

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

House Bill 2538

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[Introduced January 21, 2019; Referred to the
Committee on Banking and Insurance then the
Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §12-1-14, relating to providing banking services for medical cannabis;
3 providing findings; defining terms; authorizing Treasurer to competitively bid for financial
4 institutions to provide banking services; providing for disposition of penalties collected
5 pursuant to the West Virginia Medical Cannabis Act; authorizing the Treasurer to hold
6 funds outside treasury until permitted to transfer money to state main disbursement
7 account; authorizing Treasurer to charge fees for providing services; creating the
8 Treasurer's Medical Cannabis Fund; requiring the Enterprise Resource Planning Board to
9 configure wvOASIS to allow deposits in, investing moneys in, and making payments from
10 the accounts established by the Treasurer at a selected financial institution; establishing
11 that action under section not unlawful; providing that the Commissioner of Financial
12 Institutions shall not prohibit, penalize, incentivize or otherwise impair a financial institution
13 from providing services under the Act in certain instances; providing that no cause of
14 action exists against the Treasurer and state officers and employees involved in cannabis-
15 related banking or financial services in their personal capacities in certain circumstances;
16 and providing that the state will defend and indemnify the Treasurer and any state officers
17 and employees involved in cannabis-related banking services provided within the scope
18 of their duties or employment in accordance with the West Virginia Medical Cannabis Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-14. Banking Services for Medical Cannabis.

1 (a) The Legislature finds and declares that the inability to provide banking services needed
2 to collect and remit the fees, penalties, and taxes authorized under the West Virginia Medical
3 Cannabis Act has delayed the implementation and is precluding access by the patients potentially
4 eligible to be prescribed medical cannabis and investment by the persons and entities interested

5 in providing services under the Act. The purpose of this section is to provide a solution to the
6 banking problems encountered by the state in connection with the Act.

7 (b) The following words when used in this section shall have the following meanings,
8 unless the context clearly indicates otherwise,

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

10 (2) "Financial institution" means a bank, national banking association, a non-bank financial
11 institution, a bank and trust company, a trust company, a savings and loan association, a building
12 and loan association, a mutual savings bank, a credit union or a savings bank;

13 (3) "Non-bank financial institution" means a financial institution that does not have a
14 banking license or is not supervised by a state, national or international banking regulatory
15 agency. If a non-bank financial institution is a selected financial institution, it shall post a collateral
16 bond of not less than 125 percent of the amounts on deposit with the Treasurer in lieu of any other
17 collateral requirement in this article.

18 (4) "Selected financial institution" means a financial institution selected by the Treasurer
19 under this section to receive, invest, and disperse the fees, penalties, and taxes authorized under
20 the Act;

21 (4) "Treasurer" means the State Treasurer.

22 (c) The Treasurer shall select by competitive bid one or more financial institutions to
23 provide banking services for the fees, penalties, and taxes collected under the Act and is
24 authorized to pay any fees charged by a selected financial institution. A contract awarded by the
25 Treasurer under the section may be extended as long as the Treasurer determines an extension
26 is in the best interest of the state. A financial institution selected shall meet the requirements of
27 this chapter for a state depository and any other applicable requirements of this section.

28 (d) The Medical Cannabis Program Fund authorized in §16A-9-2 of this code shall receive
29 all civil penalties collected under §16A-12-8 of this code. Any method of receipt, remittance,
30 payment, or transfer authorized by the Treasurer are acceptable under the Act.

31 (e) The Treasurer's office may authorize the Medical Cannabis Program Fund be held in
32 one or more accounts at a selected financial institution outside the treasury until the Treasurer is
33 able to lawfully transfer moneys to the main disbursement account of the state. Moneys in the
34 Medical Cannabis Program Fund may be invested by a financial institution or the West Virginia
35 Board of Treasury Investments and earnings shall accrue to the Medical Cannabis Program Fund.

36 (f) The Treasurer may charge fees for providing banking services under the Act, including
37 without limitation, fees for expenses incurred, oversight, and compliance. The Treasurer's Medical
38 Cannabis Fund is hereby created to receive all fees charged by the Treasurer. The Treasurer
39 may authorize the Treasurer's Medical Cannabis Fund held in an account at a selected financial
40 institution outside the treasury until the Treasurer is lawfully able to transfer moneys to the main
41 disbursement account of the state. When the financial institution holding the state concentration
42 account will accept the medical cannabis funds of the state, the Treasurer shall transfer the funds
43 and close the accounts created under this section. Moneys in the Treasurer's Medical Cannabis
44 Fund shall be expended for the expenses incurred, oversight and compliance, and may be
45 invested by a financial institution or the West Virginia Board of Treasury Investments with earnings
46 accruing to the fund.

47 (g) The Enterprise Resource Planning Board shall configure wvOASIS to allow deposit in,
48 investing moneys in, and making payments from the accounts established by the Treasurer
49 pursuant to this section at a selected financial institution.

50 (h)(1) Actions taken under and in accordance with this section shall not be considered
51 unlawful under any provision of this code.

52 (2) The Commissioner of Financial Institutions shall not prohibit, penalize, incentivize, or
53 otherwise impair a financial institution from providing services to a person or entity involved in a
54 medical cannabis-related business functioning under the Medical Cannabis Act solely because
55 the person or entity is a grower, processor, dispensary, owner of any proportion, operator,
56 employee, patient, caregiver, family or household member, financial broker, or other similar

57 person or entity of a medical cannabis-related business operating in accordance with the Medical
58 Cannabis Act. *Provided*, That nothing in this section shall prohibit the Commissioner of Financial
59 Institutions from enforcing applicable laws and regulations related to ensuring the safety and
60 soundness of a financial institution.

61 (3) No cause of action exists against the Treasurer and the state officers and employees
62 involved in cannabis-related banking or financial services, in their personal capacities, while
63 acting within the scope of duties contemplated by this Article or the Act. Any recovery for claims
64 or actions arising from this Article is limited solely to the proceeds of available insurance coverage.

65 (4) To the extent permitted by law, the State of West Virginia shall defend the Treasurer
66 and the state officers and employees involved in cannabis-related banking or financial services
67 against any claims, charges, liabilities or expenses and shall indemnify and hold harmless the
68 Treasurer and any state employee involved in cannabis-related banking or financial services
69 provided within the scope of their duties or employment in accordance with the Act, including
70 without limitation, defense in any state, federal, or local court and payment of the amount of any
71 judgment obtained, damages, legal fees and expenses, and any other expenses incurred.

NOTE: The purpose of this bill is to provide banking services for services provided under the West Virginia Medical Cannabis 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.