

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

**FILED**

2004 AUG 18 A 11: 11

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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

AGENCY: State Treasurer's Office TITLE NUMBER: 112

CITE AUTHORITY: West Virginia Code §12-3A-6

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

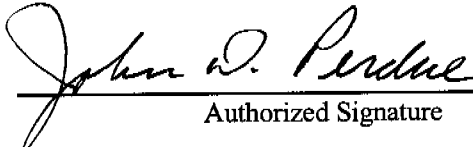
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

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

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 12

TITLE OF RULE BEING PROPOSED: Procedures for Fees in Collections by Charge,  
Credit or Debit Card or by Electronic Payment

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



# State of West Virginia

OFFICE OF THE STATE TREASURER  
CHARLESTON, WV 25305

JOHN D. PERDUE  
STATE TREASURER

JERRY SIMPSON  
ASSISTANT STATE TREASURER

CASH MANAGEMENT  
DIVISION  
Check Hotline: 1-866-243-9010  
304-558-3599  
FAX 304-558-5132  
WWW.WVTREASURY.COM

August 18, 2004

The Honorable Joe Manchin, III  
Secretary of State  
State Capitol  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

Re: 112 CSR 12 - Proposed Legislative Rule  
Notice of Agency Approval of a Proposed Rule

Dear Secretary Manchin:

Enclosed please find for filing an amended proposed legislative rule, 112 CSR 12, Procedures for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment, with the Notice of Agency Approval of a Procedural Rule and Filing with the Legislative Rule-Making Review Committee and other required documentation. Please accept this letter as evidence of my approval of the proposed rule.

If you have any questions, do not hesitate to contact me or my General Counsel, Diana Stout.

Sincerely,

A handwritten signature in black ink that reads "John D. Perdue".

John Perdue  
State Treasurer

JP/wlt

cc: Diana Stout

**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: August 18, 2004

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Treasurer's Office

1900 Kanawha Blvd., E., Bldg. 1, Room E-145, Charleston, WV 25305

(304) 558-5000

LEGISLATIVE RULE TITLE: Procedures for Fees in Collections by Charge,  
Credit or Debit Card or by Electronic Payment

1. Authorizing statute(s) citation §12-3A-6

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
July 9, 2004

b. What other notice, including advertising, did you give of the hearing?  
Copies of the proposed rule were sent to various spending units.  
See attached notice and list.

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
August 2, 2004

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)

N/A

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

Diana Stout, General Counsel

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State Treasurer's Office

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1900 Kanawha Blvd., E., Bldg. 1, Room E-122, Charleston, WV 25305

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Ph: (304) 341-7081 Fax: (304) 558-5063 diana.stout@wvsto.com

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- 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

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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

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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

## 112 CSR 12

### **PROCEDURES FOR FEES IN COLLECTIONS BY CHARGE, CREDIT OR DEBIT CARD OR BY ELECTRONIC PAYMENT**

#### **Brief Summary of the Rule:**

This rule establishes the procedures for authorizing and implementing the provisions of West Virginia Code §12-3A-6, which will enable spending units not prohibited to accept payments via electronic commerce. When a spending unit accepts charge, credit or debit cards or electronic payments, various fees and other expenses are incurred by the spending unit. Some spending units are required by statute to collect a set sum and do not believe they can pay the fees associated with processing payments via electronic commerce. Still other spending units cannot afford the associated fees. This rule will allow those spending units to collect payments via electronic commerce.

#### **Statement of Circumstances Which Require the Proposed Rule:**

The timely collection of state moneys is of paramount importance to the fiscal integrity of the state of West Virginia. Technological advances and changes in the banking industry necessitate that the Treasurer's Office accept payments by electronic commerce, i.e., through charge, credit or debit cards or by electronic payments. This rule will facilitate those collections.

(Note: West Virginia Code §12-3A-4 requires the Treasurer propose a legislative rule and authorizes the Treasurer to propose an emergency rule.)

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Procedures for Fees in Collections by Charge, Credit or Debit Cards or by Electronic Payment

Type of Rule:  Legislative     Interpretive     Procedural

Agency: State Treasurer's Office

Address: 1900 Kanawha Blvd., East, E-122

Charleston, WV 25305

Contact: Diana Stout, General Counsel, 304.558.5000

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	None		None		
<b>PERSONAL SERVICES</b>					
<b>CURRENT EXPENSE</b>					
<b>REPAIRS &amp; ALTERATIONS</b>					
<b>EQUIPMENT</b>					
<b>OTHER</b>					

2. Explanation of Above Estimates:

As with other computerization, over time payments made electronically will provide a convenience to our citizens and other customers, and will improve earnings.

3. Objectives of These Rules:

The objective of this rule is to improve collections of moneys due the state.

