WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 386

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SWOPE, WOELFEL AND BOSO

[Originating in the Committee on Health and Human

Resources; reported on March 25, 2017]
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, §16-8A-14, §16-8A-15, §16-8A-16, and §16-8A-17, all relating to creating the West Virginia Medical Cannabis Act; defining terms; creating the West Virginia Medical Cannabis Commission; setting forth members of the West Virginia Medical Cannabis Commission; setting forth responsibilities for the West Virginia Medical Cannabis Commission; creating a special revenue account known as the West Virginia Medical Cannabis Commission Fund; requiring a portion of any profit to be spent for specific programs; detailing the fund’s revenue sources and disbursements; detailing requirements of the commission to implement the provisions of the act; setting requirements for becoming a certifying physician; authorizing the commission to approve physician applications for certain medical conditions; requiring reporting to the Controlled Substances monitoring database; setting out conditions for which cannabis may be used; requiring certain annual reports to the Governor and Legislature; authorizing the commission to license medical cannabis growers and grower agents that meet certain requirements; setting forth certain parameters for licensed growers and grower agents; requiring a certain percentage of licenses be granted to persons in veterans agriculture programs; providing an exception for a qualifying patient to grow a specified amount without a license; authorizing the commission to license dispensaries and register dispensary agents; setting forth certain requirements for dispensaries and dispensary agents setting an initial limit on number of medical cannabis growers and dispensaries; authorizing commission to license the number of growers and dispensaries sufficient to meet demand as of July 1, 2020; authorizing the commission to license medical cannabis processors and register processor agents; authorizing testing laboratories; stating requirements for the commission’s registration of independent laboratories; requiring the State Police and commission to enter a memorandum of
understanding for criminal records checks and setting forth basic requirements; providing that certain persons licensed, registered and authorized under the act may not be subject to arrest, prosecution or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege, for the medical use of cannabis; creating a new criminal offense of distributing, possessing, manufacturing or using cannabis that has been diverted from an authorized medicinal use; specifically stating conduct related to cannabis that is not protected by the provisions of the act; authorizing state employees to recover certain counsel fees; empowering the Governor to suspend implementation of the act if the Governor determines certain federal action may occur; authorizing promulgation of emergency rules and the proposal of legislative rules for approval by the Legislature; and establishing effective dates.

Be it enacted by the Legislature of West Virginia:


ARTICLE 8A. WEST VIRGINIA MEDICAL CANNABIS ACT.

§16-8A-1. Definitions.

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

(1) “Caregiver” means:

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

and

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

(2) “Certifying physician” means an individual who:
(A) Has an active, unrestricted license to practice medicine that was issued by the West Virginia Board of Medicine or the West Virginia Board of Osteopathic Medicine;

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

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

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

(3) “Commission” means the West Virginia Medical Cannabis Commission established under this article.

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

(5) “Dispensary agent” means an owner, a member, an employee, a volunteer, an officer, or a director of a dispensary.

(6) “Fund” means the West Virginia Medical Cannabis Commission Fund established under this article.

(7) “Grower” means an entity licensed under this article that:

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

(ii) Processes medical cannabis products; and

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

(8) “Independent testing laboratory” means a facility, entity, or site that offers or performs tests related to the inspection and testing of cannabis and products containing cannabis.
(9) “Medical cannabis grower agent” means an owner, an employee, a volunteer, an officer, or a director of a grower.

(10) “Processor” means an entity that:

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

(B) Packages and labels medical cannabis.

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

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

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

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

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

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

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

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

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

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

(D) Written certifications referenced in this subdivision shall be written on tamper-resistant, noncopyable paper.
§16-8A-2. Creation of West Virginia Medical Cannabis Commission.

(a) There is hereby created the West Virginia Medical Cannabis Commission.

(b) The commission is an independent commission that functions within the Department of Health and Human Resources.

(c) The purpose of the commission is to develop policies, procedures, guidelines, and regulations to implement programs to make medical cannabis available to qualifying patients in a safe and effective manner.

(d) The commission shall develop identification cards for qualifying patients and caregivers.

