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House Bill 4498 History

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H. B. 4498

(By Delegate Manypenny)

[Introduced February 9, 2012; referred to the
Committee on Health and Human Resources then the Judiciary.]

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, §16-8A-17, §16-8A-18, §16-8A-19, §16-8A-20, §16-8A-21, §16-8A-22, §16-8A-23 and §16-8A-24, all relating to creating the "Compassionate Use Act for Medical Cannabis; providing for protections for the medical use of cannabis; limitations of article; prohibiting discrimination; authorizing addition of debilitating medical conditions; registration of qualifying patients and designated care givers; issuance of registry identification cards; affirmative defense and dismissal for medical marihuana; providing misdemeanor offense and criminal penalties for disclosing certain information; and otherwise provides for the enforcement of this article.

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, §16-8A-14, §16-8A-15, §16-8A-16, §16-8A-17, §16-8A-18, §16-8A-19, §16-8A-20, §16-8A-21, §16-8A-22, §16-8A-23 and §16-8A-24, all to read as follows:

ARTICLE 8A. THE COMPASSIONATE USE ACT FOR MEDICAL CANNABIS.**§16-8A-1. Findings.**

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

(b) Studies, published since the 1999 Institute of Medicine report, have continued to show the therapeutic value of marihuana in treating a wide array of debilitating medical conditions. These include relief of the neuropathic pain caused by multiple sclerosis, HIV/AIDS, and other illnesses and injuries that often fails to respond to conventional treatments and relief of nausea, vomiting, and other side effects of drugs used to treat HIV/AIDS and hepatitis C, increasing the chances of patients continuing on life-saving treatment regimens.

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

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

(e) Alaska, Arizona, California, Colorado, Delaware, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, New Jersey, Oregon, Vermont, Rhode Island, Washington state and the District of Columbia, have removed state-level criminal

penalties from the medical use and cultivation of marihuana. West Virginia joins in this effort for the health and welfare of its citizens.

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

(g) State law should make a distinction between the medical and nonmedical uses of marihuana. Hence, the purpose of this article is to protect patients with debilitating medical conditions, as well as their practitioners and providers, from arrest and prosecution, criminal and other penalties and property forfeiture, if the patients engage in the medical use of marihuana.

§16-8A-2. Definitions.

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

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

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

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

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

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

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

(d) "Debilitating medical condition" means:

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

(2) 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; or severe and persistent muscle spasms, including, but not limited to, those characteristic of multiple sclerosis; or

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

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

(f) "Designated care giver" means a person who:

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

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

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

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

(g) "Disqualifying felony offense" means:

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

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

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

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

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

(i) "Marihuana" has the meaning given that term in section 101, article one, chapter sixty-a of this code.

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

(1) The plant has flowers;

