WEST VIRGINIA CODE CHAPTER 12 ARTICLE 1

WV Legislature

§12-1-1. Legislative findings and purpose.

The Legislature finds and declares that the efficient collection, disbursement, management and investment of public moneys in the State Treasury will benefit the citizens, teachers and public employees of this state by reducing the costs of government and providing sources of increased revenue without the necessity of increased taxation; and to achieve these goals, the State Treasurer shall provide a stable and continuous source of professional financial management, and shall be given the authority to develop and maintain modern systems, consistent with sound financial practices, for the collection, disbursement, management and investment of such moneys in conjunction with the State Treasurer.

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§12-1-1a. Definitions.

For the purposes of this chapter:

"Banking goods or services" refers to the goods and services required by a spending unit and provided by a financial institution to facilitate a spending unit's collection or acceptance of state funds, either directly by the spending unit or through a third-party vendor or other entity.

"Financial institution" means a bank, national banking association, non-bank financial institution, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a mutual savings bank, or a savings bank. The term also includes any entity when that entity is processing financial transactions for a spending unit or offering financial goods or services to a spending unit that are traditionally performed by a financial institution, including, but not limited to, check disbursement services, depository services, payment card processing services, or electronic funds transfers.

"Spending unit" means a department, agency, board, commission, or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

"State funds" refers to moneys accepted or collected on behalf of the state or those moneys designated by the Legislature or the State Treasurer as state funds, according to §12-1-2(e) of this code.

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§12-1-1b. Prohibited clauses in State Treasurer contracts.

(a) Any term or condition in any contract entered into by the State Treasurer shall be void ab initio to the extent that it requires the State Treasurer to agree to or abide by a term and condition prohibited in §5A-3-62 of this code.

(b) No official, employee, agent, or representative of the State Treasurer may contravene this section, and no oral or written expression of consent to any term or condition declared void ab initio by this section, or signature on a contract, may be deemed as such. Any contract that contains a term or condition declared void ab initio by this section shall otherwise be enforceable as if it did not contain such term or condition. All contracts entered into by the State Treasurer, except for contracts with another government, shall be governed by West Virginia law notwithstanding any term or condition to the contrary.

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§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by State Treasurer; definition of spending unit.

(a) The State Treasurer shall designate the state and national banks and the state and federal savings and loan associations in this state meeting the requirements of this chapter as depositories for all state funds placed in demand deposits.

(b)(1) Demand deposit accounts shall consist of receipt and disbursement accounts. Receipt accounts are accounts in which are deposited moneys belonging to or due the State of West Virginia or any official, department, board, commission or agency of the state.

(2) Disbursement accounts are accounts from which are paid moneys due from the State of West Virginia or any official, department, board, commission, political subdivision or agency of the state to any political subdivision, person, firm or corporation, except moneys paid from investment accounts.

(3) Investment accounts are accounts established by the West Virginia Investment Management Board, the West Virginia Board of Treasury Investments or the state Treasurer for the buying and selling of securities for investment purposes.

(c) The State Treasurer shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, concerning depositories for receipt accounts prescribing the selection criteria, procedures, compensation and any other contractual terms it considers to be in the best interests of the state giving due consideration to: (1) The activity of the various accounts maintained in the depositories; (2) the reasonable value of the banking services rendered or to be rendered the state by the depositories; and (3) the value and importance of the deposits to the economy of the communities and the various areas of the state affected by the deposits.

(d) The State Treasurer shall select depositories for disbursement accounts through competitive bidding by eligible banks in this state. If none of the eligible banks in this state are able to provide the needed services, then the state Treasurer may include eligible banks outside this state in the competitive bidding process. The State Treasurer shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, prescribing the procedures and criteria for the bidding and selection. The State Treasurer shall, in the invitations for bids, specify the approximate amounts of deposits, the duration of contracts to be awarded and any other contractual terms the state Treasurer considers to be in the best interests of the state, consistent with obtaining the most efficient service at the lowest cost.