Rule Title: Procedures for Fees in Collections by Charge, Credit or Debit  
Cards or by Electronic Payment

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Electronic collection of moneys due the state will enable the moneys to be collected faster, with less uncertainty, and will create additional earnings.

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

Electronic collections will enable citizens and other customers to make payments via the internet and other electronic means to state spending units, which will improve the collection process.

C. Economic Impact on Citizens/Public at Large.

See 4.B.

Date: July 1, 2004

Signature of Agency Head or Authorized Representative:

*Maria Stout*

112 CSR 12

FILED

TITLE 112  
LEGISLATIVE RULE  
STATE TREASURER'S OFFICE

2004 AUG 18 A 11:11

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 12  
PROCEDURES  
FOR FEES IN COLLECTIONS  
BY CHARGE, CREDIT OR DEBIT CARD  
OR BY ELECTRONIC PAYMENT

**§112-12- 1. General.**

1.1 Scope. - This rule establishes the procedures for authorizing and implementing fees by state spending units to cover the cost of collection of moneys by charge, credit or debit card or by electronic payment.

1.2. Authority. - West Virginia Code §12-3A-6.

1.3 Filing Date. - \_\_\_\_\_.

1.4 Effective Date. - \_\_\_\_\_.

**§112-12-2. Definitions.**

2.1. "ACH" means automated clearinghouse.

2.2. "Card Processor" means the entity that processes payments by charge, credit and debit cards from the merchant to the card issuer to the merchant's financial institution.

2.3. "Card Issuer" means the financial institution issuing a charge, credit or debit card.

2.4. "Card Payment Service Provider" means an entity that accepts payment by charge, credit or debit card or electronic payment on behalf of a spending unit.

2.5. "Charge Card" means a card (usually plastic) issued for the purpose of obtaining money, property or services on credit, with the full balance due at the end of each statement period.

2.6. "Convenience Fee" means a fixed or variable rate charge assessed to a charge, credit or debit card or electronic payment to help defray the cost of processing a transaction.

2.7. "Credit Card" means a card (usually plastic) issued for the purpose of obtaining money, property or services on credit, with the full balance or minimum payments due at the end of each statement period. Interest is assessed on the unpaid balance.

2.8. "Customer" means any person or entity purchasing from a spending unit.

2.9. "Debit Card" means a card (usually plastic) issued for the purpose of obtaining money, property or services with the amount charged directly to the holder's financial institution account electronically by electronic funds transfer.

2.10. "Discount Fee" means the charges assessed to the merchant on the total sale by charge, credit or debit card by a card issuer for accepting its card.

2.11. "Electronic Commerce" means the processing of transactions by electronic means, including, but not limited to, the telephone, IVR, POS terminal, internet and electronic payment.

2.12. "EFT" means electronic funds transfer.

2.13. "Electronic Payment" means an EFT, including, but not limited to, payment by ACH and ACH based electronic check.

2.14. "Financial Institution" means any state-chartered banking institution, national banking institution, national banking association, federal savings and loan association, bank holding company, savings and loan holding company, federal savings bank, state-chartered credit union or federally-chartered credit union.

2.15. "Internet" means the computer-based global information system linking computer networks all over the world by satellite.

2.16. "IVR" means a telephone interactive voice response system.

2.17. "Merchant" means any state spending unit that accepts charge, credit or debit cards.

2.18. "Point of Sale Terminal" or "POS Terminal" means a financial institution communication device or equipment used for the primary purposes of transferring moneys to or from a financial institution account or segregating moneys in accounts within a financial institution, or both, for transactions, including, but not limited to, devices and equipment used to implement and facilitate check guarantee and check authorization.

2.19. "Spending Unit" means any entity of the West Virginia state government for which an appropriation is requested or to which an appropriation is made by the Legislature.

2.20. "STO" means the West Virginia state treasurer's office.

2.21. "Transaction" means one electronic purchase or payment.

2.22. "Treasurer" means the West Virginia state treasurer or his or her designee.

**§112-12-3. General Information**

3.1. Spending units shall use the methods provided by the treasurer to accept payments.

3.2. Electronic commerce methods available from the STO include, but are not limited to, telephone, IVR, POS terminal, internet, EFT and any other electronic payment method.

3.3. Governmental entities other than spending units may request to use the methods provided by the treasurer to accept payments.

**§112-12-4. Convenience Fees.**

4.1. The treasurer may authorize the use of convenience fees unless use is prohibited by law.

4.2. The treasurer shall set the amount of the convenience fees authorized.

4.3. The amount of convenience fees must be related to the convenience of the customer.

4.4. ~~The amount of convenience fees for similar transactions shall be the same.~~

4.5. The treasurer may contract with one or more card payment service providers.

**§112-12-5. Request to assess and collect a convenience fee.**

5.1. Spending units may accept payment for electronic commerce and select the methods to use from the methods made available by the STO.

