

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Engrossed**

**Committee Substitute**

**for**

**Senate Bill 386**

BY SENATORS OJEDA, BEACH, FACEMIRE, MILLER,  
PALUMBO, PLYMALE, ROMANO, RUCKER, STOLLINGS,  
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[Originating in the Committee on Health and Human  
Resources; reported on March 25, 2017]



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, and §16-8A-17, all relating to creating the West Virginia Medical Cannabis  
5 Act; defining terms; creating the West Virginia Medical Cannabis Commission; setting forth  
6 members of the West Virginia Medical Cannabis Commission; setting forth responsibilities  
7 for the West Virginia Medical Cannabis Commission; creating a special revenue account  
8 known as the West Virginia Medical Cannabis Commission Fund; requiring a portion of  
9 any profit to be spent for specific programs; detailing the fund's revenue sources and  
10 disbursements; detailing requirements of the commission to implement the provisions of  
11 the act; setting requirements for becoming a certifying physician; authorizing the  
12 commission to approve physician applications for certain medical conditions; requiring  
13 reporting to the Controlled Substances monitoring database; setting out conditions for  
14 which cannabis may be used; requiring certain annual reports to the Governor and  
15 Legislature; authorizing the commission to license medical cannabis growers and grower  
16 agents that meet certain requirements; setting forth certain parameters for licensed  
17 growers and grower agents; requiring a certain percentage of licenses be granted to  
18 persons in veterans agriculture programs; providing an exception for a qualifying patient  
19 to grow a specified amount without a license; authorizing the commission to license  
20 dispensaries and register dispensary agents; setting forth certain requirements for  
21 dispensaries and dispensary agents setting an initial limit on number of medical cannabis  
22 growers and dispensaries; authorizing commission to license the number of growers and  
23 dispensaries sufficient to meet demand as of July 1, 2020; authorizing the commission to  
24 license medical cannabis processors and register processor agents; authorizing testing  
25 laboratories; stating requirements for the commission's registration of independent  
26 laboratories; requiring the State Police and commission to enter a memorandum of

27 understanding for criminal records checks and setting forth basic requirements; providing  
28 that certain persons licensed, registered and authorized under the act may not be subject  
29 to arrest, prosecution or any civil or administrative penalty, including a civil penalty or  
30 disciplinary action by a professional licensing board, or be denied any right or privilege,  
31 for the medical use of cannabis; creating a new criminal offense of distributing,  
32 possessing, manufacturing or using cannabis that has been diverted from an authorized  
33 medicinal use; specifically stating conduct related to cannabis that is not protected by the  
34 provisions of the act; authorizing state employees to recover certain counsel fees;  
35 empowering the Governor to suspend implementation of the act if the Governor  
36 determines certain federal action may occur; authorizing promulgation of emergency rules  
37 and the proposal of legislative rules for approval by the Legislature; and establishing  
38 effective dates.

*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 and §16-8A-17, all to read as follows:

**ARTICLE 8A. WEST VIRGINIA MEDICAL CANNABIS ACT.**

**§16-8A-1. Definitions.**

1 As used in this article, the following words have the meanings indicated.

2 (1) "Caregiver" means:

3 (A) A person who has agreed to assist with a qualifying patient's medical use of cannabis;

4 and

5 (B) For a qualifying patient under the age of eighteen years, a parent or legal guardian.

6 (2) "Certifying physician" means an individual who:

7 (A) Has an active, unrestricted license to practice medicine that was issued by the West  
8 Virginia Board of Medicine or the West Virginia Board of Osteopathic Medicine;

9 (B) Is in good standing with the West Virginia Board of Medicine or the West Virginia Board  
10 of Osteopathic Medicine, whichever is applicable;

11 (C) Has a valid and unencumbered authority to prescribe controlled substances; and

12 (D) Is registered with the commission to make cannabis available to patients for medical  
13 use in accordance with regulations adopted by the commission.

14 (3) "Commission" means the West Virginia Medical Cannabis Commission established  
15 under this article.

16 (4) "Dispensary" means an entity licensed under this article that acquires, possesses,  
17 processes, transfers, transports, sells, distributes, dispenses, or administers cannabis, products  
18 containing cannabis, related supplies, related products containing cannabis including food,  
19 tinctures, aerosols, oils, or ointments, or educational materials for use by a qualifying patient or  
20 caregiver.