The amount of money needed for current operation purposes of the state government, as determined by the state Treasurer, shall be maintained at all times in the state Treasury, in cash, in short term investments not to exceed five days or in disbursement accounts with financial institutions designated as depositories in accordance with the provisions of this

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section. No state officer or employee shall make or cause to be made any deposits of state funds in financial institutions which have not been designated as depositories.

(e) Except as otherwise provided in this code, only banks and state and federal savings and loan associations designated by the state Treasurer as depositories may accept deposits of state funds. Only the Legislature and the state Treasurer may determine whether funds are state funds and only the state Treasurer may approve the opening of an account or processing of a transaction with a financial institution.

(f) Boards, commissions and spending units with authority pursuant to this code to deposit moneys in a financial institution without approval of the state Treasurer shall retain that authority and are not required to have the state Treasurer designate a financial institution as a depository: Provided, That boards, commissions and spending units with moneys deposited in financial institutions not approved for that purpose by the state Treasurer shall submit a report on those moneys annually to the Legislative Auditor and the state Treasurer.

(g) The provisions of this section shall not apply to the proceeds from the sale of general obligation bonds or bonds issued by the School Building Authority, the Parkways, Economic Development and Tourism Authority, the Housing Development Fund, the Economic Development Authority, the Infrastructure and Jobs Development Council, the Water Development Authority or the Hospital Finance Authority.

(h) As used in this chapter, "spending unit" means a department, agency, board, commission or institution of state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

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§12-1-3. Depositories for interest earning deposits; qualifications.

Any state or national bank or any state or federal savings and loan association in this state shall, upon request made to the State Treasurer, be designated as an eligible depository for interest earning deposits of state funds if such bank or state or federal savings and loan association meets the requirements set forth in this chapter. For purposes of this article, the term "interest earning deposits" includes certificates of deposit or other financial institution products. The State Treasurer shall make and apportion such interest earning deposits and shall prescribe the interest rates, terms and conditions of deposits, all in accordance with the provisions of articles six and six-c of this chapter: Provided, That state or federal savings and loan associations insured by an agency of the federal government shall be eligible for such deposits not in excess of the amount insured by any agency of the federal government.

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§12-1-4. Bonds to be given by depositories.

(a) Before allowing any money to be deposited with any eligible depository in excess of the amount insured by an agency of the federal government or insured by a deposit guaranty bond issued by a valid bankers surety company acceptable to the treasurer, the state Treasurer shall require the depository to give a collaterally secured bond, in the amount of not less than $10,000, payable to the State of West Virginia, conditioned upon the prompt payment, whenever lawfully required, of any state money, or part thereof, that may be deposited with that depository, or of any accrued interest on deposits. The bond shall be a continuous bond but may be increased or decreased in amount or replaced by a new bond with the approval of the state Treasurer. The collateral security for the bond shall consist of bonds of the United States, or bonds or letters of credit of the federal land banks, of the federal home loan banks, or bonds of the State of West Virginia or of any county, district or municipality of this state, or other bonds, letters of credit, or securities approved by the treasurer. All bonds so secured are here designated as collaterally secured bonds. Withdrawal or substitution of any collateral pledged as security for the performance of the conditions of the bond may be permitted with the approval in writing of the treasurer. All depository bonds shall be recorded by the treasurer in a book kept in his or her office for the purpose, and a copy of the record, certified by the treasurer, shall be prima facie evidence of the execution and contents of the bond in any suit or legal proceeding. All collateral securities shall be delivered to or deposited for the account of the treasurer of the State of West Virginia and in the event said securities are delivered to the treasurer, he or she shall furnish a receipt therefor to the owner thereof. The treasurer and his or her bondsmen shall be liable to any person for any loss by reason of the embezzlement or misapplication of the securities by the treasurer or any of his or her employees, and for the loss thereof due to his or her negligence or the negligence of his or her employees; and the securities shall be delivered to the owner thereof when liability under the bond which they are pledged to secure has terminated. The treasurer may permit the deposit under proper receipt of the securities with one or more banking institutions within or outside the State of West Virginia and may contract with any institution for safekeeping and exchange of any collateral securities and may prescribe the rules for handling and protecting the collateral securities.