5.2. A spending unit interested in accepting payments and payments with convenience fees for electronic commerce shall deal exclusively with the STO, unless otherwise authorized by the West Virginia Code.

5.3. The STO shall provide an application, which shall contain information on the spending unit, the nature of the proposed transactions, the goals and expectations of the spending unit, and such other matters as the treasurer determines.

5.4. A spending unit shall complete an application, ensure the application is signed by an authorized person, and return it to the STO.

5.5. The STO will review each submitted application.

5.6. The STO shall approve a complete and timely application of a spending unit authorized to collect convenience fees. If the application is not complete or timely or if the spending unit has not been authorized to collect convenience fees, the STO may reject the application.

5.7. The STO shall return rejected applications with explanations of the reasons for rejection.

5.8. If the STO determines alternative methods to the payment methods selected by the spending unit may be better suited to the activity, the STO shall inform the spending unit of the alternative methods. The STO will provide only the methods selected by the spending unit.

#### **§112-12-6. Duties of Spending Units**

6.1. The spending unit is responsible for acquiring the necessary computer system, software, and other matters required to process transactions.

6.2. For internet transactions, the website of a spending unit shall contain:

- (a) complete description of the goods or services offered,
- (b) returning merchandise and refund policy,
- (c) customer service contact, including electronic mail and telephone number,
- (d) transaction currency is US dollars,
- (e) any legal or other restrictions,
- (f) order fulfillment, including, but not limited to, delivery policy and practices,
- (g) re-direct services to re-direct customers to the STO payment gateway to select the method of payment and execute the payment. The spending unit is also responsible for developing the "front end" website that will connect to the STO payment gateway,
- (h) privacy policy approved by the STO,

- (i) provide an opt-in system for customers to receive mail, electronic or regular US mail, and only retain information provided by a customer that has authorized maintenance of that information,
- (j) not sell or share the names and addresses of customers unless specific authorization is granted in the West Virginia Code,
- (k) appropriate security controls, and
- (l) conspicuous disclosure of the nature and amount of the convenience fees.

6.3. The spending unit is responsible for all discount and other fees and amounts assessed or charged for providing the selected methods of receiving payment.

6.4 The spending unit shall not store charge, credit or debit card or electronic payment account numbers as that information is confidential. The only authorized use of a charge, credit or debit card or electronic payment is to process an authorized transaction. At most, a spending unit may have non-persistent cookies to ensure confidential information is not stored.

6.5 ~~Deposit~~ The spending unit shall deposit all convenience fees collected by the spending unit in an account in the state treasury. The spending unit shall expend the convenience fees collected to defray the costs of providing internet services, charge, credit or debit card payments or electronic payments to customers.

6.6 The spending unit shall establish procedures to reconcile receipts with the amount reported.

**§112-12-7. STO Duties.**

7.1. The STO shall:

- (a) provide the training and assistance needed for a spending unit to accept payments for electronic commerce,
- (b) provide a list of the type of approved methods to accept payment for electronic commerce and make the methods available for use by spending units,
- (c) obtain merchant account numbers for spending units authorized to collect payments for electronic commerce, and
- (d) test the acceptance process prior to implementing the acceptance of payments.

7.2. The STO may audit the spending unit's web site as needed.

7.3. The STO may assess or require the assessment of the system security of the spending unit at any time.

## COMMENT PERIOD

The comment period for this proposed legislative rule, 112 CSR 12, ended on August 3, 2004 at 3:00 p.m. The proposed legislative rule was filed in the West Virginia Register, Volume XXI, Issue 28, July 9, 2004 on page 1172. The Notice of a Comment Period on a Proposed Rule is in the same West Virginia Register on page 1205.

As only spending units are affected by the proposed rule, no legal advertisement was published. A copy of the proposed rule with a cover memo, as is attached, was sent to the persons on the list attached to the cover memo.

Two comments were received. One comment was a memorandum dated August 3, 2004, from Diana Stout to correct minor technical matters. The second comment received was in the form of a letter dated August 3, 2004, from Gary W. Rogers, Vice President for Administration, Finance and Human Resources of West Virginia University. A copy of the memorandum and a copy of the letter are attached. A copy of the response letter sent to Mr. Rogers is also attached.

The proposed legislative rule has been amended to correct the minor technical matters raised in the memorandum and to remove a clause found objectionable by Mr. Rogers. Amendments are reflected by the underscoring of new language and the striking of language to be removed. Two clauses requested by Mr. Rogers to be added to the rule have not been added. The reasons for the amendments are to correct minor technical matters and to eliminate the potential problems caused by the limitation in §112-12-4.4. The reasons regarding the comments of Mr. Rogers are discussed in the response letter dated August 18, 2004.



