

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #6

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APR 9 2 45 PM '99

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE  
AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AGENCY: WV Dept. of Tax & Revenue TITLE NUMBER: 119

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 301

TITLE OF RULE BEING AMENDED: Telemarketing

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

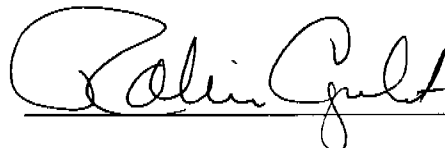
THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) House Bill 2570

SECTION 64-7-2, PASSED ON March 10, 1999

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: April 9, 1999



Robin C. Capehart, Cabinet Secretary

\$2.80

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

**Series 301  
REGISTRATION OF TELEMARETERS**

FILED  
Apr 9 2 42 PM '99  
OFFICE OF THE SECRETARY OF TAX AND REVENUE  
SECRETARY OF STATE

**§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.** -- 2/11/99.

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.

119-301

HL 56

1 Bill-Tax, Te

H. B. 2574

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

[Introduced February 1, 1999; referred to the  
Committee on Finance then the Judiciary.]

10 A BILL to amend and reenact section two, article seven,  
11 chapter sixty-four of the code of West Virginia, one  
12 thousand nine hundred thirty-one, as amended, relating  
13 to authorizing the department of tax and revenue to  
14 promulgate a legislative rule relating to the  
15 registration of telemarketers.

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

17 That section two, article seven, 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 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE**  
22 **TO PROMULGATE LEGISLATIVE RULES.**

23 **§64-7-2. Department of tax and revenue; tax division; and**

1                   **state tax commissioner.**

2           (a) The legislative rule filed in the state register  
3 on the twenty-third day of July, one thousand nine hundred  
4 ninety-six, authorized under the authority of section five,  
5 article thirteen-j, chapter eleven of this code, modified  
6 by the tax division to meet the objections of the  
7 legislative rule-making review committee and refiled in the  
8 state register on the thirty-first day of October, one  
9 thousand nine hundred ninety-six, relating to the tax  
10 division (tax credit for qualified agricultural equipment,  
11 110 CSR 13J), is authorized.

12           (b) The legislative rule filed in the state register  
13 on the sixteenth day of August, one thousand nine hundred  
14 ninety-six, authorized under the authority of section  
15 fifty-one, article twenty-one, chapter eleven of this code,  
16 modified by the tax division to meet the objections of the  
17 legislative rule-making review committee and refiled in  
18 the state register on the thirty-first day of October, one  
19 thousand nine hundred ninety-six, relating to the tax  
20 division (personal income tax low income exclusions, 110  
21 CSR 21.1), is authorized.

22           (c) The legislative rule filed in the state register  
23 on the sixteenth day of August, one thousand nine hundred

1 ninety-six, authorized under the authority of section  
2 twenty-one, article twenty-one, chapter forty-seven of this  
3 code, modified by the tax division to meet the objections  
4 of the legislative rule-making review committee and  
5 refiled in the state register on the twenty-seventh day  
6 of February, one thousand nine hundred ninety-seven,  
7 relating to the tax division (charitable raffles, 110 CSR  
8 37), is authorized.

9 (d) The legislative rule filed in the state register  
10 on the thirty-first day of July, one thousand nine hundred  
11 ninety-eight, authorized under the authority of sections  
12 three hundred one and three hundred three, article six-f,  
13 chapter forty-six-a, of this code, modified by the  
14 department of tax and revenue to meet the objections of the  
15 legislative rule-making review committee and refiled in the  
16 state register on the twelfth day of January, one thousand  
17 nine hundred ninety-nine, relating to the department of tax  
18 and revenue (registration of telemarketers, 119 CSR 301),  
19 is authorized.

20

21 NOTE: The purpose of this bill is to authorize the  
22 Department of Tax and Revenue to promulgate a legislative  
23 rule relating to the Registration of Telemarketers.

24

25 Strike-throughs indicate language that would be

1 ~~stricken~~ from the present law, and underscoring indicates  
2 new language that would be added.