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

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

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

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

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

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

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

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

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

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

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

(B) Security and inventory accountability procedures; and

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

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

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

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

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

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

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

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

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

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

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

- (1) Six ounces of usable marihuana; and
- (2) Twelve mature marihuana plants and twelve seedlings, if the qualifying patient has not specified that a designated care giver will be allowed under state law to cultivate marihuana for the qualifying patient.
- (b) A registered designated care giver may not be subject to arrest, prosecution or denial of any right or privilege, including, but not limited to, civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau:
- (1) For assisting a registered qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana if the designated care giver does not possess more than:
- (A) Six ounces of usable marihuana for each qualifying patient to whom the registered care giver is connected through the department's registration process; and
- (B) Twelve mature marihuana plants and twelve seedlings for each registered qualifying patient who has specified that the designated care giver will be allowed under state law to cultivate marihuana for the qualifying patient.
- (2) For receiving compensation for costs associated with assisting a registered qualifying patient's medical use of marihuana if the registered designated care giver is connected to the registered qualifying patient through the department's registration process.
- (c) All mature marihuana plants and seedlings possessed pursuant to this section must be kept in an enclosed, locked facility, unless they are being transported to a permissible location, including because the cardholder is moving, the registered qualifying patient has changed his or her designation of who can cultivate or the plants are being given to someone allowed to possess them pursuant to this article.
- (d) A visiting qualifying patient may not be subject to arrest, prosecution or denial of any right or privilege, including, but not limited to, civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for the medical use of marihuana pursuant to this article if the visiting qualifying patient does not possess more than six ounces of usable marihuana.
- (e) A registered qualifying patient, visiting qualifying patient or registered designated care giver may not be subject to arrest, prosecution, or denial of any right or privilege, including, but not limited to, civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau for:
- (1) Possession of marihuana that is incidental to medical use, but is not mature marihuana plants, seedlings, or usable marihuana as defined in this article;
- (2) Selling, transferring, or delivering marihuana seeds produced by the registered qualifying patient, visiting qualifying patient, or registered designated care giver to a registered compassion center;
- (3) Transferring marihuana to a registered safety compliance facility for testing; or
- (4) Giving marihuana to a registered qualifying patient, a registered compassion center, or a registered designated care giver for a registered qualifying patient's medical use where nothing of value is transferred in return, or for offering to do the same, if the person giving the marihuana does not knowingly cause the recipient to possess more marihuana than is permitted by this section.
- (f) (1) There is a presumption that a qualifying patient is engaged in, or a designated care giver is assisting with, the medical use of marihuana in accordance with this article if the qualifying patient or designated care giver:
- (A) Is in possession of a valid registry identification card, or, in the case of a visiting qualifying patient, its equivalent; and
- (B) Is in possession of an amount of marihuana that does not exceed the amount allowed under the provisions of this section.
- (2) The presumption may be rebutted by evidence that conduct related to marihuana was not for the purpose of treating or alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition in compliance with this article.
- (g) A practitioner may 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 West Virginia Board of Medicine or by any other occupational or professional licensing board or bureau, solely for providing written certifications or for otherwise stating that, in the practitioner's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition: *Provided*, That nothing in this article may prevent a practitioner from being sanctioned for:
- (1) Issuing a written certification to a patient with whom the practitioner does not have a bona fide practitioner-patient relationship, or
- (2) Failing to properly evaluate a patient's medical condition or otherwise violating the standard of care.
- (h) No person may be subject to arrest, prosecution or denial of any right or privilege, including, but not limited to, civil

penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(o) No law-enforcement officer employed by an agency which receives state or local government funds may expend any state or local resources, including the officer's time, to effect any arrest or seizure of marihuana, or conduct any investigation,

on the sole basis of activity the officer believes to constitute a violation of the federal Controlled Substances Act if the officer has reason to believe that such activity is in compliance with state medical marihuana laws, nor may any such officer expend any state or local resources, including the officer's time, to provide any information or logistical support related to such activity to any federal law enforcement authority or prosecuting entity.

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

§16-8A-4. Limitations.

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

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

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

(A) In a school bus:

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

(C) In any correctional facility.

(3) Smoking marihuana:

(A) On any form of public transportation; or

(B) In any public place.

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

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

§16-8A-5. Discrimination Prohibited.

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

(1) Any interaction with a person's employer:

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

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

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

(2) No employer is required to allow the ingestion of marihuana in any workplace or to allow any employee to work while under the influence of marihuana. A registered qualifying patient may not be considered to be under the influence of marihuana solely because of the presence of metabolites or components of marihuana that appear in insufficient concentration to cause impairment.

(c) No school or landlord may refuse to enroll or lease to, or otherwise penalize, a person solely for his or her status as a registered qualifying patient or a registered designated care giver, unless failing to do so would violate federal law or regulations or cause the school or landlord to lose a monetary or licensing-related benefit under federal law or regulations.

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

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

(f) No school, landlord or employer may be penalized or denied any benefit under state law for enrolling, leasing to or

employing a cardholder.

§16-8A-6. Addition of Debilitating Medical Conditions.

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

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

(a) Nothing in this article requires:

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

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

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

§16-8A-8. Registration of qualifying patients and designated care givers.

