

**WEST VIRGINIA LEGISLATURE**  
**2018 FIRST EXTRAORDINARY SESSION**

**Introduced**  
**House Bill 109**

BY DELEGATES PUSHKIN, BATES, FERRO, BARRETT

CAPUTO, BYRD, WILLIAMS AND FLUHARTY

[Introduced May 20, 2018; Referred to the Committee  
on Health and Human Resources then Banking and  
Insurance then Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter,  
 2 designated §16B-1-1, §16B-1-2, §16B-1-3, §16B-1-4, §16B-1-5, §16B-1-6, §16B-1-7 and  
 3 §16B-1-8, all relating to the Medical Cannabis Banking Act; stating the short title; defining  
 4 terms; requiring the Treasurer to create a closed-loop system to accept moneys and  
 5 payments; requiring vendors to comply with all federal, state and local laws, regulations  
 6 and rules; establishing various requirements for the closed-loop system and matters the  
 7 system should prohibit; authorizing the Treasurer to determine payment methods and to  
 8 withdraw any funds due the state; establishing that a financial institution does not have to  
 9 qualify as a state depository; determining that actions under the Act are not unlawful;  
 10 prohibiting the commissioner of financial institutions from impairing operations of financial  
 11 institutions under the Act; indemnifying the Treasurer and employees of the Treasurer's  
 12 office when acting within the scope of their duties under the Act; authorizing fees;  
 13 exempting confidential information from the freedom of information act; authorizing the  
 14 bureau of public health and law enforcement access to the closed-loop system and all  
 15 information under the Act; authorizing others approved by the Treasurer to access the  
 16 closed-loop system and information under the Act upon execution of a nondisclosure  
 17 agreement; establishing that the Act controls over the Medical Cannabis Act; and  
 18 determining that proprietary interests are subject to the uniform unclaimed property act.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 16B. MEDICAL CANNABIS BANKING ACT.**

### **ARTICLE 1. CLOSED LOOP SYSTEM.**

#### **§16B-1-1. Short Title.**

1 This chapter shall be known and cited as the West Virginia Medical Cannabis Banking  
 2 Act.

#### **§16B-1-2. Definitions.**

1           The following words and phrases when used in this chapter shall have the meanings given  
2 to them in this section and then as given to them in the Medical Cannabis Act, unless the context  
3 clearly indicates otherwise:

4           (1) "Act" means the West Virginia Medical Cannabis Banking Act contained in this chapter.

5           (2) "Caregiver" means caregiver as provided in §16A-2-1(a)(4) of this code and shall  
6 include guardians and conservators for purposes of this chapter.

7           (3) "Closed-loop system" means the payment processing system established by the State  
8 Treasurer in accordance with this chapter to monitor and facilitate financial transactions of  
9 authorized medical cannabis entities, patients and caregivers, as well as their agents and  
10 employees.

11           (4) "Financial institution" means a bank, a national banking association, an industrial bank,  
12 a nonbank financial institution, a bank and trust company, a trust company, a savings and loan  
13 association, a building and loan association, a mutual savings bank, a credit union or a savings  
14 bank.

15           (5) "Medical Cannabis Act" means the West Virginia Medical Cannabis Act in §16A-1-1 et  
16 seq. of this code.

17           (6) "Medical cannabis entity" means a person or entity that engages or participates in an  
18 activity licensed or otherwise authorized under the Medical Cannabis Act.

19           (7) "Proprietary interest" means any ownership interest, membership, membership  
20 certificate, membership interest, membership share, share, share certificate, equity or dividend of  
21 any class representing an interest in and issued under the closed-loop system or by a financial  
22 institution, together with all accrued and unpaid earnings, dividends and other related sums.

23           (8) "State" means the State of West Virginia.

24           (9) "Treasurer" means the State Treasurer.

**§16B-1-3. Closed-Loop System.**

1           (a) The Treasurer shall create a closed loop system to accept moneys and payments

2 under the Medical Cannabis Act.

3 (b) The Treasurer may provide or competitively bid and contract for any cannabis-related  
4 banking services the Treasurer determines necessary under the Act.

5 (c) Any vendor contracting to provide services under the Act shall comply with all federal,  
6 state and local laws, regulations and rules.

7 (d) The closed-loop system shall:

8 (1) Provide a means to process all financial transactions under the Medical Cannabis Act  
9 by and between the Bureau, caregivers, dispensaries, growers, growers/processors, medical  
10 cannabis entities, patients, physicians, processors, and state government entities;

11 (2) Provide record-keeping, accounting, and reporting functions that, at a minimum,  
12 identify all parties involved in each transaction;

13 (3) Integrate with software used by the Bureau to comply with the Medical Cannabis Act;

14 (4) Provide the ability for medical cannabis entities, patients, and caregivers to create,  
15 establish, and monitor accounts;

16 (5) Provide the ability to accept and make electronic deposits and payments; and

17 (6) Provide other services authorized by the Treasurer that may include, but are not limited  
18 to, payroll, tax calculation, and remittance.

