

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

Form #4

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OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: Department of Tax and Revenue TITLE NUMBER: 119

CITE AUTHORITY: W. Va. Code §§ 46-A-6F-301 and 303

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

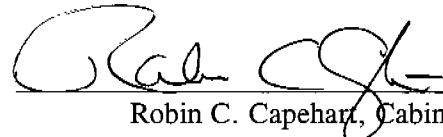
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: Series 301

TITLE OF RULE BEING PROPOSED: Registration of Telemarketers

THE ABOVE PROPOSED LEGISLATIVE RULES, 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.



Robin C. Capehart, Cabinet Secretary

January 12, 1999

Date

\$ 2.80

**TITLE 119  
PROPOSED LEGISLATIVE RULE  
SECRETARY OF TAX AND REVENUE**

**Series 301  
REGISTRATION OF TELEMARKETERS**

**§119-301-1. General.**

1.1. **Scope.** -- This rule establishes telemarketing registration fees and factors the Secretary of Tax and Revenue considers when assessing civil administrative penalties.

1.2. **Authority.** -- The authority for this rule is W. Va. Code §§ 29A-3-15, 46A-6F-301 and 46A-6F-303.

1.3. **Filing Date.** -- January 12, 1999.

1.4. **Effective Date.** --

1.5. **Official Citation.** -- The official citation of this rule is title 119, series 301 of the West Virginia Code of State Rules. Sections of this rule may be cited as 119 W.Va.C.S.R. § \_\_\_\_\_, or 119 C.S.R. § \_\_\_\_\_.

**§ 119-301-2. Registration fees.**

2.1 **General.** -- The Secretary of Tax and Revenue may charge reasonable application and renewal fees. These fees are deposited in the *Telemarketer Registration Fund* created in the State Treasury and used to administer and enforce the registration requirements of W. Va. Code §§ 46A-6F-1 *et seq.* and this rule.

2.2 **Fees.** --

2.2.1 **Initial application fee** -- \$250.00

2.2.2 **Renewal fee** -- \$250.00

2.2.3 **Discount.** -- If the telemarketer registers at the Secretary's web site, or renews its registration at the Secretary's web site, the applicant will be allowed a \$50 discount.

2.3 **Refund of fee.**

2.3.1 No refund shall be given, or credit established, for all or a portion of

the registration fee if during the registration year the registrant: (a) goes out of business, (b) stops doing telemarketing activity in this State, or (c) has its telemarketing registration certificate revoked or suspended.

2.3.2 No refund shall be given, or credit established, for all or a portion of the registration fee when the claim is for any other reason, except that a refund will be made if payment of the fee, or any portion of the fee, was erroneous at the time it was paid.

**§119-301-3. Failure to register or meet security requirement; remedies.**

3.1 **Civil administrative penalty.** -- The Secretary may assess any person subject to this rule a civil administrative penalty of not more than \$5,000 per violation if the person does any of the following:

3.1.1 Acts as a telemarketer without first registering with the Secretary as required by W. Va. Code § 46A-6F-301;

3.1.2 Acts as a telemarketer without first meeting the security requirements set forth in W. Va. Code § 46A-6F-302, unless the telemarketer is exempt from the security requirements;

3.1.3 Acts as a telemarketer after failing to maintain a certificate of registration as required by W. Va. Code § 46A-6F-301;

3.1.4 Acts as a telemarketer without furnishing the security required by W. Va. Code § 46A-6F-302;

3.1.6 Acts as a telemarketer without maintaining the amount of security required by W. Va. Code § 46A-6F-302;

3.1.7 Includes any material information on a registration application, or on a renewal application, that is false or misleading; or

3.1.8 Misrepresents that the telemarketer is registered with the Secretary.

3.2 **Considerations.** -- When determining the amount of penalty to assess, the Secretary shall take the following into account:

3.2.1 The seriousness of the violation;

3.2.2 Any good faith efforts of the telemarketer to comply with applicable requirements of W. Va. Code §§ 46A-6F-1 *et seq.* and this rule;