(b) A banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in certificates of deposit meeting the following requirements:

(1) The funds are invested through a designated state depository selected by the Treasurer;

(2) The selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the state;

(3) The full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation;

(4) The selected depository acts as custodian for the state with respect to such certificates of

deposit issued for the state's account; and

(5) On the same date the public moneys are redeposited by the public depository, the public depository may, in its sole discretion, choose whether to receive deposits, in any amount, from other banks, savings banks, or savings and loan associations.

(c) A banking institution is not required to provide a bond or security in lieu of bond pursuant to this section if the deposits accepted are placed in a designated state depository that is selected and authorized by the state to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions:

(1) On or after the date that the funds are received the selected depository: (i) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and (ii) serves as custodian for the state with respect to the funds redeposited into such accounts.

(2) State funds deposited in a selected depository in accordance with this section and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance with §7-6-2 of this code.

(3) The full amount of the funds of the state redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to this section (plus accrued interest, if any) shall be insured by the Federal Deposit Insurance Corporation.

(4) On the same date that the funds of the state are redeposited pursuant to this section, the selected depository receives an amount of deposits from customers of other financial institutions through the deposit placement program that are equal to the amount of the state funds redeposited by the selected depository.

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§12-1-5. Limitation on amount on deposit; dedicated method; rules.

(a) The amount of state funds on deposit in any depository in excess of the amount insured by an agency of the federal government shall be secured by a deposit guaranty bond issued by a valid bankers' surety company or by other securities acceptable to the State Treasurer, pursuant to the dedicated method, in an amount of at least 102 percent of the amount on deposit. The value of the collateral shall be determined by the State Treasurer.

(b) The State Treasurer may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code and may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code as are necessary to effectuate the provisions of this section.

(c) For the purposes of this section, the term "dedicated method" means the securing of public deposits without accepting the contingent liability for the losses of public deposits of other designated state depositories as provided in this section.

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§12-1-6. Unlawful acceptance of deposits by depositories.

It is unlawful for any depository to accept and retain state deposits in excess of the amount permitted by application of the preceding section or in an amount greater than its paid up capital stock and surplus.

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§12-1-7. Rules; banking contracts and agreements; depositors; agreements.

In addition to rules specially authorized in this article, the West Virginia Investment Management Board and the State Treasurer are generally authorized to promulgate any rules necessary to protect the interests of the state, its depositories and taxpayers. All rules promulgated are subject to the provisions of article three, chapter twenty-nine-a of this code. Any rules previously established by the board of public works, the Board of Investments, the Investment Management Board or the State Treasurer pursuant to this article shall remain in effect until amended, superseded or rescinded.

Only the treasurer may enter into contracts or agreements with financial institutions for banking goods or services required by spending units. Boards, commissions and spending units with authority pursuant to this code to enter into contracts or agreements with financial institution for banking goods and services without approval of the State Treasurer shall retain that authority and are not required to have the treasurer designate a financial institution as a depository. The provisions of this section shall not apply to trust and investment accounts and activities for general obligation bonds or bonds issued by the School Building Authority, the Parkways, Economic Development and Tourism Authority, the Housing Development Fund, the economic development authority, the infrastructure and jobs development council, the water development authority or the hospital finance authority. A state spending unit requiring banking goods or services shall submit a request for the goods or services to the treasurer. If the treasurer enters into a contract or agreement for the required goods or services, spending units using the contract or agreement shall pay either the vendor or the treasurer for the goods or services used.