21 (5) "Dispensary agent" means an owner, a member, an employee, a volunteer, an officer,  
22 or a director of a dispensary.

23 (6) "Fund" means the West Virginia Medical Cannabis Commission Fund established  
24 under this article.

25 (7) "Grower" means an entity licensed under this article that:

26 (A)(i) Cultivates, manufactures, processes, packages, or dispenses medical cannabis; or

27 (ii) Processes medical cannabis products; and

28 (B) Is authorized by the commission to provide cannabis to a qualifying patient, caregiver,  
29 processor, dispensary, or independent testing laboratory.

30 (8) "Independent testing laboratory" means a facility, entity, or site that offers or performs  
31 tests related to the inspection and testing of cannabis and products containing cannabis.

32 (9) “Medical cannabis grower agent” means an owner, an employee, a volunteer, an  
33 officer, or a director of a grower.

34 (10) “Processor” means an entity that:

35 (A) Transforms medical cannabis into another product or extract; and

36 (B) Packages and labels medical cannabis.

37 (11) “Processor agent” means an owner, member, employee, volunteer, officer, or director  
38 of a processor.

39 (12) “Qualifying patient” means an individual who:

40 (A) Has been provided with a written certification by a certifying physician in accordance  
41 with a bona fide physician–patient relationship; and

42 (B) If under the age of eighteen years, has a caregiver.

43 (13) “Written certification” means a certification that:

44 (A) Is issued by a certifying physician to a qualifying patient with whom the physician has  
45 a bona fide physician–patient relationship; and

46 (B) Includes a written statement certifying that, in the physician’s professional opinion,  
47 after having completed an assessment of the patient’s medical history and current medical  
48 condition, the patient has a condition:

49 (i) That meets the inclusion criteria and does not meet the exclusion criteria of the certifying  
50 physician’s application; and

51 (ii) For which the potential benefits of the medical use of cannabis would likely outweigh  
52 the health risks for the patient; and

53 (C) May include a written statement certifying that, in the physician’s professional opinion,  
54 a thirty–day supply of medical cannabis would be inadequate to meet the medical needs of the  
55 qualifying patient.

56 (D) Written certifications referenced in this subdivision shall be written on tamper-resistant,  
57 noncopyable paper.

**§16-8A-2. Creation of West Virginia Medical Cannabis Commission.**

- 1           (a) There is hereby created the West Virginia Medical Cannabis Commission.
- 2           (b) The commission is an independent commission that functions within the Department  
3 of Health and Human Resources.
- 4           (c) The purpose of the commission is to develop policies, procedures, guidelines, and  
5 regulations to implement programs to make medical cannabis available to qualifying patients in a  
6 safe and effective manner.
- 7           (d) The commission shall develop identification cards for qualifying patients and  
8 caregivers.
- 9           (e) The department shall adopt rules that establish the requirements for identification cards  
10 provided by the commission. The rules shall include:
- 11           (1) The information to be included on an identification card;
- 12           (2) Requirements that ensure identification cards may not be tampered with or altered and  
13 that the identification cards be noncopyable;
- 14           (3) The method through which the commission will distribute identification cards; and
- 15           (4) The method through which the commission will track identification cards.
- 16           (f) The commission shall develop and maintain a website that:
- 17           (1) Provides information on how an individual can obtain medical cannabis in the state;  
18 and
- 19           (2) Provides contact information for licensed dispensaries.

**§16-8A-3. Makeup of commission and creation of the West Virginia Medical Cannabis**

**Commission Fund.**

- 1           (a) The commission shall consist of the following sixteen members:
- 2           (1) The Secretary of the Department of Health and Human Resources, or the secretary's  
3 designee;
- 4           (2) The Commissioner of the Department of Agriculture, or the commissioner's designee;

5 (3) The West Virginia Treasurer, or the Treasurer's designee; and

6 (4) The following twelve members, appointed by the Governor:

7 (i) Two members of the public who support the use of cannabis for medical purposes and  
8 who are or were patients who found relief from the use of cannabis;

9 (ii) One member designated by the West Virginia Association of Alcoholism and Drug  
10 Counselors;

11 (iii) Two physicians licensed to practice in this state;

12 (iv) One nurse practitioner licensed to practice in this state with experience in hospice  
13 care;

14 (v) One pharmacist licensed to practice in this state;

15 (vi) One pharmacologist who has experience in the science of cannabis with experience  
16 in and a knowledge of the uses, effects and modes of actions of drugs;

17 (vii) One representative of the West Virginia State Bar;

18 (viii) One representative of law enforcement;

19 (ix) An attorney licensed in this state who is knowledgeable about medical cannabis laws  
20 in the United States; and

21 (x) An individual with experience in horticulture, recommended by the Department of  
22 Agriculture.

