H. B. 3251

(By Delegate Manypenny)

[Introduced February 21, 2011; referred to the Committee on the Judiciary then Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-8A-1, §16-8A-2, §16-8A-3, §16-8A-4, §16-8A-5, §16-8A-6, §16-8A-7, §16-8A-8, §16-8A-9, §16-8A-10, §16-8A-11, §16-8A-12, §16-8A-13 and §16-8A-14, all relating to creating the "Compassionate Use Medical Marijuana Act;” stating legislative intent; permitting the medical use of marijuana; determining the types of patients and their physicians and caregivers who are exempt from prosecution; limiting the amount of marijuana that may be possessed; designating compassion centers; requiring sales tax to be collected and deposited into a special fund for drug prevention and abuse; prohibiting the operation of a motor vehicle; requiring the use of identification cards; requiring record keeping to be confidential; permitting funding; requiring reports; collecting sales tax; setting forth duties of the State Police; defining terms; and granting rule-making authority.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8A. THE COMPASSIONATE USE MEDICAL MARIJUANA ACT.

This article shall be known and may be cited as the “Compassionate Use Medical Marijuana Act.”

§16-8A-2. Legislative intent.
The Legislature finds and declares as follows:

(1) Modern medical research has discovered a beneficial use for marijuana in treating or alleviating the pain or other symptoms associated with certain debilitating medical conditions, as found by the National Academy of Sciences' Institute of Medicine in March 1999.

(2) According to the United States Sentencing Commission and the Federal Bureau of Investigation, ninety-nine percent of marijuana arrests in this nation are made under the laws of states, rather than under federal law. Consequently, changing the law of this state on this subject will have the practical effect of protecting from arrest seriously ill people who have a medical need to use marijuana.

(3) Although federal law currently prohibits the use of marijuana, the laws of Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont and Washington permit the use of marijuana for medical purposes, and in Arizona doctors are permitted to prescribe marijuana. West Virginia joins this effort for the health and welfare of its citizens.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(1) "Bona fide physician-patient relationship" means a physician who has completed a full assessment of the patient's medical history and current medical condition, including a personal physical examination.

(2) "Compassion center" means a facility where usable marijuana may be dispensed for medical use.

(3) "Controlled Substance, Drug, Device and Cosmetic Act" means The Controlled Substance, Drug, Device and Cosmetic Act, P.L. 233, No.64.

(4) "Debilitating medical condition" includes any of the following:

(A) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome or the treatment of these conditions;

(B) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: Cachexia or wasting syndrome; severe or chronic pain; severe nausea; seizures, including, but not limited to, those characteristic of epilepsy; severe and persistent muscle spasms, including, but not limited to, those characteristic of multiple sclerosis or Crohn's disease; or
(C) Any other weakening medical condition or its treatment that is recognized by licensed medical authorities as being treatable with marijuana in a manner that is superior to treatment without marijuana.

(5) "Department" means the Department of Health and Human Resources.

(6) "Marijuana" means the term that is defined using the spelling "marihuana" under The Controlled Substance, Drug, Device and Cosmetic Act, P.L. 233, No.64.

(7) "Medical use" means the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to a qualifying patient's consumption of marijuana to alleviate the symptoms or effects of the patient's debilitating medical condition.

(8) "Physician" means a person licensed to practice medicine and surgery under the laws of this state.

(9) "Primary caregiver" or "caregiver" means a person who is at least eighteen years of age, who has never been convicted of a felony drug offense, has agreed to assist with a qualifying patient's medical use of marijuana and has been designated as primary caregiver on the qualifying patient's application or renewal for a registry identification card or in other written notification to the Department of Health and Human Resources. A primary caregiver shall only have one qualifying patient at any one time. A primary caregiver shall not include the qualifying patient's physician.

(10) "Qualifying patient" or "patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

(11) "Registry identification card" means a document issued by the Department of Health and Human Resources that identifies a person as a qualifying patient or primary caregiver. The term shall include a registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical use of marijuana.

(12) "Secretary" means the Secretary of Health and Human Resources.

(13) "Usable marijuana" means the dried leaves and flowers of marijuana, and any mixture or preparation thereof, and does not include the seeds, stalks and roots of the plant.

(14) "Written certification" means the qualifying patient's medical records, or a statement signed by a physician licensed in accordance with the laws of this state with whom the patient has a bona fide physician-patient relationship, stating that in the physician's professional opinion, after having completed a full assessment of the qualifying patient's medical history and current medical condition, the qualifying
patient has a debilitating medical condition for which the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient and would likely be superior to treatment without the medical use of marijuana.

§16-8A-4. Compassion centers.

(a) Duty of department. -- The department may establish its own and shall license any privately owned compassion center.