The treasurer is also authorized to enter into any depositors' agreements for the purpose of reorganizing or rehabilitating any depository in which state funds are deposited, and for the purpose of transferring the assets, in whole or in part, of any depository to any other lawful depository when, in the judgment of the treasurer, the interests of the state are promoted thereby, and upon condition that no right of the state to preferred payment is waived.

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§12-1-8. Conflict of interest.

An employee or a person applying for a position with the office of the Treasurer shall disclose to the Treasurer if he or she, or his or her spouse, is an officer, director or employee of a depository or owns greater than two percent of a depository. Any employee of the office of the Treasurer who, or whose spouse, is an officer, director or employee of a depository or owns greater than two percent of a depository may not participate in any selection of or in any contract negotiations with any depository.

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§12-1-9. Transfer of funds by check or electronic funds transfer; requirements.

Subject to applicable banking regulations or state law, the treasurer may transfer funds by check or electronic funds transfer whenever actually needed to pay the warrants drawn by the Auditor upon the treasury, to equalize deposits or to provide funds to purchase investments for the account of the state. All checks drawn for transfer of funds shall have printed or stamped on the face of same "for transfer of funds only", or if the transfer is made by electronic funds transfer, the electronic funds transfer and supporting documents shall be marked "for transfer of funds only".

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§12-1-10. The treasurer to keep accounts with depositories; settlements with depositories; statements of depository balances; reconciliation of statements and records.

The treasurer shall keep in his office or her office a record showing the account of each depository. Under the account of each depository an entry shall be made showing the amount and date of each deposit, the amount and date of each withdrawal and the balance on deposit. The treasurer shall cause the state's account with each depository to be settled at the end of every month of the year and the balance in the depository to the credit of the treasury to be carried forward to the account of the next month.

All the statements and records shall be reconciled monthly and the reconciled reports shall be kept in the Treasurer's Office. The reconciled records for each month shall be kept in the Treasurer's Office for a period of five years.

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§12-1-11. Reports by depositories to Treasurer; discontinuance of depositories.

(a) Each depository of state funds shall at the end of each quarter cause its president or designated officer to report to the Treasurer the amount of state funds on deposit and the report shall be verified by the affidavit of the officer making it. The form and contents of the report shall be prescribed by the Treasurer and may be in an electronic format.

(b) For the failure to file the report, or for other good cause, the Treasurer may discontinue any depository as an eligible depository and cause all state funds to be withdrawn from any depository or depositories discontinued.

(c) When a depository is discontinued, the Treasurer shall immediately notify such depository of its discontinuance, and shall immediately withdraw by current checks or by transfer to another depository or depositories the full amount of the deposits held by any depository discontinued. After discontinuance, it shall be unlawful for the Treasurer to deposit any state funds in any depository discontinued until such time as the depository may be reinstated to eligibility.

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§12-1-12. Investing funds in treasury; depositories outside the state.

(a) When the funds in the Treasury exceed the amount needed for current operational purposes, as determined by the state Treasurer, the state Treasurer shall make all excess funds available for investment by the board of Treasury Investments which shall invest the excess for the benefit of the General Revenue Fund: *Provided*, That the state Treasurer, after reviewing the cash flow needs of the state, may withhold and invest amounts not to exceed $125 million of the operating funds needed to meet current operational purposes. Investments made by the state Treasurer under this section shall be made in short term investments not to exceed five days. Operating funds means the consolidated fund established in §12-6-8 of this code, including all cash and investments of the fund.

(b) Spending units with authority to retain interest or earnings on a fund or account may submit requests to the state Treasurer to transfer moneys to a specific investment pool of the Investment Management Board or the board of Treasury Investments and retain any interest or earnings on the money invested. The General Revenue Fund shall receive all interest or other earnings on money invested that are not designated for a specific fund or account.

(c) Whenever the funds in the Treasury exceed the amount for which depositories within the state have qualified, or the depositories within the state which have qualified are unwilling to receive larger deposits, the state Treasurer may designate depositories outside the state, disbursement accounts being bid for in the same manner as required by depositories within the state, and when depositories outside the state have qualified by giving the bond prescribed in §12-1-4 of this code, the state Treasurer shall deposit funds in the same manner as funds are deposited in depositories within the state under this article.