23 (b)(1) The term of a member is four years. However, the Governor shall set the terms of  
24 the initial members of the commission by executive order such that three expire after one year,  
25 three expire after two years, and three expire after three years in order to stagger the membership  
26 terms of the commission.

27 (2) At the end of a commission member's term, he or she shall continue to serve until a  
28 successor is appointed and qualified.

29 (3) A member may not serve more than three consecutive full terms.



30 (4) A member who is appointed after a term has begun serves only for the rest of the term  
31 and until a successor is appointed and qualifies.

32 (c) The Governor shall designate the chair from among the members of the commission.

33 (d) A majority of the full authorized membership of the commission is a quorum.

34 (e) A member of the commission may not receive compensation, but shall be entitled to  
35 reimbursement for expenses incurred while engaged in the discharge of official duties, not to  
36 exceed the amount paid to members of the Legislature.

37 (f) The commission may employ staff, including contractual staff, in accordance with the  
38 funds provided in the annual state budget.

39 (g) The commission may set reasonable fees that shall be sufficient to cover the costs of  
40 operating the commission in conformity with the duties imposed upon it by the provisions of this  
41 article.

42 (h)(1) There is hereby created in the State Treasury a separate special revenue account,  
43 which shall be an interest-bearing account, to be known as the West Virginia Medical Cannabis  
44 Commission Fund.

45 (2) The commission shall administer the fund.

46 (3) Any balance remaining in the fund at the end of any state fiscal year reverts to the  
47 General Revenue Fund: *Provided*, That annually ten percent of the funds shall be dedicated to  
48 educational programs regarding safe cannabis use and supporting controlled substance and  
49 alcohol recovery programs. The commission shall establish a procedure for disbursement by rule.

50 (4) The fund shall be subject to an audit by the West Virginia Legislative Auditor's Office.

51 (5) The Treasurer shall pay out money from the fund as directed by the commission.

52 (6) The fund consists of:

53 (A) Any money appropriated by the Legislature to the fund;

54 (B) Any other money from any other source accepted for the benefit of the fund, in  
55 accordance with any conditions adopted by the commission for the acceptance of donations or  
56 gifts to the fund; and

57 (C) Any fees collected by the commission under this article.

**§16-8A-4. Certifying physician's registration.**

1 (a) The commission shall register as a certifying physician an individual who:

2 (1) Meets the requirements of this article; and

3 (2) Submits application materials that meet the requirements of this article.

4 (b) To be registered as a certifying physician, a physician shall submit a proposal to the  
5 commission that includes:

6 (1) The reasons for including a patient under the care of the physician for the purposes of  
7 this article, including the patient's qualifying medical conditions;

8 (2) An attestation that a standard patient evaluation will be completed, including a history,  
9 a physical examination, a review of symptoms, and other pertinent medical information; and

10 (3) The physician's plan for the ongoing assessment and follow-up care of a patient, and  
11 for collecting and analyzing data.

12 (c) The commission may not require an individual to meet requirements in addition to the  
13 requirements listed in subsections (a) and (b) of this section to be registered as a certifying  
14 physician.

15 (d)(1) The commission shall consider for approval physician applications for the following  
16 medical conditions:

17 (A) Chronic or debilitating diseases or medical conditions that result in a patient being  
18 admitted into Hospice or receiving palliative care; and

19 (B) Chronic or debilitating diseases or medical conditions or the treatment of chronic or  
20 debilitating diseases or medical conditions that produce:

21 (i) Cachexia, anorexia, or wasting syndrome;

22 (ii) Severe or chronic pain that does not find effective relief through standard pain  
23 medication;

24 (iii) Severe nausea;

25 (iv) Seizures;

26 (v) Severe or persistent muscle spasms; or

27 (vi) Refractory generalized anxiety disorder.