# State of West Virginia

OFFICE OF THE STATE TREASURER  
CHARLESTON, WV 25305

JOHN D. PERDUE  
STATE TREASURER

JERRY SIMPSON  
ASSISTANT STATE TREASURER

1-800-422-7498  
304-558-5000  
FAX 304-558-4097  
WWW.WVTREASURY.COM

## MEMORANDUM

TO: State Treasurer's Office  
FROM: Diana Stout *Diana Stout*  
DATE: August 3, 2004  
RE: 112 CSR 12 Comments

The Legislative Rule, 112 CSR 12, contains the following technical errors needing correction:

1. Page 2, §112-12-2.14 needs a period after "2.14" so that it reads, "2.14."
2. Page 5, §112-12-6.2(i), the first word, "provide" should be deleted.
3. Page 5, §112-12-6.5, should have the words, "The spending unit shall" inserted at the beginning.

DS/wlt



West Virginia University

Administration, Finance and Human Resources

August 3, 2004

Rec'd 8.6.04  
2:40pm

Diana Stout  
General Counsel  
State Treasurer's Office  
1900 Kanawha Blvd., East, E-122  
Charleston, WV 25305

Dear Ms. Stout:

West Virginia University offers the following comments in response to the State Treasurer's Office (STO) Proposed Legislative Rule 112 CSR 12, entitled "Procedures for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment."

The amount of the convenience fee for similar services may differ across spending units. Therefore, each spending unit should have the flexibility to determine convenience fees for similar transactions within that spending unit. Please consider the addition of these words "as defined within the spending unit" to the end of the statement in 112-12-4.4 which states that "The amount of convenience fees for similar transactions shall be the same."

In implementing e-commerce applications at West Virginia University it has been discovered that all of the standard/off the shelf e-commerce packages feed an industry standardized gateway which then needs customized to feed the STO gateway. In one instance, this was an easy modification by the vendor at a minimal additional fee to the University. The STO was **extremely helpful** in working with this vendor and the University to make this happen rather quickly. In another instance, the vendor would not modify their application to feed the STO. This vendor developed a unique software application to support Athletic departments across the country. The vendor's e-commerce application sends the transaction to a third party credit card processor. This third party credit card processor offered to send the transaction to the STO but the STO is not established as a certified credit card processor and could not accept this feed. To implement e-commerce for Athletic ticket sales, the University has had to develop a batch process to feed the STO these e-commerce transactions. This process is not operationally efficient or cost effective. Each time the vendor upgrades its software the University must upgrade its e-commerce customized application.

Due to the complexity of feeding e-commerce transactions through the current STO gateway, the University can not respond quickly to requests for implementing e-commerce across the institution. Please consider these additional bullets under the STO duties in 112-12-7.1. The STO shall:

**Office of Vice President**


304-293-2545 104 Stewart Hall  
Fax: 304-293-3493 PO Box 6205  
www.wvu.edu/~adminfin/ Morgantown, WV 26506-6205

Equal Opportunity/Affirmative Action Institution

- 112-12-7.1 (e) provide an industry standardized gateway and/or become a certified credit card processor to receive transactions from the spending units.
- (f) approve the use of an e-commerce package or customized software if this mechanism is more operationally efficient and cost effective than the payment methods offered by the STO. These packages will use the merchant account numbers provided by the STO in the application process to ensure that the revenues are being deposited in an account with the State Treasury.

Thank you for your consideration of these comments. Please feel free to call me at 293-2545 or Lisa Lively at 293-4002 extension 2430 to discuss further.

Sincerely,

  
Gary W. Rogers  
Vice President for Administration, Finance  
and Human Resources

c: John L. Williams  
Interim Associate Vice President for Finance

Lisa A. Lively  
Director, Financial Affairs and Research Accounting



# State of West Virginia

OFFICE OF THE STATE TREASURER  
CHARLESTON, WV 25305

JOHN D. PERDUE  
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WWW.WVTREASURY.COM

August 18, 2004

Mr. Gary W. Rogers  
Vice President for Administration,  
Finance and Human Resources  
West Virginia University  
P. O. Box 6205  
Morgantown, WV 26506-6205

Re: Comments of August 3, 2004

Dear Mr. Rogers:

Thank you for your comments on our proposed legislative rule, 112 CSR 12, Procedures for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment. This letter is in response to those comments, and with your letter will be made part of the record for the rule.

The first issue you raise is allowing spending units to establish the amount of convenience fees without having to consider what other spending units charge. You request that at the end of §112-12-4.4 we add this statement, "as defined within the spending unit." The point you raise is valid. A spending unit may contain various entities and while transactions may appear similar, the costs of processing may vary dramatically. As §112-12-4.4 does appear problematic, we have deleted the subsection in its entirety and renumbered §112-12-4.5 as §112-12-4.4.