(d) The State Treasurer may transfer funds to financial institutions outside the state to meet obligations to paying agents outside the state if the financial institution meets the same collateral requirements as set forth in this article.

(e) Notwithstanding subsection (b) of this section, at the direction of the Governor, interest or earnings on federal moneys received by the state related to the COVID-19 pandemic, including, but not limited to, moneys received pursuant to the Coronavirus Aid, Relief, and Economic Security Act and the American Rescue Plan Act, shall be retained in the funds or accounts where the moneys are invested unless otherwise restricted by federal law or regulation, to be expended according to funding source restrictions. This subsection shall apply retroactively to the date of receipt of the federal moneys described in this subsection.

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§12-1-12a. Investment of operating funds for cash flow needs.

(a) The Legislature hereby finds and declares that the cash flow needs of the state require short term and liquid investments, and that up to $125 million of the operating funds of the state should be sufficient to meet cash flow needs. The Legislature further finds that the state Treasurer may withhold from transfer to the Investment Management Board up to $125 million of the operating funds of the state and invest those funds in short term and liquid investments.

(b) The State Treasurer may exercise any and all powers reasonably necessary or appropriate to carry out and effectuate the purposes of this section.

(c) Investments shall be made in accordance with the provisions of the "Uniform Prudent Investor Act" codified as article six-c, chapter forty-four of this code.

(d) The State Treasurer is authorized to invest the funds in repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities.

(e) The State Treasurer shall prepare monthly a report of the investments he or she administers. A copy of each report shall be furnished to the President of the Senate, speaker of the House, legislative Auditor, council of finance and administration, and upon request to any legislative committee, banking institution, state or federal savings and loan association in this state, and any member of the news media. The report shall also be kept available for inspection by the public.

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§12-1-12b. Cash Management Improvement Act; administration; reports.

(a) The Cash Management Improvement Act of 1990, Public Law 101-453, October 24, 1990, 31 U.S.C. Section 6501 et. seq. (CMIA) and regulations, as amended, establishes requirements and techniques, including calculations, for the receipt and disbursement of federal funds by states. The authorized official and representative of the State of West Virginia for the CMIA is the state Treasurer.

(b) In administering the CMIA, the state Treasurer is authorized to do all things reasonably necessary, including without limitation, entering into agreements with, negotiating settlements with, refunding any interest due and satisfying any liability to the United States Treasury in accordance with the CMIA.

(c) Periodically, the state Treasurer shall transfer to the "Federal Cash Management Fund", which is hereby authorized and continued, earnings on the state General Revenue Fund in an amount the Treasurer estimates is needed to make refunds in accordance with the CMIA. After each annual settlement with the United States Treasury, the state Treasurer shall transfer to the state General Revenue Fund any moneys remaining in the Federal Cash Management Interest Fund for the period just settled.

(d) The State Treasurer shall also transfer periodically to the "Federal Cash Management - Administration Fund," which is hereby authorized and continued, earnings on the state General Revenue Fund in an amount the Treasurer determines is needed to pay for the costs of administering the CMIA. The State Treasurer may pay the costs he or she incurs in administering the CMIA from the Federal Cash Management-Administration Fund.

(e) All state spending units shall cooperate fully with the state Treasurer in accumulating all the necessary data elements to fully comply with the CMIA.

(f) The State Treasurer shall send quarterly reports on the activities involving the CMIA to the Governor, Auditor, Secretary of Revenue and Joint Committee on Government and Finance.

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§12-1-12c.

Repealed.

Acts, 2013 Reg. Sess., Ch. 179.

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§12-1-12d. Investments by Marshall University, West Virginia University and West Virginia School of Osteopathic Medicine.