28 (C) Post-traumatic stress disorder.

29 (2) The commission may not limit treatment of a particular medical condition to one class  
30 of physicians.

31 (e) The commission may approve applications that include any other condition that is  
32 severe and for which other medical treatments have been ineffective if the symptoms reasonably  
33 can be expected to be relieved by the medical use of cannabis.

34 (f)(1) A certifying physician or the spouse of a certifying physician may not receive any  
35 gifts from or have an ownership interest in a medical cannabis grower, a processor, or a  
36 dispensary.

37 (2) A certifying physician may receive compensation from a medical cannabis grower, a  
38 processor, or dispensary if the certifying physician:

39 (A) Obtains the approval of the commission before receiving the compensation; and

40 (B) Discloses the amount of compensation received from the medical cannabis grower,  
41 processor, or dispensary to the commission.

42 (g)(1) A qualifying patient may be a patient of the certifying physician or may be referred  
43 to the certifying physician.

44 (2) A certifying physician shall provide each written certification to the commission.

45 (3) On receipt of a written certification provided under subdivision (2) of this subsection,  
46 the commission shall issue an identification card to each qualifying patient or caregiver named in  
47 the written certification.

48 (4) A certifying physician may discuss medical cannabis with a patient.

49 (5)(A) Except as provided in paragraph (B) of this subdivision, a qualifying patient or  
50 caregiver may obtain medical cannabis only from a medical cannabis grower licensed by the  
51 commission or a dispensary licensed by the commission.

52 (B) A qualifying patient under the age of eighteen years may obtain medical cannabis only  
53 through his or her caregiver.

54 (6)(A) A caregiver may serve no more than five qualifying patients at any time.

55 (B) A qualifying patient may have no more than two caregivers.

56 (h)(1) A certifying physician shall register biennially.

57 (2) The commission shall grant or deny a renewal of a registration for approval based on  
58 the physician's performance in complying with rules adopted by the commission.

59 (i) Certifying physicians shall report all certifications for qualifying patients as set forth in  
60 this article to the Controlled Substances Monitoring Database as set forth in article nine, chapter  
61 sixty-A of this code.

**§16-8A-5. Reporting requirement.**

1 On or before January 31 each year, the commission shall report to the Governor and the  
2 Joint Committee on Government and Finance the commission's activities over the course of the  
3 previous year.

**§16-8A-6. Medical cannabis growers and grower agents.**

1 (a)(1) The commission may license medical cannabis growers that meet all requirements  
2 established by the commission to operate in the state to provide cannabis to:

3 (A) Processors licensed by the commission under this article;

4 (B) Dispensaries licensed by the commission under this article;

5 (C) Qualifying patients and caregivers; and

6 (D) Independent testing laboratories registered with the commission under this article.

7 (2)(A) Except as provided in paragraph (B) of this subdivision, the commission may license  
8 no more than fifteen medical cannabis growers.

9           (B) Beginning July 1, 2020, the commission may issue the number of licenses necessary  
10 to meet the demand for medical cannabis by qualifying patients and caregivers in an affordable,  
11 accessible, secure, and efficient manner.

12           (C) The commission shall establish an application review process for granting medical  
13 cannabis grower licenses in which applications are reviewed, evaluated, and ranked based on  
14 criteria established by the commission.

15           (D) If the commission finds sufficient availability, at least ten percent of the licenses  
16 granted pursuant to this section shall be to persons participating in a veterans' agriculture  
17 program.

18           (E) The commission may not issue more than one medical cannabis grower license to  
19 each applicant.

20           (F) A grower shall pay an application fee in an amount to be determined by the commission  
21 consistent with this article.

22           (3) The commission shall set standards for licensure as a medical cannabis grower to  
23 ensure public safety and safe access to medical cannabis, which may include a requirement for  
24 the posting of security.

25           (4) Each medical cannabis grower agent shall:

26           (A) Be registered with the commission before the agent may volunteer or work for a  
27 licensed grower; and

28           (B) Obtain state and national criminal history records checks in accordance with section  
29 twelve of this article.

30           (5)(A) A licensed grower shall apply to the commission for a registration card for each  
31 grower agent by submitting the name, address, and date of birth of the agent.