(b) Sales tax and special fund. -- State sales tax at the rate imposed under article fifteen, chapter eleven of this code shall be imposed on all sales of marijuana in this state. However, all revenue collected pursuant to this sales tax is to be deposited into the newly created Drug and Abuse Prevention Fund to be held by the State Treasurer. The Division of Criminal Justice Services is to distribute proceeds from this fund for drug prevention and substance abuse programs in schools and as substance abuse treatment facilities community grants.

(c) Growth, processing or distribution of marijuana for medical treatment. -- A compassion center shall maintain records of all marijuana it grows, processes or distributes for medical treatment and shall make its records available for inspection by the department.


(a) Freedom from arrest, prosecution or penalty. --

(1) A qualifying patient shall not be subject to arrest, prosecution or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a professional licensing board, for the medical use of marijuana, provided that the patient possesses a registry identification card and no more than six marijuana plants and one ounce of usable marijuana.

(2) There shall exist a rebuttable presumption that a qualifying patient is engaged in the medical use of marijuana if he possesses a registry identification card and no more than six marijuana plants and one ounce of usable marijuana. The presumption may be rebutted by evidence that conduct related to marijuana was not for the purpose of alleviating the symptoms or effects of a patient's debilitating medical condition.

(3) A qualifying patient may assert the medical use of marijuana as an affirmative defense to any prosecution involving marijuana unless the patient was in violation of this section when the events giving rise to the prosecution occurred. The defense shall be presumed valid where the evidence shows both of the following:

(A) At the time of the events giving rise to the prosecution, the patient's medical records indicated or a physician stated that, in the physician's professional opinion, after having completed a full assessment of the patient's medical history and current
medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient; and

(B) The patient and his or her caregiver, if any, were collectively in possession of no more than six marijuana plants and one ounce of usable marijuana.

(4) Possession of, or application for, a registry identification card shall not alone constitute probable cause to search the person or the property of the person possessing or applying for the registry identification card, or otherwise subject the person or his or her property to inspection by any governmental agency.

(5) The provisions of the Controlled Substance, Drug, Device and Cosmetic Act, relating to destruction of marijuana shall not apply if a qualifying patient has in his or her possession a registry identification card and no more than six marijuana plants and one ounce of usable marijuana.

(b) Patients under eighteen years of age. -- The provisions of subsection (a) of this section shall not apply to a qualifying patient under eighteen years of age, unless:

(1) The patient's physician has explained to the patient and the patient's custodial parent, guardian or person having legal custody, the potential risks and benefits of the medical use of marijuana; and

(2) The custodial parent, guardian or person having legal custody consents in writing to: allow the patient's medical use of marijuana; serve as the patient's primary caregiver; and control the acquisition, dosage and frequency of the medical use of marijuana by the patient.

(c) Immunity of primary caregiver. --

(1) A primary caregiver who has in his or her possession a registry identification card shall not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a professional licensing board, for assisting a qualifying patient to whom the caregiver is connected through the department's registration process with the medical use of marijuana, provided that the caregiver possesses no more than six marijuana plants and one ounce of usable marijuana for the patient to whom he or she is connected through the department's registration process.

(2) There shall exist a rebuttable presumption that a primary caregiver is engaged in the medical use of marijuana if the caregiver possesses a registry identification card and no more than six marijuana plants and one ounce of usable marijuana. The presumption may be rebutted by evidence that conduct related to marijuana was not for
the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition.

(3) A primary caregiver may assert the medical use of marijuana as an affirmative defense to any prosecution involving marijuana unless the caregiver was in violation of this section when the events giving rise to the prosecution occurred. The defense shall be presumed valid where the evidence shows that:

(A) At the time of the events giving rise to the prosecution, the patient's medical records indicated or a physician stated that, in the physician's professional opinion, after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient; and

(B) The patient and his or her caregiver, if any, were collectively in possession of no more than six marijuana plants and one ounce of usable marijuana.

(4) Possession of, or application for, a registry identification card shall not alone constitute probable cause to search a person or property of a person possessing or applying for the registry identification card or otherwise subject the person or his or her property to inspection by any governmental agency.

(5) The provisions of the Controlled Substance, Drug, Device and Cosmetic Act, relating to destruction of marijuana determined to exist by the department, shall not apply if a primary caregiver has in his or her possession a registry identification card and no more than six marijuana plants and one ounce of usable marijuana.

(d) Immunity of physician. -- A physician shall not be subject to arrest, prosecution or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by the State Board of Medicine or the Board of Osteopathy for providing written certification for the medical use of marijuana to a qualifying patient.

(e) Personal proximity. -- No person shall be subject to arrest or prosecution for constructive possession, conspiracy or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this article.

