

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: SECRETARY OF STATE TITLE NUMBER: 153

CITE AUTHORITY W.VA. CODE §59-1-2

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: FEES RELATING TO ELECTRONIC
RECORDS

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Ken Hechler

\$ 5.80

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: JULY 31, 1998

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) SECRETARY OF STATE

BLDG. 1, SUITE 157-K

CHARLESTON, WV 25305

LEGISLATIVE RULE TITLE: FEES RELATING TO ELECTRONIC RECORDS

1. Authorizing statute(s) citation W.VA. CODE §59-1-2

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

JULY 1, 1998

b. What other notice, including advertising, did you give of the hearing?

c. Date of Public Hearing(s) *or* Public Comment Period ended:

JULY 31, 1998

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

JULY 31, 1998

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

MARY RATLIFF

PHONE: 558-6000

SECRETARY OF STATE

FAX: 558-0900

BLDG. 1, SUITE 157-K

E-MAIL: MRATLIFF@SECRETARY.STATE.WV.US

CHARLESTON, WV 25305

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

SAME

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

While the Secretary of State agrees with the goals addressed in the attached comments, the funding of the Administrative Law Division is currently dependent on revenue from sales of rules and other publications. Until this funding mechanism is replaced by a legislative appropriation for a sufficient portion of the cost of the Division, the rules cannot be provided free of charge by the Secretary of State or any other agency.

Statement of Purpose

The purpose of the proposed amendments to this rule are as follows:

1. The amendments will allow the Secretary of State to waive the subscription costs for electronic records when the appropriated, special or other revenue is sufficient to maintain the service of the office. This will increase access to the public, at the cost of some loss of revenue. The divisions for which fees are charged for electronic access to major databases under the original rule are Administrative Law, Corporations and Uniform Commercial Code.

2. If the fees must be continued, the amendments will revise the billing for one-time access to a method which is technologically less expensive, easier to manage and more straightforward for the customer.

Statement of Circumstances

Currently, the Administrative Law Division and Uniform Commercial Code Division are funded by revenues received for services, including searches, copies and filings. Members of the Legislature have expressed a desire for free on-line access to the Code of State Rules for the public, and the Secretary of State has sought an appropriation to offset the loss of revenue. If that appropriation is granted, or if the other revenues of the divisions are sufficient to cover the cost of services, the Secretary of State wishes to provide as much information as possible over the Internet at no cost.

The Corporations Division is largely funded by appropriations, with a portion of reimbursed revenue relating to attorney-in-fact fees. If sufficient revenue is available, the Secretary of State wishes to provide the public information from the corporation database available at no cost.

The previous method proposed for billing per minute of access is less desirable and more technologically difficult and expensive than the proposed alternative billing method for specific documents.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: FEEES RELATING TO ELECTRONIC RECORDS

Type of Rule: Legislative Interpretive Procedural

Agency SECRETARY OF STATE

Address BLDG. 1, ROOM 157-K
CHARLESTON, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 40,000	\$	\$	\$ 40,000	\$ 40,000
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER	40,000			40,000	40,000

2. Explanation of above estimates:

The estimated cost represents the potential loss of revenue. However, the availability of free information may also decrease costs by reducing workload.

3. Objectives of these rules:

The rule will increase public access to vital state records.

Rule Title: FEEES RELATING TO ELECTRONIC RECORDS

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Some revenue loss, hopefully to be partially offset by cost reductions.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Potentially reduced costs for frequent users of state information.

C. Economic Impact on Citizens/Public at Large.

Potentially reduced costs for obtaining information.

Date: July 1, 1998

Signature of Agency Head or Authorized Representative

Ken Seibler

TITLE 153
LEGISLATIVE RULES
SECRETARY OF STATE

SERIES 2
FEES RELATING TO ELECTRONIC RECORDS

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OFFICE OF THE SECRETARY OF STATE

OFFICE OF THE SECRETARY OF STATE

§153-2-1. General.

1.1. Scope. This legislative rule establishes the fees to be charged for online access to electronic records maintained by the Secretary of State and for the sale of electronic records for the purpose of resale.

1.2. Authority. -- W. Va. Code §59-1-2.

1.3. Filing Date. --

1.4. Effective Date. --

§153-2-2. Definitions.

2.1. For the purpose of this rule:

2.1.1. "Electronic record" means any record maintained in a database by the Secretary of State which becomes available for access electronically at a remote location, and which may include those portions of the complete record as are public and are considered appropriate to include in the viewable database, as determined by the Secretary of State.

2.1.2. "Online access" means access to view any available electronic record from a remote site via the Internet, modem, or other means of data communication.