(e) The department shall adopt rules that establish the requirements for identification cards provided by the commission. The rules shall include:

(1) The information to be included on an identification card;
(2) Requirements that ensure identification cards may not be tampered with or altered and that the identification cards be noncopyable;
(3) The method through which the commission will distribute identification cards; and
(4) The method through which the commission will track identification cards.

(f) The commission shall develop and maintain a website that:

(1) Provides information on how an individual can obtain medical cannabis in the state; and
(2) Provides contact information for licensed dispensaries.

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

(a) The commission shall consist of the following sixteen members:

(1) The Secretary of the Department of Health and Human Resources, or the secretary’s designee;
(2) The Commissioner of the Department of Agriculture, or the commissioner’s designee;
(3) The West Virginia Treasurer, or the Treasurer’s designee; and

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

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

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

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

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

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

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

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

(viii) One representative of law enforcement;

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

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

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

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

(3) A member may not serve more than three consecutive full terms.
(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

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

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

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

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

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

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

(2) The commission shall administer the fund.

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

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

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

(6) The fund consists of:

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

(B) Any other money from any other source accepted for the benefit of the fund, in accordance with any conditions adopted by the commission for the acceptance of donations or gifts to the fund; and
(C) Any fees collected by the commission under this article.


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

(1) Meets the requirements of this article; and

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

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

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

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

(3) The physician’s plan for the ongoing assessment and follow–up care of a patient, and for collecting and analyzing data.

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

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

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

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

(i) Cachexia, anorexia, or wasting syndrome;

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

(iii) Severe nausea;
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(iv) Seizures;
(v) Severe or persistent muscle spasms; or
(vi) Refractory generalized anxiety disorder.

(C) Post-traumatic stress disorder.

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

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

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

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

(A) Obtains the approval of the commission before receiving the compensation; and
(B) Discloses the amount of compensation received from the medical cannabis grower,
processor, or dispensary to the commission.

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

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

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

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

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

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

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

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

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

§16-8A-5. Reporting requirement.

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

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

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

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

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

(C) Qualifying patients and caregivers; and

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

(2)(A) Except as provided in paragraph (B) of this subdivision, the commission may license no more than fifteen medical cannabis growers.
(B) Beginning July 1, 2020, the commission may issue the number of licenses necessary to meet the demand for medical cannabis by qualifying patients and caregivers in an affordable, accessible, secure, and efficient manner.

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

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

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

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

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

(4) Each medical cannabis grower agent shall:

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

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

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

(B) Within one business day after a grower agent ceases to be associated with a grower, the grower shall notify the commission and return the grower agent’s registration card to the commission. On receipt of the notice, the commission shall immediately revoke the registration
card of the grower agent and, if the registration card was not returned to the commission, notify the Superintendent of the West Virginia State Police.
(C) The commission may not register a person as a grower agent who has been convicted of a felony drug offense.

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

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

(8)(A) The commission may encourage licensing medical cannabis growers that grow strains of cannabis, including strains with high cannabidiol content, with demonstrated success in alleviating symptoms of specific diseases or conditions.
(B) The commission may encourage licensing medical cannabis growers that prepare medical cannabis in a range of routes of administration.

(9)(A) The commission shall:
(i) Actively seek to achieve geographic diversity when licensing medical cannabis growers; and
(ii) Encourage applicants who qualify as a minority-owned business, as that term is defined in section fifty-nine, article three, chapter five-a of this code.
(B) Beginning July 1, 2020, a grower licensed under this article to operate as a medical cannabis grower shall report annually to the commission regarding geographic diversity and minority ownership and employees of the grower.

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

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

(1) Processors licensed by the commission under this article;
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(2) Dispensaries licensed by the commission under this article;
(3) Qualified patients;
(4) Caregivers; and
(5) Independent testing laboratories registered with the commission under this article.