§16-8A-6. Operation of a motorized vehicle prohibited.

This article may not be construed to permit any person to operate, navigate or be in actual physical control of any motor vehicle, aircraft or motorboat while under the influence of marijuana; or smoke marijuana in a school bus or other form of public transportation, on any school grounds, in any correctional facility, at any public park or beach, at any recreation center or at any place where cigarette smoking is prohibited.
by law or by organizational policy. A person who commits an act as provided in this section shall be subject to such penalties as provided by law.


It shall be a violation of section one-b, article six, chapter sixty-one (relating to disorderly conduct) for a person to fabricate or misrepresent a registry identification card to a law-enforcement official.


(a) Registry. -- The department shall establish a registry and shall issue a registry identification card to a qualifying patient who submits the following information in accordance with the department's regulations:

(1) Written certification that the person is a qualifying patient;
(2) An application or renewal fee of not less than $50, which may be based on a sliding scale as determined by the secretary;
(3) Name, address and date of birth of the patient;
(4) Name, address and telephone number of the patient's physician; and
(5) Name, address and date of birth of the patient's primary caregiver, if any.

(b) Issuance of registry identification card to qualified patient.--

Before issuing a registry identification card, the department shall verify the information contained in the application or renewal form submitted under this section. The department shall approve or deny an application or renewal within fifteen days of receipt of the application or renewal and shall issue a registry identification card within five days of approving the application or renewal. The department may deny an application or renewal only if the applicant fails to provide the information required under this section or if the department determines that the information was falsified. Denial of an application is considered a final agency decision, subject to review by the courts of this state.

(c) Issuance of registry identification card to caregiver.--

The department shall issue a registry identification card to the caregiver named in a patient's approved application if the caregiver signs a statement agreeing to provide marijuana only to the patient who has named him or her as caregiver.

(d) Information on face of registry identification card.--A registry identification card shall contain the following information:

(1) The name, address and date of birth of the patient;
(2) The name, address and date of birth of the patient's caregiver, if any;
(3) The date of issuance and expiration date of the registry identification card;
(4) Photo identification of the cardholder; and
Such other information that the department may specify in its regulations.

(e) Changes in listed information. -- A patient who has been issued a registry identification card shall notify the department of any change in the patient's name, address, physician or caregiver, or change in status of the patient's debilitating medical condition, within ten days of such change, or the registry identification card shall be deemed null and void.

(f) Freedom of Information Act inapplicable. -- The department shall maintain a confidential list of the persons to whom it has issued registry identification cards. Individual names and other identifying information on the list shall be confidential, and shall not be considered a public record under the Freedom of Information Act in chapter twenty-nine-b of this code and shall not be disclosed except to:

1. Authorized employees of the department as necessary to perform official duties of the department; or
2. Authorized employees of state or local law-enforcement agencies, only as necessary to verify that a person who is engaged in the suspected or alleged medical use of marijuana is lawfully in possession of a registry identification card.


The secretary may accept from any governmental department or agency, public or private body or any other source grants or contributions to be used in carrying out the purposes of this article.

§16-8A-10. Reports by secretary.

The secretary shall report annually to the Governor and the Legislature on the number of applications for registry identification cards, the number of qualifying patients and primary caregivers approved, the nature of the debilitating medical conditions of the patients, the number of registry identification cards revoked and the number of physicians providing written certifications for patients. The report shall not contain any identifying information of patients, caregivers or physicians.


This article may not be construed to require a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana, or an employer to accommodate the medical use of marijuana in an workplace.


The state shall not be held liable for any deleterious outcomes from the medical use of marijuana by any qualifying patient.

The secretary shall promulgate rules in accordance with chapter twenty-nine-a of this code to effectuate the purposes of this article. The rules shall establish the application and renewal form, process and fee schedule and any limitations in the public interest on debilitating medical conditions not specifically included in this article.


The West Virginia State Police shall advise the department and caregivers on effective security measures for the possession and transportation of medical marijuana and shall inspect sites if requested.

NOTE: The purpose of this bill is to create the “Compassionate Use Medical Marijuana Act.” The bill states legislative intent of permitting the medical use of marijuana. The bill determines the types of patients and their physicians and caregivers who are exempt from prosecution. The bill also limits the amount of marijuana that may be possessed. The bill designates compassion centers and prohibits the operation of a motor vehicle. The bill also requires the use of identification cards and all record keeping to be confidential. The bill requires sales tax to be collected and deposited into a special fund for drug prevention and abuse. The bill requires reports be made to the Governor and Legislature. The bill requires the collecting of sales tax. The bill further sets forth duties of the State Police, defines terms, grants and rule-making authority.

This article is new; therefore, it has been completely underscored.