3.2.3 Any benefit obtained by person due to the act or omission;

3.2.4 The past history of the telemarketer in filing the initial application for registration and subsequent renewals;

3.2.5 Whether the cause of the delinquency was unavoidable, or was due to negligence or an intentional act of the telemarketer or an agent of the telemarketer;

3.2.6 The opportunity and degree of difficulty to correct erroneous or incomplete information in the initial application or a renewal application;

3.2.7 The cooperativeness and efforts made by the telemarketer or an agent of the telemarketer to correct the erroneous or incomplete information for which the penalty is to be imposed, in whole or in part;

3.2.8 The cost to the Secretary and time involved in investigation and correspondence prior to the time the erroneous or incomplete information is actually corrected;

3.2.9 Any good faith belief by the telemarketer that it was exempt from the registration requirements of section W. Va. Code § 46A-6F-301, or the security requirements of W. Va. Code § 46A-6F-302, or exempt from the requirements of both sections;

3.2.10 The lack of actual knowledge by the telemarketer of the registration and security requirements of W. Va. Code §§ 46A-6F-301 and 302; and

3.2.11 The telemarketer's business reputation and history, if offered by the telemarketer.

**3.3 Notice of civil administrative penalty.** -- The telemarketer shall be notified by certified mail or personal service of any alleged violation of W. Va. Code § 46A-6F-301 or 302. This notice shall include:

3.3.1 A reference to the provisions of W. Va. Code §§ 46A-6F-301, 302 and 303 that that the person allegedly violated;

3.3.2 A concise statement of the facts alleged to constitute the violation;

3.3.3 A statement of the amount of penalty sought to be imposed; and

3.3.4 A statement of the alleged violator's right to a hearing if the violator desires to contest the proposed civil administrative penalty.

**3.4 Request for hearing.** -- The alleged violator has 20 calendar days after receipt of the notice within which to file with the Secretary a written request for a hearing. If no hearing is requested, the notice becomes a final order after the 20th calendar day.

3.4.1 **Computation of time.** -- If the 20th calendar day falls on a Saturday, Sunday or legal holiday in this State, the written request is timely if it is filed on the next day that is not a Saturday, Sunday or legal holiday in this State.

3.4.2 **Service.** -- A written request for a hearing is filed timely when the request is delivered to the Secretary in person on or before the last day for filing, or the request is deposited in the United States mail, postage prepaid, addressed to one of the following addresses; or the request is sent by other means recognized as service by the courts of this State:

W.Va. Secretary of Tax and Revenue  
Office of Telemarketing Registration  
P.O. Box 963  
Charleston, WV 25324-0963

W.Va. Secretary of Tax and Revenue  
Office of Telemarketing Registration  
Building 1, Room W-300  
Charleston, WV 25305-0842

### 3.5 **Hearing and appeal procedures.**

3.5.1 When a request for hearing is filed timely, the Secretary shall inform the alleged violator of the time and place of the hearing.

3.5.2 The Secretary may appoint a hearing examiner to conduct the hearing and then make a written recommendation to the Secretary concerning the assessment of a civil administrative penalty.

3.5.3 The hearing shall be conducted in accordance with the provisions of article 5, chapter 29A of this Code.

3.5.4 Within 30 days following the hearing, the Secretary shall issue and serve on the alleged violator a written decision that explains the rationale for any assessment of an administrative penalty.

3.5.5 An adverse decision may be appealed to the courts as provided in W. Va. Code § 29A-5-4.

3.5.6 No notice of a civil administrative penalty is due and payable until after the procedures for review of the notice as set out in this section have been completed.



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**WEST VIRGINIA LEGISLATURE**  
**Legislative Rule-Making Review Committee** OFFICE OF THE SECRETARY OF STATE

*State Capitol - Room MB-49  
Charleston, West Virginia 25305  
Phone: (304) 347-4840  
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*Senator Mike Ross, Co-Chairman  
Delegate Mark Hunt, Co-Chairman  
Debra A. Graham, Counsel*

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

January 12, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Dale W. Steager  
Department of Tax and Revenue  
Capitol Complex  
Building 1, Room W-300

FROM: Legislative Rule-Making Review Committee

Proposed Rule: <sup>119</sup> Registration of Telemarketers, ~~119~~ CSR301

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. \_\_\_\_\_