32           (B) Within one business day after a grower agent ceases to be associated with a grower,  
33 the grower shall notify the commission and return the grower agent's registration card to the  
34 commission. On receipt of the notice, the commission shall immediately revoke the registration

35 card of the grower agent and, if the registration card was not returned to the commission, notify  
36 the Superintendent of the West Virginia State Police.

37 (C) The commission may not register a person as a grower agent who has been convicted  
38 of a felony drug offense.

39 (6)(A) A medical cannabis grower license is valid for four years on initial licensure.

40 (B) A medical cannabis grower license is valid for two years on renewal.

41 (7) An application to operate as a medical cannabis grower may be submitted in paper or  
42 electronic form.

43 (8)(A) The commission may encourage licensing medical cannabis growers that grow  
44 strains of cannabis, including strains with high cannabidiol content, with demonstrated success in  
45 alleviating symptoms of specific diseases or conditions.

46 (B) The commission may encourage licensing medical cannabis growers that prepare  
47 medical cannabis in a range of routes of administration.

48 (9)(A) The commission shall:

49 (i) Actively seek to achieve geographic diversity when licensing medical cannabis growers;  
50 and

51 (ii) Encourage applicants who qualify as a minority-owned business, as that term is defined  
52 in section fifty-nine, article three, chapter five-a of this code.

53 (B) Beginning July 1, 2020, a grower licensed under this article to operate as a medical  
54 cannabis grower shall report annually to the commission regarding geographic diversity and  
55 minority ownership and employees of the grower.

56 (10) An entity seeking licensure as a medical cannabis grower shall meet local zoning and  
57 planning requirements.

58 (b) An entity licensed to grow medical cannabis under this section may provide cannabis  
59 only to:

60 (1) Processors licensed by the commission under this article;

61 (2) Dispensaries licensed by the commission under this article;

62 (3) Qualified patients;

63 (4) Caregivers; and

64 (5) Independent testing laboratories registered with the commission under this article.

65 (c)(1) An entity licensed to grow cannabis under this section may only dispense cannabis  
66 from a facility of a grower that is also licensed as a dispensary.

67 (2) An entity licensed to grow medical cannabis under this section may be licensed to grow  
68 and process medical cannabis on the same premises.

69 (d) An entity licensed to grow medical cannabis under this section shall ensure that safety  
70 precautions established by the commission are followed by any facility operated by the grower.

71 (e) The commission shall establish requirements for security and the manufacturing  
72 process that a grower must meet to obtain a license under this section, including, but not limited  
73 to, a requirement for a product-tracking system.

74 (f) A grower licensed under this section shall allow the commission and its agents to  
75 inspect licensed facilities.

76 (g) The commission is authorized to impose penalties or rescind the license of a grower  
77 that does not meet the standards for licensure set by the commission.

78 (h) Notwithstanding any provision of law to the contrary, a qualifying patient is exempt  
79 from the provisions of this section and may grow and cultivate no more than two mature cannabis  
80 plants solely for his or her own use in accordance with the certification from a certifying physician.

81 A qualifying patient remains subject to the prohibitions set forth in section four hundred one, article  
82 four, chapter sixty-A of this code for delivery or distribution of any cannabis which is grown and  
83 possessed pursuant to this subsection.

**§16-8A-7. Dispensaries.**

1 (a) The Commission is hereby authorized to license dispensaries of medical cannabis.

2 (b) To be licensed as a dispensary, an applicant must submit to the commission:

3           (1) An application fee in an amount to be determined by the commission consistent with  
4 this article; and

5           (2) An application that includes:

6           (A) The legal name and physical address of the proposed dispensary;

7           (B) The name, address, and date of birth of each principal officer and each director, none  
8 of whom may have served as a principal officer or director for a dispensary that has had its license  
9 revoked; and

10          (C) Operating procedures that the dispensary will use, consistent with commission  
11 regulations for oversight, including storage of cannabis and products containing cannabis only in  
12 enclosed and locked facilities.

13          (c) The commission shall:

14          (1) Establish an application review process for granting dispensary licenses in which  
15 applications are reviewed, evaluated, and ranked based on criteria established by the  
16 commission; and

17          (2) Actively seek to achieve geographic diversity when licensing dispensaries.

18          (d) (1) Upon initial issuance, a license to dispense medical cannabis shall be valid for four  
19 years.

20          (2) Upon renewal, a dispensary license shall be valid for two years.

