

# The Banking Dilemma of the West Virginia Medical Cannabis Act



With the stroke of a pen on April 19, 2017, Governor Jim Justice set West Virginia on the path towards establishing a medical cannabis program for patients suffering from serious medical conditions.

A little more than a year later, West Virginia's banking industry unexpectedly finds itself front and center in one of the major problems holding up implementation of the West Virginia Medical Cannabis Act (the "Act") – the direct conflict between federal and state law with respect to the legality of medical cannabis.

West Virginia's foray into the medical cannabis industry has been, and continues to be, an evolving process. With the passage of SB 386 during the 2017 Legislative Session, the Legislature effectively established a two-year period to get West Virginia's medical cannabis program up and running. After receiving feedback from the Bureau of Public Health and the newly-established Medical Cannabis Advisory Board, lawmakers introduced additional legislation (HB 4345) earlier this year to refine a number of the Act's previously enacted provisions.

In a March 1, 2018 letter to the Governor and other public officials, State Treasurer John Perdue raised "serious concerns" about the financial processing of funds related to the Act. Specifically, Treasurer Perdue questioned whether current enforcement of federal law would prohibit state-chartered and nationally chartered banks from accepting and processing funds known to be associated with medical cannabis in West Virginia. Based on the expressed unwillingness of current state vendors to bank with entities connected to the medical cannabis program, Treasurer Perdue indicated that his office was "unwilling to accept funds derived from the medical cannabis [program] at this time."

HB 4345 sought to alleviate these banking concerns somewhat by allowing for the creation of a credit union to receive state funds only as they relate to the Act, but questions were raised as to whether a credit union alone would fix the financing problems for the medical marijuana industry. Ultimately, technical

errors and the end-of-session time crunch led to the demise of HB 4345 on the last night of the sixty-day legislative session.

Now, many are looking for in-depth solutions to the banking issues that have been raised, and the banking community could play a unique role in this process.

Treasurer Perdue issued a formal Request for Information ("RFI") to the public seeking relevant guidance on the banking functions necessary to lawfully process sales, fees, licenses, taxes and other financial transactions under the Act. The deadline to respond was April 20, 2018. More specifically, the Treasurer's Office requested information relating to the lawful processing of medical cannabis funds through a variety of methods, including general banking services, cash processing, closed-loop/open-loop and alternative systems. At the same time, the Treasurer's Office is also seeking additional guidance from U.S. Treasury Secretary Steven Mnuchin for medical cannabis-related banking transactions.

Treasurer Perdue's hope "is to find a banking alternative, similar to other states that have legalized medical marijuana, in an effort to move forward," with indications being that any such solution could involve the solicitation of a financial services contract to work on behalf of the state. As of the submission of this article, the Treasurer's Office had yet to publicize the responses to his RFI, but an announcement on that front could come any day.

While Treasurer Perdue seeks additional guidance, others urge more immediate action on the banking front. Industry representative Matt Walker notes that "continued delays in finding a banking solution...could indeed discourage investors and companies from coming to the state." Delegate Mike Pushkin (D-Kanawha) has echoed those comments, noting that "potential investors have decided to go elsewhere (because of the banking holdup)."

All of this puts West Virginia's banking community in a unique position with respect to the medical cannabis program. At present, it's unclear whether Governor Justice would

seek to address the banking issues raised in a special session, or whether Treasurer Perdue's efforts will provide further clarification on the matter. However, with full implementation of the West Virginia Medical Cannabis Act a little more than a year away (July 1, 2019), this is clearly an issue to watch for community banks.

Many suggest that the medical cannabis program could result in millions of dollars of new financial transactions and investments in the state. Forbes Magazine reported just last year that "investor dollars are pouring into the cannabis industry," with surveys indicating that the average investor planned on investing half a million dollars on cannabis businesses in 2017.

Although West Virginia's current law caps the number of allowed growers (10), processors (10) and dispensaries (30), lawmakers showed an interest in increasing those caps significantly under the proposals of HB 4345. As such, the amount of activity under the Act could increase exponentially.

Start-up application and permit fees alone could total more than a million dollars in initial vendor transactions, and W.Va. Code § 16A-9-1 imposes a new ten percent gross receipts tax on the sale of medical cannabis by a grower/processor to a dispensary. Transactions involving the sales, fees, licenses, and taxes associated with the Act may be substantial enough to require the State Treasurer's Office to contract out for associated banking solutions.

Given the significant uncertainty and opportunity, this is a developing area that banks should continue to monitor. **INITY**

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