The next issue you raise requires consideration of the issue of whether or not collections by state spending units should be centralized. You ask we insert the following:

- §112-12-7.1 (e) provide an industry standardized gateway and/or become a certified credit card processor to receive transactions from spending units.
- (f) approve the use of an e-commerce package or customized software if this mechanism is more operationally efficient and cost

effective than the payment methods offered by the STO. These packages will use the merchant account numbers provided by the STO in the application process to ensure that the revenues are being deposited in an account with the State Treasury.

In your proposed clause (e), you want the STO to provide an industry standardized gateway. To our knowledge, there is no industry standardized gateway. Gateways differ as to software and providers. Providers profit by charging for their proprietary models. While Verisign is the major player at this time, it still has competition.

In the alternative, you want the STO to become a certified card processor. Agreeing to this request would put the STO in direct competition with private industry, which does not appear appropriate or warranted. Vendors selected to provide e-commerce solutions will continue to want to use certain processors.

When we recently bid our merchant services contract, we considered the limited number of spending units using our system and our expectations of future use by spending units. We considered that there is no standardized gateway used by merchant services providers and that the contract being bid will be in effect for at least the next three years. These factors led us to believe that this was the time to change our system if required or desired by the merchant services provider community and the winning proposer.

Your proposed clause (f) requires this Office to approve whatever system a spending unit selected provider may require. This would effectively require the de-centralization of the collection of state moneys. The standard you offer, more operationally efficient and cost effective, is vague. In short, your proposal would defeat the long-standing practice and statutorily required centralized collection of state moneys.

Allowing spending units to collect moneys any way they elect may save money for the spending units on a direct cost basis, but the costs to the State Treasurer's Office and other areas of state government will easily offset those savings. Spending units utilizing different companies for e-commerce solutions will also see additional costs. We understand that no one likes to conform to the requirement of others. However, there are salient reasons for centralized collection of state moneys.

For example, all state moneys are invested daily to generate the maximum amount of earnings. In addition to charging fees for the services provided, card processors hold the moneys collected to generate earnings for them, not their customers. Combining the volume of all spending units enhances the buying power of the state and decreases the costs of collections. The longer it takes for state moneys to be placed in the treasury, the fewer earnings that will accrue.

Mr. Gary W. Rogers  
August 18, 2004  
Page 3

Your proposal in clause (f) would add to the costs of manpower and technology for this Office each time a spending unit implements a different collection mechanism. Other entities, such as the Auditor's Office, would have increased costs as well. The costs associated with having to meet the requirements of the State Treasurer's Office in collecting revenues are more suitably borne by the spending units collecting revenues as a cost of doing business, rather than having the state's general revenue fund bear the burden.

The second sentence of West Virginia Code §12-3A-6(a) provides, "Notwithstanding any other provision of this code to the contrary, each spending unit utilizing WEB commerce, electronic commerce or other method that offers products or services for sale shall utilize the state treasurer's system for acceptance of payments." This same sentiment is expressed in §12-2-2(a), which states,

All officials and employees of the state authorized by statute to accept moneys due the state of West Virginia shall keep a daily itemized record of moneys so received for deposit in the state treasury and shall deposit within twenty-four hours with the state treasurer all moneys received or collected by them for or on behalf of the state for any purpose whatsoever. The treasurer shall be authorized to review the procedures and methods used by officials and employees authorized to accept moneys due the state and change such procedures and methods if he or she determines it to be in the best interest of the state: Provided, That the treasurer shall not be authorized to review or amend the procedures by which the department of tax and revenue accepts moneys due the state. The treasurer shall propose rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the procedure for deposits.

The official or employee making such deposits with the treasurer shall prepare deposit lists in the manner and upon report forms as may be prescribed by the treasurer. Certified or receipted copies shall be immediately forwarded by the state treasurer to the state auditor and to the secretary of administration. The original of the deposit report shall become a part of the treasurer's permanent record.

You state that the State Treasurer's Office system prohibits you from responding "quickly to requests for implementing e-commerce across the institution." I suggest you include the requirements of the STO with your requirements when bidding an e-commerce solution, requirements such as security and privacy. You may find this limiting some of the competition, as will any requirements you establish.

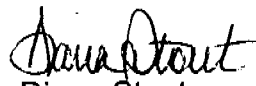
As discussed in this letter, the State Treasurer's Office has considered your proposed revisions to the rule. We agree with your proposal to allow spending units to set their

Mr. Gary W. Rogers  
August 18, 2004  
Page 4

convenience fees without regard to the fees charged by other spending units, and have so modified the rule. As to your proposals requiring the STO to de-centralize the collection of state moneys, we do not believe the West Virginia Code allows us to permit spending units to de-centralize the collections of state moneys and also do not believe those revisions to be in the best interests of the state.