(c)(1) An entity licensed to grow cannabis under this section may only dispense cannabis
from a facility of a grower that is also licensed as a dispensary.
(2) An entity licensed to grow medical cannabis under this section may be licensed to grow
and process medical cannabis on the same premises.
(d) An entity licensed to grow medical cannabis under this section shall ensure that safety
precautions established by the commission are followed by any facility operated by the grower.
(e) The commission shall establish requirements for security and the manufacturing
process that a grower must meet to obtain a license under this section, including, but not limited
to, a requirement for a product-tracking system.
(f) A grower licensed under this section shall allow the commission and its agents to
inspect licensed facilities.
(g) The commission is authorized to impose penalties or rescind the license of a grower
that does not meet the standards for licensure set by the commission.
(h) Notwithstanding any provision of law to the contrary, a qualifying patient is exempt
from the provisions of this section and may grow and cultivate no more than two mature cannabis
plants solely for his or her own use in accordance with the certification from a certifying physician.
A qualifying patient remains subject to the prohibitions set forth in section four hundred one, article
four, chapter sixty-A of this code for delivery or distribution of any cannabis which is grown and
possessed pursuant to this subsection.


(a) The Commission is hereby authorized to license dispensaries of medical cannabis.
(b) To be licensed as a dispensary, an applicant must submit to the commission:
(1) An application fee in an amount to be determined by the commission consistent with this article; and

(2) An application that includes:

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

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

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

(c) The commission shall:

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

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

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

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

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

(f) The commission shall establish requirements for security and product handling procedures that a dispensary must meet to obtain a license under this section, including a requirement for a product-tracking system.
(g) A dispensary licensed under this section shall allow the Commission and its agents to inspect licensed facilities at any time without the necessity of a warrant to ensure compliance with this article.

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

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

1. The number of patients served;
2. The county of residence of each patient served;
3. The medical condition for which medical cannabis was recommended;
4. The type and amount of medical cannabis dispensed; and
5. If available, a summary of clinical outcomes, including adverse events and any cases of suspected diversion.

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

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

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


(a) A dispensary agent shall:

1. Be at least twenty-one years old;
2. Be registered with the commission before the agent may volunteer or work for a dispensary; and
(3) Obtain state and national criminal history records check in accordance with section twelve of this article.

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

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

(A) Notify the commission; and

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

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

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

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

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


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

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

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

(2) An application that includes:

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

(B) The name, address, and date of birth of each principal officer and director, none of whom may have served as a principal officer or director for a licensee under this article that has had its license revoked; and
(C) Operating procedures that the processor will use, consistent with commission regulations for oversight, including storage of cannabis, extracts, and products containing cannabis only in enclosed and locked facilities.

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

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

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

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

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

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

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


(a) A processor agent shall:

(1) Be at least twenty-one years old;
(2) Be registered with the commission before the agent may volunteer or work for a processor; and

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

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

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

(A) Notify the commission; and

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

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

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

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

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


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

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

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

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

(2) Pay any applicable fee required by the commission; and
(3) Meet the standards and requirements for accreditation, inspection, and testing established by the commission.

(d) The commission shall adopt regulations that establish:

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

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

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

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

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


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

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

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

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

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

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

(1) Confidential and may not be disseminated other than as authorized in this section; and
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(2) Used only for the registration purpose authorized by this article.

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

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

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

(1) A qualifying patient:

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

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

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

(3) A certifying physician;

(4) A caregiver;

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

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

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

(b) (1) A who knowingly distributes, possesses with intent to distribute or manufactures cannabis that has been diverted in violation of the provisions of this article from a qualifying patient, caregiver, licensed grower, or licensed dispensary, is guilty of a felony and, upon
conviction, shall be imprisoned in a state correctional facility for not less than one nor more than
five years, fined not more than $10,000, or both fined and imprisoned.

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


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

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

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

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

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

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

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

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

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

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

(c) This article may not be construed to provide immunity or an affirmative defense to a
person who violates the provisions of this article from criminal prosecution for a violation of any
law prohibiting or regulating the use, possession, dispensing, distribution, or promotion of
controlled dangerous substances, dangerous drugs, detrimental drugs, or harmful drugs, or any
conspiracy or attempt to commit any of those offenses.

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

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


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

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


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