19 (e) The system shall endeavor to prohibit:

20 (1) Revenue from the sale of marijuana from going to criminal enterprises, gangs, and  
21 cartels;

22 (2) The diversion of marijuana from a state where it is legal in some form under that state's  
23 law to another state;

24 (3) The distribution of marijuana to minors; and

25 (4) The use of state-authorized marijuana as a cover or pretext for the trafficking of other  
26 illegal drugs or for other illegal activity.

27 (f) The Treasurer shall determine the forms of moving funds that may be authorized under

28 the closed-loop system. Any forms of payment, remittance or transfer authorized by the Treasurer  
29 shall be acceptable under the Medical Cannabis Act.

30 (g) Amounts payable to a state government entity under the Medical Cannabis Act shall  
31 be withdrawn or transferred by the Treasurer and deposited into the appropriate account in the  
32 Treasury.

33 (h) Any financial institution involved in providing banking services under the Act is not  
34 required to post a bond or collateral or to qualify as a depository under §12-1-4 of this code for  
35 any moneys held under this chapter.

**§16B-1-4. Actions under this chapter not unlawful, etc.**

1 (a) Actions taken under and in accordance with this chapter shall not be considered  
2 unlawful under any provision of this code.

3 (b) The Commissioner of Financial Institutions shall not prohibit, penalize, incentivize, or  
4 otherwise impair a financial institution from providing services to a person or entity involved in a  
5 medical cannabis-related business functioning under the Medical Cannabis Act solely because  
6 the person or entity is a grower, processor, dispensary, owner of any portion, operator, employee,  
7 patient, caregiver, family or household member, financial backer, or other similar person or entity  
8 of a medical cannabis-related business operating in accordance with the Medical Cannabis Act.

9 (c) The State of West Virginia shall defend the Treasurer and the employees of the  
10 Treasurer’s Office involved in providing cannabis-related banking services against any claims,  
11 charges, liabilities, or expenses and shall indemnify and hold harmless the Treasurer and any  
12 employee of the Treasurer’s Office involved in providing cannabis-related banking services  
13 provided within the scope of their duties or employment in accordance with the Act, including  
14 without limitation, defense in any state, federal, or local court and payment of the amount of any  
15 judgment obtained, damages, legal fees, and expenses, and any other expenses incurred.

**§16B-1-5. Fees.**

1 The Treasurer may charge fees for providing services under the Act, including without

2 limitation, oversight and compliance services. Fees received shall be deposited into the  
3 Treasurer's Financial Electronic Commerce Fund created in §12-3A-6 of this code and expended  
4 for the expenses incurred in providing and overseeing cannabis-related banking services.

**§16B-1-6. Access to information.**

1 (a) The closed-loop system and information the Treasurer may create, obtain, access or  
2 retain while providing services under this chapter the Treasurer determines is confidential shall  
3 be exempt from disclosure under §29B-1-1 et seq. of this code.

4 (b) The closed-loop system and information the Treasurer may create, obtain, access or  
5 retain while providing services under this chapter shall be fully accessible by the Bureau and all  
6 state and federal law-enforcement agencies, including the United States Treasury Department  
7 Financial Crimes Enforcement Network. Auditors and others approved by the Treasurer may  
8 access the closed-loop system and information upon execution of a nondisclosure agreement  
9 approved by the Treasurer.

10 (c) The Bureau shall provide the Treasurer with access to any information or system it  
11 may create, obtain, access or retain pursuant to the Medical Cannabis Act.

**§16B-1-7. Conflict.**

1 The provisions of the Act shall control in the event of any conflict between the Act and the  
2 Medical Cannabis Act.

**§16B-1-8. Unclaimed Property.**

1 Any proprietary interest in the closed-loop system or in a financial institution pursuant to  
2 this chapter is considered unclaimed property and presumed abandoned under the Uniform  
3 Unclaimed Property Act in §36-8-1 et seq. of this code three years from the last indication of  
4 interest.

NOTE: The purpose of this bill is to create the Medical Cannabis Banking Act to provide banking services for the Medical Cannabis Act. Various definitions are provided. The State Treasurer is required to create a closed-loop system to accept moneys and

payments. Vendors are required to comply with all federal, state and local laws, regulations and rules. Various requirements are established for the closed-loop system and matters the system should prohibit. The Treasurer is to authorize acceptable forms of payment, and to withdraw or transfer any amounts due the state. A financial institution under this Act is not required to be a state depository. Actions under this Act are not unlawful under any other provisions of the Code. The Commissioner of Financial Institutions is not to impair operations of any financial institution engaged under this Act. The State is to indemnify the Treasurer and employees of the Treasurer's Office providing banking services in accordance with the Act. The Treasurer is authorized to charge fees and to deposit and expend those fees. Confidential information is exempt from disclosure pursuant to a FOIA request. All information is accessible by the Bureau of Public Health and law enforcement, and by others upon execution of a nondisclosure agreement. This Act shall control over the Medical Cannabis Act, and any proprietary interests in the closed-loop system are subject to the Uniform Unclaimed Property Act.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.