(a) Notwithstanding any provision of this article to the contrary, the governing boards of Marshall University, West Virginia University and West Virginia School of Osteopathic Medicine each may invest certain funds with its respective nonprofit foundation that has been established to receive contributions exclusively for that university and which exists on January 1, 2005. The investment is subject to the limitations of this section.

(b) A governing board, through its chief financial officer, may enter into agreements, approved as to form by the State Treasurer, for the investment by its foundation of certain funds subject to their administration. Any interest or earnings on the moneys invested is retained by the investing university.

(c) Moneys of a university that may be invested with its foundation pursuant to this section are those subject to the administrative control of the university and that do not include any funds made available to the university from the state General Revenue Fund or the funds established in section eighteen or eighteen-a, article twenty-two, chapter twenty-nine of this code. Moneys permitted to be invested under this section may be aggregated in an investment fund for investment purposes.

(d) Investments by foundations that are authorized under this section shall be made in accordance with and subject to the provisions of the Uniform Prudent Investor Act, codified as article six-c, chapter forty-four of this code. As part of its fiduciary responsibilities, each governing board shall establish investment policies in accordance with the Uniform Prudent Investor Act for those moneys invested with its foundation. The governing board shall review, establish and modify, if necessary, the investment objectives as incorporated in its investment policies so as to provide for the financial security of the moneys invested with its foundation. The governing boards shall give consideration to the following:

(1) Preservation of capital;

(2) Diversification;

(3) Risk tolerance;

(4) Rate of return;

(5) Stability;

(6) Turnover;

(7) Liquidity; and

(8) Reasonable cost of fees.

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(e) A governing board shall report annually by December 31 to the Governor and to the Joint Committee on Government and Finance on the performance of investments managed by its foundation pursuant to this section.

(f) The amendments to this section in the second extraordinary session of the Legislature in 2010 apply retroactively so that the authority granted by this section shall be construed as if that authority did not expire on July 1, 2010.

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§12-1-12e. Investments by state colleges.

(a) Notwithstanding any provision of this article to the contrary, the governing boards of four-year public colleges and universities, with the exception of those schools provided for in section twelve-d of this article, after first consulting with the West Virginia Investment Management Board and the state Board of Treasury Investments to determine what their estimated rate of return on investment, including administrative expenses, would be if the moneys to be invested with the foundation were instead to be invested with the Investment Management Board or the Board of Treasury Investments when compared to any estimated return on investment, including administrative expenses, provided by the foundation, each may invest certain funds with its respective nonprofit foundation that has been established to receive contributions exclusively for that institution and which exists on January 1, 2015. The investment is subject to the limitations of this section.

(b) A governing board, through its chief financial officer, may enter into agreements, approved as to form by the State Treasurer, for the investment by its foundation of certain funds subject to their administration. Any interest or earnings on the moneys invested is retained by the investing institution.

(c) Moneys of a four-year public college or university that may be invested with its foundation pursuant to this section are those subject to the administrative control of the institution and that do not include any funds made available to the institution from the state General Revenue Fund or the funds established in section eighteen or eighteen-a, article twenty-two, chapter twenty-nine of this code. Moneys permitted to be invested under this section may be aggregated in an investment fund for investment purposes.

(d) Of the moneys authorized for investment by this section, each four-year public college or university that may be invested with its foundation pursuant to this section, may have invested with its foundation at any time no more than $1 million excluding investment gains.

(e) Investments by foundations that are authorized under this section shall be made in accordance with and subject to the provisions of the Uniform Prudent Investor Act, codified as article six-c, chapter forty-four of this code. As part of its fiduciary responsibilities, each governing board shall establish investment policies in accordance with the Uniform Prudent Investor Act for those moneys invested with its foundation. The governing board shall review, establish and modify, if necessary, the investment objectives as incorporated in its investment policies so as to provide for the financial security of the moneys invested with its foundation. The governing boards shall give consideration to the following:

(1) Preservation of capital;

(2) Diversification;

(3) Risk tolerance;

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(4) Rate of return;

(5) Stability;

(6) Turnover;

(7) Liquidity; and

(8) Reasonable cost of fees.