2.1.3. "Subscriber" means one person, company, agency or other entity which applies for access for one or more users to any

database maintained by the Secretary of State for which a charge is applied on an annual subscription basis, or on a time of use basis if the charges are paid by prepayment.

2.1.4. "User" means each concurrent use by a subscriber using a single access identification.

2.1.5. "Available" means the condition of having met the hardware, software, development and database development requirements necessary for secure and convenient access to the information system and each division's records for public viewing, and is not to imply any required beginning date for the access.

§153-2-3. Records of the Administrative Law Division.

3.1. The charges for access to electronic records of the Administrative Law Division are based on the requirement of W. Va. Code §29A-2-7 that the costs of the services of the division be recovered from the fees charged for the sale of publications.

3.2. The Secretary of State may make publications available on-line through an annual subscription for unlimited access, or through an on-line billing per ~~time unit of~~ access to a specific rule, index or issue of the State Register, depending on the technological considerations at the time.

3.3. The annual subscription for on-line access runs from January 1 through December 31, with the customer's first year subscription prorated.

3.4. The annual subscription fees are as follows:

3.4.1. For the Code of State rules, on-line access only, three hundred fifty dollars (\$350);

3.4.2. For the Code of State Rules, for purchasers of the printed 12-volume set, on-line access, one hundred seventy-five dollars (\$175);

3.4.3. For the Index to the Code of State rules, no charge;

3.4.4. For the index to the Opinions of the Ethics Commission, one hundred fifty dollars (\$150);

3.4.5. For the index to the Decisions of the State Grievance Board, no charge;

3.4.6. For the State Register, on-line access only, two hundred fifty dollars (\$250);

3.4.7. For the State Register, for purchasers of the printed subscription, on-line access, one hundred twenty-five dollars (\$125); and

3.4.8. For the calendar of emergency meeting notices, no charge.

3.5. If on-line billing is made available, the charge for each access to the ~~electronic records of the administrative law division a specific rule, index or issue of the State Register~~ shall be ~~fifteen cents (\$.15) per minute~~ two dollars.

3.6. The Secretary of State shall make electronic records of the Administrative Law Division available at no charge to members of the Legislature for their personal official use only, and not for distribution.

3.7. If sufficient revenue for the Administrative Law Division is available either through appropriations or special revenue, the subscription or other fees provided for in this section may be waived, at the discretion of the Secretary of State.

§153-2-4. Records of the Corporations Division.

4.1. The fees for access to records of the Corporations Division are based on the need for convenient access to key elements of those records by the public, the legal and banking community, and other users in order to reduce the personnel time and expense for telephone inquiries regarding those records.

4.2. The annual subscription for access to the electronic records of the corporation division for each user shall be one hundred dollars (\$100) per year.

4.3. If on-line billing is made available, the charge for access to electronic records of the corporation division for each user shall be fifteen cents (\$.15) per minute.

4.4. If sufficient revenue for the Corporations and/or Service of Process is available either through appropriations or other revenue, the subscription or other fees provided for in this section may be waived, at the discretion of the Secretary of State.

§153-2-5. Records of the Uniform Commercial Code (UCC) Division.

5.1. The fees for access to records of the UCC Division are based on a balance of the need for convenient access to key elements of those records in order to reduce the personnel time and expense for telephone inquiries regarding those records and the necessity for the division to maintain sufficient revenue to be staffed and maintained by revenue.

5.2. The annual subscription for access to the electronic indexes records of the UCC Division for each user shall be two hundred dollars (\$200) per year.

5.3. If on-line billing is made available, the charge for ~~access to each search of a debtor name in the~~ electronic records indexes of the UCC Division for each user shall be ~~fifteen cents (\$.15) per minute~~ two dollars.

5.4. If sufficient revenue for the UCC Division is available through special revenue, the subscription or other fees provided for in this section may be waived, at the discretion of the Secretary of State.

§153-2-6. Records of the Charitable Organizations, Elections, and Executive Records Divisions and Other Public Information.

6.1. The records of the Charitable Organizations Division are public information maintained for the purpose of preventing fraud in the conduct of charitable solicitations and fund-raising.

6.1.1. When available, the Secretary of State shall make the index information relating to charitable organizations and professional fund raisers available over the Internet at no charge.

6.2. The records of the Election Division are public information relating to the conduct

of elections, candidate filings and other filings made with the Secretary of State.

6.2.1. When available, the Secretary of State shall make the index information relating to elections, candidate filing, and campaign finance filing available over the Internet at no charge.

6.2.2. The Secretary of State shall not make lists of registered voters available online, however, lists of registered voters in electronic format may be purchased under the provisions of W. Va. Code §3-2-30.