21          (e) A dispensary licensed under this section or a dispensary agent registered under  
22 section eight of this article may not be prosecuted or penalized under state law for acquiring,  
23 possessing, processing, transferring, transporting, selling, distributing, or dispensing cannabis,  
24 products containing cannabis, related supplies, or educational materials for use by a qualifying  
25 patient or a caregiver in compliance with the provisions of this article.

26          (f) The commission shall establish requirements for security and product handling  
27 procedures that a dispensary must meet to obtain a license under this section, including a  
28 requirement for a product-tracking system.



29 (g) A dispensary licensed under this section shall allow the Commission and its agents to  
30 inspect licensed facilities at any time without the necessity of a warrant to ensure compliance with  
31 this article.

32 (h) The commission may impose penalties or rescind the license of a dispensary that does  
33 not meet the standards for licensure set by the commission.

34 (i) Each dispensary licensed under this section shall submit to the commission a quarterly  
35 report which shall include:

36 (1) The number of patients served;

37 (2) The county of residence of each patient served;

38 (3) The medical condition for which medical cannabis was recommended;

39 (4) The type and amount of medical cannabis dispensed; and

40 (5) If available, a summary of clinical outcomes, including adverse events and any cases  
41 of suspected diversion.

42 (j)(1) Except as provided by subdivision (2) of this subsection, the commission may license  
43 no more than sixty medical cannabis dispensaries;

44 (2) Beginning July 1, 2020, the commission may issue the number of licenses necessary  
45 to meet the demand for medical cannabis by qualifying patients and caregivers by an affordable,  
46 accessible, secure and efficient manner.

47 (k) The quarterly report required by the provisions of subsection (i) of this section shall not  
48 include personal identifying information of qualifying patients.

**§16-8A-8. Dispensary agents.**

1 (a) A dispensary agent shall:

2 (1) Be at least twenty-one years old;

3 (2) Be registered with the commission before the agent may volunteer or work for a  
4 dispensary; and

5           (3) Obtain state and national criminal history records check in accordance with section  
6 twelve of this article.

7           (b) A dispensary shall apply to the commission for a registration card for each dispensary  
8 agent by submitting the name, address, and date of birth of the agent.

9           (c)(1) Within one business day after a dispensary agent ceases to be associated with a  
10 dispensary, the dispensary shall:

11           (A) Notify the commission; and

12           (B) Return the dispensary agent's registration card to the commission.

13           (2) On receipt of a notice described in subdivision (1) of this subsection, the commission  
14 shall:

15           (A) Immediately revoke the registration card of the dispensary agent; and

16           (B) If the registration card was not returned to the commission, notify the Superintendent  
17 of the West Virginia State Police.

18           (d) An individual who has been convicted of a felony drug offense may not register as a  
19 dispensary agent.

**§16-8A-9. Processors.**

1           (a) The Commission is hereby authorized to license processors of medical cannabis.

2           (b) To be licensed as a processor, an applicant must submit to the commission:

3           (1) An application fee in an amount to be determined by the commission in accordance  
4 with this article; and

5           (2) An application that includes:

6           (A) The legal name and physical address of the proposed processor;

7           (B) The name, address, and date of birth of each principal officer and director, none of  
8 whom may have served as a principal officer or director for a licensee under this article that has  
9 had its license revoked; and

10 (C) Operating procedures that the processor will use, consistent with commission  
11 regulations for oversight, including storage of cannabis, extracts, and products containing  
12 cannabis only in enclosed and locked facilities.

13 (c) The commission shall establish an application review process for granting processor  
14 licenses in which applications are reviewed, evaluated, and ranked based on criteria established  
15 by the commission.

16 (d)(1) Upon initial issuance, a processor license shall be valid for four years.

17 (2) Upon renewal, a processor license shall be valid for two years.

18 (e) A processor licensed under this section or a processor agent registered pursuant to  
19 section ten of this article may not be prosecuted or penalized under state law for acquiring,  
20 possessing, processing, transferring, transporting, selling, distributing, or dispensing cannabis,  
21 products containing cannabis, related supplies, or educational materials for use by a licensee  
22 under this article or a qualifying patient or a caregiver in compliance with the provisions of this  
23 article.

24 (f) The commission shall establish requirements for security and product handling  
25 procedures that a processor must meet to obtain a license under this section, including a  
26 requirement for a product-tracking system.

