this bill is to create the "Compassionate Use Act for Medical Cannabis. It provides protections for the medical use of cannabis; defines debilitating medical conditions for which medical cannabis may be used; and authorizes the addition of debilitating medical conditions. The bill sets out limitations of this article. It prohibits discrimination against persons entitled to the protection of this article. The bill requires the registration of qualifying patients and designated caregivers and requires issuance of registry identification cards. The bill affords an affirmative defense and dismissal of proceedings for medical marijuana. It provides a misdemeanor offense and criminal penalties for disclosing certain information. And, the bill otherwise provides for enforcement of the provisions of this article.

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