

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #4

Do Not Mark In this Box

SEP 23 3 57 PM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: SECRETARY OF STATE TITLE NUMBER: 153

CITE AUTHORITY W.VA. CODE §59-1-2

AMENDMENT TO AN EXISTING RULE: YES  NO

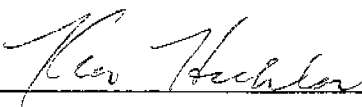
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

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, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
\_\_\_\_\_

\$3.00

TITLE 153  
LEGISLATIVE RULES  
SECRETARY OF STATE

SEP 23 3 57 PM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 2  
FEES RELATING TO ELECTRONIC RECORDS

**§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 Division 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.



FILED

SEP 23 10 23 AM '98

**WEST VIRGINIA LEGISLATURE**  
**Legislative Rule-Making Review Committee**

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

*State Capitol - Room MB-49*  
*Charleston, West Virginia 25305*  
*September 23, 1998*  
*(304) 347-4840*

*Senator Mike Ross, Co-Chairman*  
*Delegate Mark Hunt, Co-Chairman*  
*Debra A. Graham, Clerk*

*Joseph A. Altizer, Associate Counsel*  
*Rita Pauley, Associate Counsel*  
*Kari Anderson, Administrative Assistant*

**NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

TO: Ken Hechler, Secretary of State, State Register

TO: Mary Ratliff  
Office of the Secretary of State  
Capitol Complex  
Building 1, Suite 157-K

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Fees Relating to Electronic Records, 153CSR2**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed \_\_\_\_\_
  - (b) as modified by the agency       /
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. \_\_\_\_\_
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Secretary of State

Subject: Fees Relating to Electronic Records, 153CSR2

PERTINENT DATES

Filed for public comment: July 1, 1998  
Public comment period ended: July 31, 1998  
Filed following public comment period: August 3, 1998  
Filed LRMRC: August 3, 1998  
Filed as emergency:

OFFICE OF THE SECRETARY OF STATE  
COMMONWEALTH OF VIRGINIA

AUG 13 9 56 AM '98

FILED

Fiscal Impact: \$40,000 potential loss in revenue

ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 3.2 has been amended to allow the Secretary of State to bill for publications which are on-line by billing per access to a specific rule, index or issue of the State Register rather than the current time unit of access. Once on-line billing is made available, the charge for each access will be \$2.00 as opposed to fifteen cents per minute.

A new subsection has been added stating that if sufficient revenue is made available to the Administrative Law Division through appropriations or special revenue, the Secretary of State may waive the fees.

Section 4 relating to records of the Corporations Division has been amended by adding a new subsection which states that if sufficient revenue is made available for the Corporations Division and service of process through appropriations or special revenue, the Secretary of State may waive the fees.

Section 5.3 relating to records of the UCC has been amended to provide that once on-line billing is made available, the charge for each search of a debtor name will be \$2.00 as opposed to fifteen cents per minute.

A new subsection has been added stating that if sufficient revenue is made available to the UCC Division through appropriations or special revenue, the Secretary of State may waive the fees.

---

AUTHORITY

Statutory authority: W.Va. Code, §59-1-2, which provides, in part, as follows:

...The secretary of state may promulgate legislative rules for charges for on-line electronic access to database information or other information maintained by the secretary of state.

---

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

The proposed rule is reasonable in that the Secretary of State's office is dependent on the fees in the rule in order to perform its statutorily dictated duties. It is unreasonable in that it limits the public's access to public information. However, until other funding is made available, Secretary of State would seem to have no alternative to the proposed rule.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has a minor technical modification to suggest.