27 (g) A processor licensed under this section shall allow the commission or its agents to  
28 inspect licensed facilities at any time without the necessity of a warrant to ensure compliance with  
29 this article.

30 (h) The commission may impose penalties or rescind the license of a processor that does  
31 not meet the standards for licensure set by the commission.

**§16-8A-10. Processor Agents.**

1 (a) A processor agent shall:

2 (1) Be at least twenty-one years old;

3           (2) Be registered with the commission before the agent may volunteer or work for a  
4 processor; and

5           (3) Obtain state and national criminal history records check in accordance with section  
6 twelve of this article.

7           (b) A processor agent shall apply to the commission for a registration card for each  
8 processor agent by submitting the name, address, and date of birth of the agent.

9           (c)(1) Within one business day after a processor agent ceases to be associated with a  
10 processor, the processor shall:

11           (A) Notify the commission; and

12           (B) Return the processor agent's registration card to the commission.

13           (2) On receipt of a notice described in subdivision (1) of this subsection, the commission  
14 shall:

15           (A) Immediately revoke the registration card of the processor agent; and

16           (B) If the registration card was not returned to the commission, notify the Superintendent  
17 of the West Virginia State Police.

18           (d) An individual who has been convicted of a felony drug offense may not register as a  
19 processor agent.

**§16-8A-11. Independent Laboratories.**

1           (a) The commission shall register a public criminal justice agency as the primary testing  
2 laboratory to test cannabis and products containing cannabis that are to be sold in the state.

3           (b) The commission may register additional private independent testing laboratories to test  
4 cannabis and products containing cannabis that are to be sold in the state.

5           (c) To be registered as a private independent testing laboratory, a laboratory shall:

6           (1) Meet the application requirements established by the commission;

7           (2) Pay any applicable fee required by the commission; and

8           (3) Meet the standards and requirements for accreditation, inspection, and testing  
9 established by the commission.

10           (d) The commission shall adopt regulations that establish:

11           (1) The standards and requirements to be met by an independent laboratory to obtain a  
12 registration;

13           (2) The standards of care to be followed by all testing laboratories;

14           (3) The initial and renewal terms for an independent laboratory registration and the  
15 renewal procedure; and

16           (4) The bases and processes for denial, revocation, and suspension of a registration of an  
17 independent testing laboratory.

18           (d) The commission may inspect any independent testing laboratory registered under this  
19 section to ensure compliance with this article.

**§16-8A-12. Criminal records check.**

1           (a) The commission and the State Police shall enter into a memorandum of understanding  
2 regarding criminal records checks that include, at a minimum, the following:

3           (1) Any applicant is required to submit to the State Police all information necessary to  
4 complete a nationwide background check consisting of inquiries of the National Instant Criminal  
5 Background Check System, the West Virginia criminal history record responses and the National  
6 Interstate Identification Index;

7           (2) The applicant is required to pay all fees associated with the background checks;

8           (3) The State Police shall complete the background checks promptly upon receipt of all  
9 necessary information and fees; and

10           (4) The State Police shall forward to the commission and to the applicant the criminal  
11 history record information of the applicant forthwith.

12           (b) Information obtained from the background checks required under this section shall be:

13           (1) Confidential and may not be disseminated other than as authorized in this section; and

14 (2) Used only for the registration purpose authorized by this article.

15 (c) The subject of a criminal history records check under this section may appeal the  
16 contents of the printed statement issued, as authorized by relevant criminal history database.

**§16-8A-13. Offenses; Exempted behaviors.**

1 (a) The following persons when acting in strict compliance with the provisions of this article  
2 are not subject to arrest, prosecution, civil or administrative penalty, including a civil penalty or  
3 disciplinary action by a professional licensing board, or be denied any right or privilege, for:

4 (1) A qualifying patient:

5 (A) In possession of an amount of medical cannabis determined by the commission to  
6 constitute a thirty-day supply; or

7 (B) In possession of an amount of medical cannabis that is greater than a thirty-day supply  
8 if the qualifying patient's certifying physician stated in the written certification that a thirty-day  
9 supply would be inadequate to meet the medical needs of the qualifying patient;

10 (2) A grower licensed under section six of this article or a grower agent registered under  
11 section six of this article;

12 (3) A certifying physician;

13 (4) A caregiver;

14 (5) A dispensary licensed under section seven of this article or a dispensary agent  
15 registered under section eight of this article;

16 (6) A processor licensed under section nine of this article or a processor agent registered  
17 under section ten of this article; or

18 (7) A hospital, medical facility, or hospice program where a qualifying patient is receiving  
19 treatment.

