



The West Virginia Medical Cannabis Act

Below is a summary of the West Virginia Medical Cannabis Act, SB 386, which Gov. Jim Justice signed into law on April 19, 2017, as amended by the Legislature by SB 1037, HB 2568 in 2019, and SB 339 in 2020.

Qualifying patients whose doctors have issued them a written certification for medical cannabis will be allowed to register with the health department to use medical cannabis. Access was expected to begin as early as July 2019, but the state did not begin accepting applications until December 2019, so the earliest sales could begin is sometime in 2020.

Qualified Medical Conditions: Patients may qualify for medical cannabis if they have a terminal illness or if they suffer from cancer, HIV/AIDS, ALS, Parkinson's disease, multiple sclerosis, spinal cord damage, epilepsy, neuropathies, Huntington's disease, Crohn's disease, post-traumatic stress disorder, intractable seizures, sickle cell anemia, or severe chronic or intractable pain.

Certifying Physicians: To certify patients, physicians must register with the health bureau, complete a four-hour course, and report to the bureau if a patient no longer needs access to medical cannabis or if the patient dies. The patient must be under the doctor's continuing care for the qualifying condition. The doctor must certify the patient is "likely to receive therapeutic or palliative benefit from the use of medical cannabis." Physicians may specify the form of cannabis their patients must use.

Regulatory Authority: The Bureau of Health will implement the program, including by developing rules, inspecting medical cannabis businesses, processing applications, and issuing patient ID cards and business licenses. The law also created an advisory board established to make recommendations to the bureau. The board will include law enforcement members, physicians, a horticultural expert, and one patient advocate. In 2018, the board recommended allowing access to dry leaf or plant cannabis.

Limitations: The only types of medical cannabis allowed initially were pills, oils, gels, creams, ointments, tinctures, liquid, and non-whole plant forms for administration through vaporization. In 2020, the legislature passed SB 339 adding "dry leaf or plant form." Dispensaries cannot sell edibles, but medical cannabis products could be mixed into food or drinks by patients themselves. Vaporization (or oils) is allowed, but smoking is prohibited. Patients may only obtain a 30-day supply of cannabis at a time.

Access: Home cultivation is not allowed. Patients will be allowed to obtain cannabis from regulated dispensaries once they are up and running. In addition, the bureau may enter into agreements with other states to allow terminally ill cancer patients to buy medical cannabis in another state.

Per Se DUID Law: Patients will be forbidden from driving and from undertaking some other activities if they have more than three nanograms of THC per milliliter of blood serum. This standard could make it illegal for some patients to ever drive, since many patients have THC levels at this amount or greater many hours or days after last administering cannabis.

Medical Cannabis Businesses: The bureau will issue up to 10 grower permits, up to 10 processor

permits, and no more than 100 dispensary permits. It will also regulate testing laboratories. Medical cannabis organizations will be required to use seed-to-sale tracking of cannabis and to meet rules regarding delivery, transportation, recordkeeping, security, and surveillance.

Local Bans: Counties may ban medical cannabis businesses entirely or may limit their locations within the county.

Legal Protections: A registered patient or caregiver is protected from arrest, prosecution, and the denial of other privileges. Employers may not discriminate against a person for their status as a registered patient, though they do not have to accommodate employees' on-site use. The bureau will promulgate rules regarding medical cannabis at schools and daycares.

Research Licensees: The bureau is directed to set up a medical cannabis research program with a vertically integrated health system — which provides the complete spectrum of care — and perhaps academic medical centers. The marijuana provided in this program would be funded from the taxes and fees levied on patients in the rest of the program. Federal law and policies may prevent this portion of the law from materializing.

New Crimes: Several new crimes are created to penalize diversion and other violations of the law and rules issued pursuant to it. For example, physicians who intentionally and knowingly certify a person for medical cannabis if the person does not qualify face a felony. Patients and caregivers who knowingly possess more cannabis than is allowed face up to six months in jail.

Taxes and Fees: Applicants will pay \$2,500 per dispensary application and \$5,000 per grower or processor application. Registration fees are \$10,000 for each dispensary location and \$50,000 for grower and processors. A 10% tax is levied on sales from dispensaries to patients or caregivers. Patients are initially charged \$50 for an identification card, which can be waived for financial hardship.

Timeline: Sales are expected to begin sometime in 2020.