

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

Form #3

Do Not Mark In This Box

FILED

JUL 31 12 51 PM '97

OFFICE OF WEST VIRGINIA
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: §59-1-2

AMENDMENT TO AN EXISTING RULE: YES NO

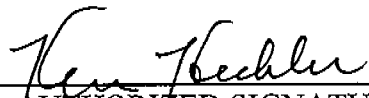
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 2

TITLE OF RULE BEING PROPOSED: FEES RELATING TO ELECTRONIC RECORDS

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.



AUTHORIZED SIGNATURE

4.40

Summary of Rule

Secretary of State Rule, Title 153, Series 2, Fees Relating to Electronic Records 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.

STATEMENT OF CIRCUMSTANCE

W. Va. Code §59-1-2 authorizes the filing for Secretary of State Title 153, Series 2.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: FEES RELATING TO ELECTRONIC RECORDS

Type of Rule: Legislative Interpretive Procedural

Agency SECRETARY OF STATE

Address 1900 KANAWHA BLVD. E., BLDG. 1, ROOM 157-K
CHARLESTON, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER					

2. Explanation of above estimates:

RULE WILL INCREASE REVENUE FOR SERVICES ALREADY RENDERED
WILL NOT INCREASE IN COST

3. Objectives of these rules:

TO ASSURE ADEQUATE RETURN TO THE STATE FOR SERVICE SUBSIDISING BY STATE FUNDS

Rule Title: FEES RELATING TO ELECTRONIC RECORDS

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

INCREASE OF REVENUE

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

RESELLERS OF STATE DATA WILL BE REQUIRED TO REIMBURSE THE STATE AT A FAIR RATE

C. Economic Impact on Citizens/Public at Large.

WILL RESULT IN STATE'S ABILITY TO PROVIDE ADDITION^{AL} FREE SERVICES.

Date:

7/25/97

Signature of Agency Head or Authorized Representative

Mary D. Kelly

DATE: July 31, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Secretary of State

LEGISLATIVE RULE TITLE: Fees Relating to Electronic Records

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

2.
 - a. Date filed in State Register with Notice of Hearing: June 30, 1997
 - b. What other notice, including advertising, did you give of the hearing?
none
 - c. Date of Hearing(s): July 31, 1997
 - d. Attach list of persons who appeared at hearing, comments received amendments, reasons for amendments. Attached: No comments received:
 - e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact) July 31, 1997
 - f. Name and phone number(s) of agency person(s) to contact for additional information:
Mary Ratliff, Deputy Secretary of State 558-6000
1900 Kanawaha Blvd E, Building 1, Room 157K
Charleston, WV 25305-0770

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: 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

RESPONSE TO COMMENTS:

Only one comment was received which suggested a price break for subscribers who subscribe to both print and on-line services. After review, the rule was changed in section 3.3 and 3.4 to reflect these changes.

MEMO

To: Mary Ratliff
From: Judy Cooper
Subject: Changes to 153-2
Date: July 22, 1997

I have the following suggested changes to 153-2 starting with 3.3.1. in order to give a price break to subscribers who subscribe both to print and on-line services.

3.3. The annual subscription for on-line access will run from January 1 through December 31. The first year's subscription will be prorated to end December 31.

3.4. The annual subscription fees shall be 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).

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

TITLE 153
LEGISLATIVE RULES
SECRETARY OF STATE

SERIES 2
FEES RELATING TO ELECTRONIC RECORDS

FILED

JUL 31 12 51 PM '97

OFFICE OF WEST VIRGINIA
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 deemed to be 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 systems and each division's records completed for public viewing, and is not to imply any required beginning date for such access.

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

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

3.2. The publications may be made available on-line through annual subscription for unlimited access, or through an on-line billing per time unit of access, depending on the technological considerations at the time of the development of the system.

3.3. The annual subscription for on-line access will run from January 1 through December 31. The first year's subscription will be prorated to end December 31.

3.4. The annual subscription fees shall be 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).

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

3.5. If on-line billing is made available, the charge for access to the electronic records of the administrative law division shall be determined annually by the secretary of state and published in the state register, but may be no more than fifteen cents (\$.15) per minute.

§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 determined annually by the secretary of state and published in the state register, but may be no more than two hundred dollars (\$200) per year, or the actual cost of such services if access is provided by value added network..

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 determined annually by the secretary of state and published in the state register, but may be no more than fifteen cents (\$.15) per minute.

§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 records of the UCC Division for each user shall be determined annually by the secretary of state and published in the state register, but may be no more than two hundred dollars (\$200) per year.

5.3. If on-line billing is made available, the charge for access to electronic records of the UCC Division for each user shall be determined annually by the secretary of state and published in the state register, but may be no more than fifteen cents (\$.15) per minute.

§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 fundraising.

6.1.1. When available, the index information relating to charitable organizations and professional fundraisers may be made 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 index information relating to elections, candidate filing, and campaign finance filing may be made available over the Internet at no charge.

6.2.2. No lists of registered voters may be made 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 index information relating to executive records may be made available over the Internet at no charge.

6.4. The secretary of state may make other public records available online as he or she deems 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 or 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 security password required.

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 data types, and twenty-five percent (25%) of the total for three (3) or more data types for each user.

7.5. The following discounts for subscribers with five (5) or more users:

5 - 9 users	10% discount
10 - 25 users	15% discount
26 users or more	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 resale.