(f) Prior to the initial transfer of funds to a foundation, the four-year public college or university shall submit its plan for the investment of the funds with its foundation to the Higher Education Policy Commission for its review. The purpose of review shall solely be to determine if the plan is financially prudent for the institution. Upon the commission's written finding that the plan is financially prudent for the institution, the institution is authorized to transfer its funds to the foundation for purposes of investment under this section.

(g) No four-year public college or university may transfer funds to its foundation pursuant to this section unless the college or university has a long-term bond from not less than two of the following rating entities of at least A3 by Moody's Investors Service, A- by Standard & Poor's and A- by Fitch Ratings.

(h) A governing board shall report annually by December 31 to the Governor and to the Joint Committee on Government and Finance on the performance of investments managed by its foundation pursuant to this section.

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§12-1-13. Payment of banking services and litigation costs for prior investment losses.

(a) The State Treasurer is authorized to pay for banking services, and goods and services ancillary to the banking services, by either a compensating balance in an account maintained at the financial institution providing the services or with a state warrant as described in section one, article three of this chapter.

(b) The Investment Management Board may pay for the investigation and pursuit of claims against third parties for the investment losses incurred during the period beginning on August 1, 1984, and ending on August 31, 1989. The payment may be in the form of a state warrant.

(c) If payment is made by a state warrant, the West Virginia Board of Treasury Investments, at the request of the state Treasurer, may establish within the consolidated fund an investment pool which will generate sufficient income to pay for all banking services provided to the state and to pay for the investigation and pursuit of the prior investment loss claims. All income earned by the investment pool shall be paid into a special account of the state Treasurer known as the banking services account to pay for all banking services and goods and services ancillary to the banking services provided to the state, for the investigation and pursuit of the prior investment loss claims, and for amortization of the balance in the investment imbalance fund.

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

(a) The Legislature finds and declares that the inability to provide banking services needed to collect and remit the fees, penalties, and taxes authorized under the West Virginia Medical Cannabis Act has delayed the implementation and is precluding access by the patients potentially eligible to be prescribed medical cannabis and investment by the persons and entities interested in providing services under the Act. The purpose of this section is to provide a solution to the banking problems encountered by the state in connection with the Act.

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

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

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

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

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

(5) "Treasurer" means the State Treasurer.

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

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

(e) The Treasurer’s office may authorize the Medical Cannabis Program Fund be held in one or more accounts at a selected financial institution outside the treasury until the Treasurer is

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able to lawfully transfer moneys to the main disbursement account of the state. Moneys in the Medical Cannabis Program Fund may be invested by a financial institution or the West Virginia Board of Treasury Investments and earnings shall accrue to the Medical Cannabis Program Fund.

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

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

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

(2) The Commissioner of Financial Institutions shall not prohibit, penalize, incentivize, or otherwise impair a financial institution from providing services to a person or entity involved in a medical cannabis-related business functioning under the Medical Cannabis Act solely because the person or entity is a grower, processor, dispensary, owner of any proportion, operator, employee, patient, caregiver, family or household member, financial broker, or other similar person or entity of a medical cannabis-related business operating in accordance with the Medical Cannabis Act: Provided, That nothing in this section shall prohibit the Commissioner of Financial Institutions from enforcing applicable laws and regulations related to ensuring the safety and soundness of a financial institution.

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

(4) To the extent permitted by law, the State of West Virginia shall defend the Treasurer and the state officers and employees involved in cannabis-related banking or financial services against any claims, charges, liabilities or expenses and shall indemnify and hold harmless the Treasurer and any state employee involved in cannabis-related banking or financial services provided within the scope of their duties or employment in accordance with the Act,

including without limitation, defense in any state, federal, or local court and payment of the amount of any judgment obtained, damages, legal fees and expenses, and any other expenses incurred.

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