Again, thank you again for your letter of August 3, 2004. If you wish to discuss further, do not hesitate to contact me.

Sincerely,



Diana Stout  
General Counsel

DS/wlt

cc: File



# State of West Virginia

OFFICE OF THE STATE TREASURER

CHARLESTON, WV 25305

JOHN D. PERDUE

STATE TREASURER

JERRY SIMPSON

ASSISTANT STATE TREASURER

1-800-422-7498

304-558-5000

FAX 304-558-4097

WWW.WVTREASURY.COM

## MEMORANDUM

TO: Recipients

FROM: Diana Stout *Diana*  
General Counsel

DATE: July 12, 2004

RE: Proposed Legislative Rule 112 CSR 12

Attached is a copy of a proposed legislative rule the State Treasurer's Office filed July 1, 2004. This rule, 112 CSR 12, is titled, "Procedures for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment." An emergency rule containing the same language was also filed July 1, 2004.

The main purpose of the rule is to facilitate payments to state spending units by electronic commerce. As you will note in §112-12-5.1. of the rule, spending units select the methods to collect moneys from the methods available from the State Treasurer's Office. Nothing in the rule requires a spending unit to collect moneys by charge, credit or debit card or by electronic means, nor to use convenience fees. These are just additional ways to collect moneys.

The comment period for this legislative rule expires on Tuesday, August 3, 2004 at 3:00 p.m. Please send any written comments by that date and time to me, as follows:

Diana Stout  
General Counsel  
State Treasurer's Office  
1900 Kanawha Blvd., East, E-122  
Charleston, WV 25305

If you have any questions or need additional information, let me know. Our telephone number is 304.558.5000.

DS/wt

WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION

Form #2

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WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Treasurer's Office TITLE NUMBER: 112

RULE TYPE: Legislative CITE AUTHORITY: West Virginia Code §12-3A-6

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: 12

TITLE OF RULE BEING PROPOSED: Procedures for Fees in Collections by Charge,  
Credit or Debit Card or by Electronic Payment

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 3, 2004 AT 3:00 pm ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

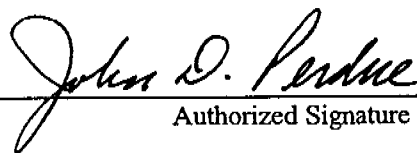
Diana Stout, General Counsel

State Treasurer's Office

1900 Kanawha Blvd., East, E-122

Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

Legislative Rule Making ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

JUL 01 2004

Review Committee



# State of West Virginia

OFFICE OF THE STATE TREASURER  
CHARLESTON, WV 25305

JOHN D. PERDUE  
STATE TREASURER

JERRY SIMPSON  
ASSISTANT STATE TREASURER

CASH MANAGEMENT  
DIVISION  
Check Hotline: 1-866-243-9010  
304-558-3599  
FAX 304-558-5132  
WWW.WVTREASURY.COM

July 1, 2004

The Honorable Joe Manchin, III  
Secretary of State  
State Capitol  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

Re: 112 CSR 12 – Proposed Legislative Rule

Dear Secretary Manchin:

Enclosed please find for filing the proposed legislative rule 112 CSR 12, Procedures for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment. Please accept this letter as evidence of my approval of the proposed rule.

If you have any questions, do not hesitate to contact me or my General Counsel, Diana Stout.

Sincerely,

John Perdue  
State Treasurer

JP/wlt

cc: Diana Stout

112 CSR 12

**PROCEDURES  
FOR FEES IN COLLECTIONS  
BY CHARGE, CREDIT OR DEBIT CARD  
OR BY ELECTRONIC PAYMENT**

**Brief Summary of the Rule:**

This rule establishes the procedures for authorizing and implementing the provisions of West Virginia Code §12-3A-6, which will enable spending units not prohibited to accept payments via electronic commerce. When a spending unit accepts charge, credit or debit cards or electronic payments, various fees and other expenses are incurred by the spending unit. Some spending units are required by statute to collect a set sum and do not believe they can pay the fees associated with processing payments via electronic commerce. Still other spending units cannot afford the associated fees. This rule will allow those spending units to collect payments via electronic commerce.

**Statement of Circumstances Which Require the Proposed Rule:**

The timely collection of state moneys is of paramount importance to the fiscal integrity of the state of West Virginia. Technological advances and changes in the banking industry necessitate that the Treasurer's Office accept payments by electronic commerce, i.e., through charge, credit or debit cards or by electronic payments. This rule will facilitate those collections.

(Note: West Virginia Code §12-3A-4 requires the Treasurer propose a legislative rule and authorizes the Treasurer to propose an emergency rule.)