8.2.1. The applicant may be required 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 their system, the billing arrangements and prices of their 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 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.

4193

153-2

1 Bill-SOS,

H. B. 4193

2

(By Delegates Hunt, Linch, Compton, Jenkins,
Faircloth and Riggs)

3

4

[Introduced January 30, 1998; referred to the
Committee on Finance then the Judiciary.]

5

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8

9

10 A BILL to amend and reenact section two, article nine,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the secretary of state to promulgate a
14 legislative rule relating to fees relating to
15 electronic records.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section two, article nine, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND

22 BOARDS TO PROMULGATE LEGISLATIVE RULES.

23 §64-9-2. Secretary of state.

4193

1 (a) The legislative rule filed in the state register
2 on the twenty-sixth day of August, one thousand nine
3 hundred ninety-six, authorized under the authority of
4 section thirteen, article two, chapter three of this code,
5 relating to the secretary of state (agencies designated to
6 provide voter registration services, 153 CSR 28), is
7 authorized.

8 (b) The legislative rule filed in the state register
9 on the twenty-eighth day of August, one thousand nine
10 hundred ninety-six, authorized under the authority of
11 section six, article one-a, chapter three of this code,
12 modified by the secretary of state to meet the objections
13 of the legislative rule-making review committee and refiled
14 in the state register on the twenty-fifth day of October,
15 one thousand nine hundred ninety-six, relating to the
16 secretary of state (procedures for recount of election
17 returns, 153 CSR 20), is authorized.

18 (c) The legislative rule filed in the state register
19 on the thirtieth day of August, one thousand nine hundred
20 ninety-six, authorized under the authority of section ten,
21 article two, chapter forty-seven of this code, modified by
22 the secretary of state to meet the objections of the
23 legislative rule-making review committee and refiled in the

1 state register on the twenty-fourth day of October, one
2 thousand nine hundred ninety-six, relating to the secretary
3 of state (trademarks and service marks, 153 CSR 29), is
4 authorized.

5 (d) The legislative rule filed in the state register
6 on the thirty-first day of July, one thousand nine hundred
7 ninety-seven, authorized under the authority of section
8 two, article one, chapter fifty-nine, of this code,
9 modified by the secretary of state to meet the objections
10 of the legislative rule-making review committee and refiled
11 in the state register on the third day of November, one
12 thousand nine hundred ninety-seven, relating to the
13 secretary of state (fees relating to electronic records,
14 153 CSR 2), is authorized.

15

16 NOTE: The purpose of this bill is to authorize the
17 Secretary of State to promulgate a legislative rule
18 relating to Fees Relating To Electronic Records.

19

20 Strike-throughs indicate language that would be
21 stricken from the present law, and underscoring indicates
22 new language that would be added.

Senate Bill No. 334

153-2

1 (By Senator(s) Ross, Anderson, Bowman,
2 Macnaughtan, Boley and Buckalew)

3 [Introduced January 30, 1998; referred to the
4 Committee on Government Organization; and then
5 to the Committee on the Judiciary.]
6
7
8
9

10 A BILL to amend and reenact section two, article nine,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the secretary of state to promulgate a
14 legislative rule relating to fees relating to
15 electronic records.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section two, article nine, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 **ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND**
22 **BOARDS TO PROMULGATE LEGISLATIVE RULES.**

23 **§64-9-2. Secretary of state.**

1 (a) The legislative rule filed in the state register
2 on the twenty-sixth day of August, one thousand nine
3 hundred ninety-six, authorized under the authority of
4 section thirteen, article two, chapter three of this code,
5 relating to the secretary of state (agencies designated to
6 provide voter registration services, 153 CSR 28), is
7 authorized.

8 (b) The legislative rule filed in the state register
9 on the twenty-eighth day of August, one thousand nine
10 hundred ninety-six, authorized under the authority of
11 section six, article one-a, chapter three of this code,
12 modified by the secretary of state to meet the objections
13 of the legislative rule-making review committee and refiled
14 in the state register on the twenty-fifth day of October,
15 one thousand nine hundred ninety-six, relating to the
16 secretary of state (procedures for recount of election
17 returns, 153 CSR 20), is authorized.

18 (c) The legislative rule filed in the state register
19 on the thirtieth day of August, one thousand nine hundred
20 ninety-six, authorized under the authority of section ten,
21 article two, chapter forty-seven of this code, modified by
22 the secretary of state to meet the objections of the
23 legislative rule-making review committee and refiled in the

1 state register on the twenty-fourth day of October, one
2 thousand nine hundred ninety-six, relating to the secretary
3 of state (trademarks and service marks, 153 CSR 29), is
4 authorized.

5 (d) The legislative rule filed in the state register
6 on the thirty-first day of July, one thousand nine hundred
7 ninety-seven, authorized under the authority of section
8 two, article one, chapter fifty-nine, of this code,
9 modified by the secretary of state to meet the objections
10 of the legislative rule-making review committee and refiled
11 in the state register on the third day of November, one
12 thousand nine hundred ninety-seven, relating to the
13 secretary of state (fees relating to electronic records,
14 153 CSR 2), is authorized.

15

16 NOTE: The purpose of this bill is to authorize the
17 Secretary of State to promulgate a legislative rule
18 relating to Fees Relating To Electronic Records.

19

20 Strike-throughs indicate language that would be
21 stricken from the present law, and underscoring indicates
22 new language that would be added.