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

(1) A written certification issued by a practitioner within ninety days immediately preceding the date of an application;

(2) If the patient is not a visiting qualifying patient, documentation required by department regulations to reasonably establish proof of residency in West Virginia;

(3) If the patient is a visiting qualifying patient, a copy of his or her registry identification card or its equivalent that was issued pursuant to the laws of the jurisdiction of the person's residence;

(4) The application or renewal fee;

(5) The name, address, and date of birth of the qualifying patient, except that if the applicant is homeless no address is required;

(6) The name, address, and telephone number of the qualifying patient's practitioner;

(7) The name, address, and date of birth of the designated care giver, if any, chosen by the qualifying patient, except that a visiting qualifying patient may not have a designated care giver;

(8) The name of the registered compassion center the qualifying patient designates, if any;

(9) The qualifying patient designates a designated care giver, a designation as to whether the qualifying patient or designated care giver will be allowed under state law to possess and cultivate marihuana plants for the qualifying patient's medical use;

(10) A statement signed by the qualifying patient, pledging not to divert marihuana to anyone who is not allowed to possess marihuana pursuant to this article; and

(11) A signed statement from the designated care giver, if any, agreeing to be designated as the patient's designated care giver and pledging not to divert marihuana to anyone who is not allowed to possess marihuana pursuant to this article.

(b) The application for qualifying patients' registry identification cards shall ask whether the patient would like the department to notify him or her of any clinical studies needing human subjects for research on the medical use of marihuana. The department shall notify interested patients if it is notified of studies that will be conducted in the United States.

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

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

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

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

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

(b) The department may not issue a registry identification card to a qualifying patient who is younger than **eighteen** years

of age unless:

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

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

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

__ (B) Serve as the qualifying patient's designated care giver; and

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

§16-8A-10. Denial of Registry Identification Cards.

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

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

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

__ (3) Provided false or falsified information.

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

__ (1) The designated care giver does not meet the requirements of section two(f) of this article;

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

__ (3) The designated care giver previously had a registry identification card revoked; or

__ (4) The applicant or the designated care giver provides false or falsified information.

__ (c) The department may conduct a background check of the prospective designated care giver in order to carry out this provision.

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

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

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

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

__ (1) The name of the cardholder;

__ (2) A designation of whether the cardholder is a designated care giver or qualifying patient;

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

__ (4) A random 10-digit alphanumeric identification number, containing at least four numbers and at least four letters, that is unique to the cardholder;

__ (5) If the cardholder is a designated care giver, the random 10-digit alphanumeric identification number of the qualifying patient the designated care giver is receiving the registry identification card to assist;

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

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

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

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

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

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

§16-8A-12. Notifications to department and responses; Civil Penalty.

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

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

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

(3) Before a registered qualifying patient changes his or her designated care giver, the qualifying patient must notify the department.

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

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

(b) When a cardholder notifies the department of items listed in subsection (a), but remains eligible under this article, the department shall issue the cardholder a new registry identification card with a new random 10-digit alphanumeric identification number within **ten** days of receiving the updated information and a \$20 fee. If the person notifying the department is a registered qualifying patient, the department shall also issue his or her registered designated care giver, if any, a new registry identification card within **ten** days of receiving the updated information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Forfeiture of any interest in or right to non-marihuana, licit property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

issue registration certificates to the corresponding number of applicants who score the highest.

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

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

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

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

(C) The applicant does not meet the requirements of section 20;

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

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

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

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

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

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

§16-8A-15. Registration and Certification of Safety Compliance Facilities.

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

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

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

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

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

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

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

(b) The department shall evaluate applications for safety compliance facility registration certificates using an impartial and numerically scored competitive bidding process developed by the department in accordance with this article. The registration considerations shall consist of the following criteria:

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

(2) The suitability of the proposed location, including compliance with any local zoning laws and the geographic convenience to cardholders and registered compassion centers from throughout the state of West Virginia to registered safety

compliance facilities if the applicant were approved:

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

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

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

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

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

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

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

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

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

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

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

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

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

§16-8A-16. Compassion Center and Safety Compliance Facilities Suspension and Revocation.