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Procedures for Fees in Collections by Charge, Credit or Debit Cards or by Electronic Payment

Type of Rule:  Legislative  Interpretive  Procedural

Agency: State Treasurer's Office

Address: 1900 Kanawha Blvd., East, E-122

Charleston, WV 25305

Contact: Diana Stout, General Counsel, 304.558.5000

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	None		None		
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

As with other computerization, over time payments made electronically will provide a convenience to our citizens and other customers, and will improve earnings.

3. Objectives of These Rules:

The objective of this rule is to improve collections of moneys due the state.

Rule Title: Procedures for Fees in Collections by Charge, Credit or Debit  
Cards or by Electronic Payment

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

Electronic collection of moneys due the state will enable the moneys to be collected faster, with less uncertainty, and will create additional earnings.

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

Electronic collections will enable citizens and other customers to make payments via the internet and other electronic means to state spending units, which will improve the collection process.

C. Economic Impact on Citizens/Public at Large.

See 4.B.

Date: July 1, 2004

Signature of Agency Head or Authorized Representative:

*Nana Stout*

112 CSR 12

FILED

TITLE 112  
LEGISLATIVE RULE  
STATE TREASURER'S OFFICE

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WEST VIRGINIA  
SECRETARY OF STATE

SERIES 12  
PROCEDURES  
FOR FEES IN COLLECTIONS  
BY CHARGE, CREDIT OR DEBIT CARD  
OR BY ELECTRONIC PAYMENT

**§112-12- 1. General.**

1.1 Scope. – This rule establishes the procedures for authorizing and implementing fees by state spending units to cover the cost of collection of moneys by charge, credit or debit card or by electronic payment.

1.2. Authority. – West Virginia Code §12-3A-6.

1.3 Filing Date. – \_\_\_\_\_.

1.4 Effective Date. – \_\_\_\_\_.

**§112-12-2. Definitions.**

2.1. "ACH" means automated clearinghouse.

2.2. "Card Processor" means the entity that processes payments by charge, credit and debit cards from the merchant to the card issuer to the merchant's financial institution.

2.3. "Card Issuer" means the financial institution issuing a charge, credit or debit card.

2.4. "Card Payment Service Provider" means an entity that accepts payment by charge, credit or debit card or electronic payment on behalf of a spending unit.

2.5. "Charge Card" means a card (usually plastic) issued for the purpose of obtaining money, property or services on credit, with the full balance due at the end of each statement period.

2.6. "Convenience Fee" means a fixed or variable rate charge assessed to a charge, credit or debit card or electronic payment to help defray the cost of processing a transaction.

2.7. "Credit Card" means a card (usually plastic) issued for the purpose of obtaining money, property or services on credit, with the full balance or minimum payments due at the end of each statement period. Interest is assessed on the unpaid balance.

2.8. "Customer" means any person or entity purchasing from a spending unit.

2.9. "Debit Card" means a card (usually plastic) issued for the purpose of obtaining money, property or services with the amount charged directly to the holder's financial institution account electronically by electronic funds transfer.

2.10. "Discount Fee" means the charges assessed to the merchant on the total sale by charge, credit or debit card by a card issuer for accepting its card.

2.11. "Electronic Commerce" means the processing of transactions by electronic means, including, but not limited to, the telephone, IVR, POS terminal, internet and electronic payment.

2.12. "EFT" means electronic funds transfer.

2.13. "Electronic Payment" means an EFT, including, but not limited to, payment by ACH and ACH based electronic check.

2.14 "Financial Institution" means any state-chartered banking institution, national banking institution, national banking association, federal savings and loan association, bank holding company, savings and loan holding company, federal savings bank, state-chartered credit union or federally-chartered credit union.

2.15. "Internet" means the computer-based global information system linking computer networks all over the world by satellite.

2.16. "IVR" means a telephone interactive voice response system.

2.17. "Merchant" means any state spending unit that accepts charge, credit or debit cards.

2.18. "Point of Sale Terminal" or "POS Terminal" means a financial institution communication device or equipment used for the primary purposes of transferring moneys to or from a financial institution account or segregating moneys in accounts within a financial institution, or both, for transactions, including, but not limited to, devices and equipment used to implement and facilitate check guarantee and check authorization.

2.19. "Spending Unit" means any entity of the West Virginia state government for which an appropriation is requested or to which an appropriation is made by the Legislature.

2.20. "STO" means the West Virginia state treasurer's office.

2.21. "Transaction" means one electronic purchase or payment.

2.22. "Treasurer" means the West Virginia state treasurer or his or her designee.

### **§112-12-3. General Information**

3.1. Spending units shall use the methods provided by the treasurer to accept payments.

3.2. Electronic commerce methods available from the STO include, but are not limited to, telephone, IVR, POS terminal, internet, EFT and any other electronic payment method.

3.3. Governmental entities other than spending units may request to use the methods provided by the treasurer to accept payments.