20 (b) (1) A who knowingly distributes, possesses with intent to distribute or manufactures  
21 cannabis that has been diverted in violation of the provisions of this article from a qualifying  
22 patient, caregiver, licensed grower, or licensed dispensary, is guilty of a felony and, upon

23 conviction, shall be imprisoned in a state correctional facility for not less than one nor more than  
24 five years, fined not more than \$10,000, or both fined and imprisoned.

25 (2) The offense set forth in this subsection is separate and distinct from other provisions  
26 of this code prohibiting the manufacture, possession, or distribution of marijuana under this code.

**§16-8A-14. Conduct not protected.**

1 (a) This article may not be construed to authorize any individual to engage in, and does  
2 not prohibit the imposition of any civil, criminal, or other penalties for, the following:

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

5 (2) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft,  
6 or boat while under the influence of marijuana or cannabis;

7 (3) Smoking marijuana or cannabis in any public place;

8 (4) Smoking marijuana or cannabis in a motor vehicle; or

9 (5) Except as provided in subsection (b) of this section, smoking marijuana or cannabis  
10 on a private property that:

11 (A)(i) Is rented from a landlord; and

12 (ii) Is subject to a policy that prohibits the smoking of marijuana or cannabis on the  
13 property; or

14 (B) Is subject to a policy that prohibits the smoking of marijuana or cannabis on the  
15 property of an attached multi-residence dwelling adopted by the council of unit owners, for entities  
16 regulated by chapter thirty-six-a of this code, or the executive board of a unit owner's association,  
17 for entities regulated by chapter thirty-six-b of this code.

18 (b) The provisions of subdivision (5), subsection (a) of this section do not apply to  
19 vaporizing cannabis.

20 (c) This article may not be construed to provide immunity or an affirmative defense to a  
21 person who violates the provisions of this article from criminal prosecution for a violation of any

22 law prohibiting or regulating the use, possession, dispensing, distribution, or promotion of  
23 controlled dangerous substances, dangerous drugs, detrimental drugs, or harmful drugs, or any  
24 conspiracy or attempt to commit any of those offenses.

25 (d) This article may not be construed to require a hospital, medical facility, or hospice  
26 program to report to the commission any disciplinary action taken by the hospital, medical facility,  
27 or hospice program against a certifying physician, including the revocation of privileges, after the  
28 registration of the certifying physician by the commission.

29 (e) This article may not be construed to prohibit a person from being concurrently licensed  
30 by the commission as a grower, a dispensary, or a processor.

**§16-8A-15. State employee actions and federal law.**

1 (a) Notwithstanding any provision of this code to the contrary, a state employee who incurs  
2 counsel fees in connection with a federal criminal investigation or prosecution solely related to  
3 the employee's good faith discharge of public responsibilities under this article is eligible for  
4 reimbursement of counsel fees.

5 (b) The Governor may suspend implementation of this article upon making a formal  
6 determination that there is a reasonable chance of federal prosecution of state employees for  
7 involvement with implementation of this article.

**§16-8A-16. Rulemaking.**

1 The commission may, in consultation with the Secretary of the Department of Health and  
2 Human Resources and the Commissioner of Agriculture, promulgate emergency rules pursuant  
3 to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to implement  
4 the provisions of this article and shall, in consultation with the Secretary of the Department of  
5 Health and Human Resources and the Commissioner of Agriculture, subsequently propose rules  
6 for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of  
7 this code.



**§16-8A-17. Specific effective date; Requirements to be met prior to implementation of article.**

(a) The provisions of this section and sections one, two, three, twelve, fifteen and sixteen of this article shall be effective from passage.

(b) The provisions of sections four, five, six, seven, eight, nine, ten, eleven, thirteen and fourteen of this article shall be effective on July 1, 2018.

(c) The provisions of this article shall not be construed to make lawful or otherwise authorize the growing, manufacturing, distribution, dispensing or possession of cannabis until all sections are in effect and the commission established by this article is fully operational.