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

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

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

§16-8A-17. Local Ordinances.

Nothing may prohibit local governments from enacting ordinances or regulations not in conflict with this article or with department rule regulating the time, place and manner of registered compassion center operations and registered safety compliance facilities: *Provided*, That no local government may prohibit registered compassion center operation altogether, either expressly or through the enactment of ordinances, rules or regulations which make registered compassion center and registered safety compliance facility operation unreasonably impracticable in the jurisdiction.

§16-8A-18. Compassion Center and Safety Compliance Facility Agents.

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

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

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

(b) A registered compassion center or safety compliance facility agent must have documentation when transporting marihuana on behalf of the registered safety compliance facility or registered compassion center that specifies the amount of marihuana being transported, the date the marihuana is being transported, the registry ID certificate number of the registered compassion center or registered safety compliance facility, and a contact number to verify that the marihuana is being transported on behalf of the registered compassion center or registered safety compliance facility.

§16-8A-19. Requirements, Prohibitions, Penalties.

(a) A registered compassion center shall be operated on a not-for-profit basis. The by-laws of a registered compassion center shall contain such provisions relative to the disposition of revenues to establish and maintain its not-for-profit character. A registered compassion center need not be recognized as tax-exempt by the Internal Revenue Service and is not required to incorporate pursuant to the provisions of chapter thirty-one-e of this code. (b) The operating documents of a registered compassion center shall include procedures for the oversight of the registered compassion center and procedures to ensure accurate record keeping.

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

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

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

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

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

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

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

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

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

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

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

(k) No person may advertise medical marihuana sales in printed materials, on radio or television, or by paid in-person solicitation of customers. This may not prevent appropriate signs on the property of the registered compassion center, listings in business directories including phone books, listings in marihuana-related or medical publications or the sponsorship of health or not-for-profit charity or advocacy events.

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

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

(n) No person who has been convicted of a disqualifying felony offense may be a registered compassion center agent.

(o) Registered compassion centers and registered safety compliance facilities must display their registration certificates

on the premises at all times.

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

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

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

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

(t) Registered compassion centers are subject to reasonable inspection by department regulations. The department shall give at reasonable notice of an inspection under this paragraph.

§16-8A-20. Confidentiality.

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

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

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

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

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

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

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

(b) Nothing in this section precludes the following:

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

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

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

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

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

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

§16-8A-21. Registry Identification and Registration Certificate Verification.

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

(b) Within one hundred twenty days of the effective date of this article, the department shall establish a verification system. The verification system must allow law-enforcement personnel, compassion center agents, and safety compliance facility

agents to enter a registry identification number to determine whether or not the number corresponds with a current, valid registry identification card. The system shall only disclose whether the identification card is valid; whether the cardholder is a registered qualifying patient or a registered designated care giver; whether the cardholder is permitted to cultivate under this act; and the registry identification number of the registered compassion center designated to serve the registered qualifying patient who holds the card or the registry identification number of the patient who is assisted by the registered designated care giver who holds the card.

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

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

§16-8A-22. Annual Reports.

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

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

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

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

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

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

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

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

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

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

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

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

(4) The nature of the debilitating medical conditions of the qualifying patients;

(5) The number of registry identification cards revoked for misconduct;

(6) The number of practitioners providing written certifications for qualifying patients; and

(7) The number of registered compassion centers.

§16-8A-23. Department to issue rules.

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

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

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

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

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

(A) Oversight requirements for registered compassion centers;

(B) Record keeping requirements for registered compassion centers;

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

(D) Electrical safety requirements;

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

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

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

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

(A) The total fees collected must generate revenues sufficient to offset all expenses of implementing and administering this article, except that fee revenue may be offset or supplemented by private donations;

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

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

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

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

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

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

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

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