6.3. The records of the Executive Records Division are public information relating to the actions and appointments of the executive branch.

6.3.3. When available, the Secretary of State shall make the index information relating to executive records available over the Internet at no charge.

6.4. The Secretary of State may make other public records available online as he or she determines appropriate and practical.

§153-2-7. Subscriber Accounts; Multiple Users and Access to Records of Multiple Divisions.

7.1. To become a subscriber to one or more of the record groups requiring fees, the person, firm or other entity shall file an application on a form prescribed by the Secretary of State.

7.2. Upon payment of the necessary fees or upon the satisfaction of any prepayment arrangements required for time of use billing, the Secretary of State shall provide a subscriber identification code and any required security password to the subscriber.

7.3. The Secretary of State shall maintain a record of all subscribers, along with a record of fees paid, and the beginning and ending dates of any annual subscription.

7.4. Subscribers who seek access to multiple record types through an annual subscription may obtain a discount of fifteen percent (15%) of the total for two record types, and twenty-five percent (25%) of the total for three (3) or more record types.

7.5. The following discounts are available for subscribers with four (4) or more users:

4 - 9 users	10% discount
10 - 25 users	15% discount
26 or more users	20% discount

153-2-8. Purchase of database index records for resale.

8.1. As required by W. Va. Code §59-1-3, any person, firm or other entity who purchases copies of any index or database and who intends to provide or subsequently provides or makes those records available to any other person for a monetary or other valuable return shall first apply to the Secretary of State for a resale agreement.

8.2. The applicant shall agree to be bound by a contract for repayment to the state for each instance of a resale.

8.2.1. The Secretary of State may require the applicant to supply detailed information relating to the data system in which the records are to be maintained, the anticipated frequency of access, the availability and use of automatic access tracking software within the applicant's system, the billing arrangements and prices of sales, and any

other information which might be necessary for contract review.

8.2.2. The Secretary of State may enter into a contract with the reseller for a reasonable return to the state of West Virginia for each instance of a resale.

8.3. Purchasers of the voter records maintained in the statewide uniform voter data system may not resell those records, as provided by W. Va. Code §3-2-30.

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July 31, 1998

Mary Ratliff
Secretary of State
Building 1, Room 157-K
Charleston, WV 25305

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WEST VIRGINIA

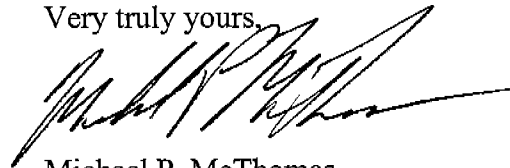
Re: Fees Relating To Electronic Records

Dear Mary:

Enclosed for filing are the comments of the West Virginia Manufacturers Association to the Secretary of State's proposed revisions to the rule, "Fees Relating to Electronic Records," 153 CSR 2. It is our position that the Code of State Rules and other items of the Secretary of State's office that our posted on the Internet be made available to the public without charge. We submit that each agency of the executive branch should be permitted to place put their respective rules on the Internet as well.

Thank you for your attention to this matter. Please contact me with any questions or comments you may have.

Very truly yours,



Michael P. McThomas
Counsel, West Virginia Manufacturers Association

c: Honorable Earl Ray Tomblin
Honorable Robert Kiss
James Teets, Chief of Staff
Office of the Governor
Karen Price, President
West Virginia Manufacturers Association

**COMMENTS OF THE
WEST VIRGINIA MANUFACTURERS ASSOCIATION
ON THE
SECRETARY OF STATE
FEES RELATING TO ELECTRONIC RECORDS**

153 CSR 2

July 31, 1998

**COMMENTS OF THE
WEST VIRGINIA MANUFACTURERS ASSOCIATION
ON THE
SECRETARY OF STATE
FEES RELATING TO ELECTRONIC RECORDS
153 CSR 2**

July 31, 1998

I. INTRODUCTION

On July 1, 1998, the West Virginia Secretary of State proposed for promulgation revisions to the rules on Fees Relating To Electronic Records. These comments are offered in accordance with the public notice accorded on the proposal of these rules.

The West Virginia Manufacturers Association ("WVMA") is an organization comprised of approximately 200 member companies engaged in a wide variety of manufacturing activities throughout the state. The WVMA members are responsible for compliance with numerous rules and regulations codified in the Code of State Rules ("CSR"). As access to the CSR is vital to its members, the WVMA offers the following comments and recommendations.

II. GENERAL COMMENTS

The WVMA believes that the CSR should be on the Internet free of charge. The Internet is the fastest growing conduit of communication and information. In this new and advanced technological age, many states -- such as West Virginia -- have created their own webpage and have placed their state codes and attendant rules on their websites as well. Our research has shown that states which have placed information, in the form of their respective state codes and/or state rules and regulations, on the Internet allow access to those legal resources free of charge.

Other agencies and government bodies in West Virginia have posted information on their respective websites. For example, the Legislature has posted the state code in a searchable platform on its website. The state code is available free of charge. The West Virginia Supreme Court of Appeals has begun to post its opinions on a searchable database on its website free of charge. Several state agencies, namely the Division of Environmental Protection, would like to put its rules on its respective websites; however, it has been instructed that it would be unlawful to do so because of the prohibition on dissemination of rules contained in W.Va. Code 29A-2-8.¹ The WVMA

¹West Virginia Code 29A-2-8 provides:

§29A-2-8. Publication of rules by agencies.

(a) No agency may duplicate copies of its rules for general distribution except in accordance with this section. However, a duly certified copy may be provided by the agency, at the cost of reproduction, if requested and if not presently available from the secretary of state. Whenever an agency desires multiple copies of all or parts of its rules or other materials filed in the state register, it shall purchase the same from the office of the secretary of state: Provided, That when reproduction of the number of copies desired by the agency can be accomplished at a lower cost by the agency, it shall notify the secretary of state in writing of such lower cost and, unless the secretary of state shall within ten days agree to furnish such copies for an equal and lower cost and do so within twenty days thereafter, may proceed at its cost to acquire such copies elsewhere if otherwise authorized to do so by law.

(b) Any published rules may be distributed only to those persons who specifically request a copy of the rules and may not be distributed in any manner to persons who have not requested a copy. The agency may print or otherwise acquire only the number of copies of any rule that it may reasonably anticipate will be requested by members of the general public.

(c) Except as provided in this section, no agency may expend funds to alter the format or presentation of such rules from that provided in the state register (except to adequately fasten and bind the pages) or expend funds to compensate the office of secretary of state to do so.

(d) Whenever for public convenience an agency deems it appropriate to reproduce one or more rules for general public distribution in some printed form, such as a booklet or other format not provided by copying the state register, the agency shall give written notice to the secretary of state and the legislative auditor of its intention to do so, including therein the anticipated cost and the source or account of appropriations therefor. Such notice shall be recorded in the state register as other notices. After twenty days shall have elapsed, the agency may proceed unless the secretary of state shall have made a finding that such additional publication is unnecessary or unduly expensive. Any such findings shall be served on the agency and the governor and filed in the state register. The governor may, within ten days after receiving such finding, order such publication canceled or order such amendment thereof as is appropriate in his judgment. Any such order of the governor shall be effective until and unless the Legislature shall otherwise provide. In the absence of such an order by the governor, the agency may proceed in accord with its original notice of intent.

believes that this statutory provision needs to be changed so that the respective agencies of government who maintain a website may publish their rules on the website for the public to have free, unlimited access. The WVMA understands that the Secretary of State is bound by statute, but lends its support in seeking statutory change to effect the following:

- 1) Adequately fund the Secretary of State's, Administrative Law Division office to ensure that the CSR may be posted on the Internet free of charge;
- 2) Allow each agency of government, to the extent the agencies' technology permits, to place their rules on their individual websites.

For the foregoing reasons, the WVMA believes that the CSR should be added to the website and be available free of charge.

III. SPECIFIC COMMENTS

A. Section 3.5

This section proposes a billing for access to the electronic records of the CSR, the State Register or the index of rules for a fee of two dollars for each access. The WVMA does not believe that the state should charge for access to the laws and rules that the state's citizens are responsible for compliance. Instead, the WVMA believes that on-line access to the CSR, the State Register and the index should be free.

B. Section 3.7

This section allows the fees to be waived at the discretion of the Secretary of State. Does this mean that the fee may be waived for all persons who access the Secretary of State's electronic database, or only for selected individuals or companies? The WVMA submits that this language is

too subjective and discriminatory. If the Secretary of State is going to waive the fees because it has enough revenue, then the fees should be waived for everyone and not just select individuals.

IV. CONCLUSION

The WVMA understands that statutory requirements and funding deficiencies hinder the ability of the Secretary of State and each individual agency to add the rules to the website for free and unlimited public access. However, the WVMA also believes strongly that the rules should be available without charge and pledges its assistance in attaining this goal.

If the Secretary of State has any questions, or if additional information is desired, please contact the WVMA at the earliest possible convenience.

Respectfully submitted this 31st day of July, 1998.

Karen S. Price, President
West Virginia Manufacturers Association
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