### **§112-12-4. Convenience Fees.**

4.1. The treasurer may authorize the use of convenience fees unless use is prohibited by law.

4.2. The treasurer shall set the amount of the convenience fees authorized.

4.3. The amount of convenience fees must be related to the convenience of the customer.

4.4. The amount of convenience fees for similar transactions shall be the same.

4.5. The treasurer may contract with one or more card payment service providers.

### **§112-12-5. Request to assess and collect a convenience fee.**

5.1. Spending units may accept payment for electronic commerce and select the methods to use from the methods made available by the STO.

5.2. A spending unit interested in accepting payments and payments with convenience fees for electronic commerce shall deal exclusively with the STO, unless otherwise authorized by the West Virginia Code.

5.3. The STO shall provide an application, which shall contain information on the spending unit, the nature of the proposed transactions, the goals and expectations of the spending unit, and such other matters as the treasurer determines.

5.4. A spending unit shall complete an application, ensure the application is signed by an authorized person, and return it to the STO.

5.5. The STO will review each submitted application.

5.6. The STO shall approve a complete and timely application of a spending unit authorized to collect convenience fees. If the application is not complete or timely or if the spending unit has not been authorized to collect convenience fees, the STO may reject the application.

5.7. The STO shall return rejected applications with explanations of the reasons for rejection.

5.8. If the STO determines alternative methods to the payment methods selected by the spending unit may be better suited to the activity, the STO shall inform the spending unit of the alternative methods. The STO will provide only the methods selected by the spending unit.

#### **§112-12-6. Duties of Spending Units**

6.1. The spending unit is responsible for acquiring the necessary computer system, software, and other matters required to process transactions.

6.2. For internet transactions, the website of a spending unit shall contain:

- (a) complete description of the goods or services offered,
- (b) returning merchandise and refund policy,
- (c) customer service contact, including electronic mail and telephone number,
- (d) transaction currency is US dollars,
- (e) any legal or other restrictions,
- (f) order fulfillment, including, but not limited to, delivery policy and practices,
- (g) re-direct services to re-direct customers to the STO payment gateway to select the method of payment and execute the payment. The spending unit is also responsible for developing the "front end" website that will connect to the STO payment gateway,
- (h) privacy policy approved by the STO,

(l) provide an opt-in system for customers to receive mail, electronic or regular US mail, and only retain information provided by a customer that has authorized maintenance of that information,

(j) not sell or share the names and addresses of customers unless specific authorization is granted in the West Virginia Code,

(k) appropriate security controls, and

(l) conspicuous disclosure of the nature and amount of the convenience fees.

6.3. The spending unit is responsible for all discount and other fees and amounts assessed or charged for providing the selected methods of receiving payment.

6.4 The spending unit shall not store charge, credit or debit card or electronic payment account numbers as that information is confidential. The only authorized use of a charge, credit or debit card or electronic payment is to process an authorized transaction. At most, a spending unit may have non-persistent cookies to ensure confidential information is not stored.

6.5 Deposit all convenience fees collected by the spending unit in an account in the state treasury. The spending unit shall expend the convenience fees collected to defray the costs of providing internet services, charge, credit or debit card payments or electronic payments to customers.

6.6 The spending unit shall establish procedures to reconcile receipts with the amount reported.

#### **§112-12-7. STO Duties.**

7.1. The STO shall:

(a) provide the training and assistance needed for a spending unit to accept payments for electronic commerce,

(b) provide a list of the type of approved methods to accept payment for electronic commerce and make the methods available for use by spending units,

(c) obtain merchant account numbers for spending units authorized to collect payments for electronic commerce, and

(d) test the acceptance process prior to implementing the acceptance of payments.

7.2. The STO may audit the spending unit's web site as needed.

7.3. The STO may assess or require the assessment of the system security of the spending unit at any time.

Honorable Gus R. Douglas  
Department of Agriculture  
Bldg. 1, Room E-28

Honorable Darrell V. McGraw  
Attorney General  
Bldg. 1, Room E-26

Honorable Glen B. Gainer, III  
Auditor  
Bldg. 1, Room W 100

Honorable Bob Wise  
Governor  
State Capitol

Honorable Joe Manchin  
Secretary of State  
Bldg. 1, Suite 157K

John Poffenbarger  
Department of Administration  
Bldg. 1, Room E-119

Betty Carver  
Bureau of Commerce  
90 MacCorkle Ave. SW,  
South Charleston, WV 25303,

Dr. David Stewart  
Department of Education  
Bldg. 6, Room 358

Kay Goodwin  
Dept. of Education & the Arts  
Bldg. 5, room 205

Commissioner  
Bureau of Employment Programs  
Bldg. 4, Room 610

Secretary  
Dept. of Environmental Protection  
1356 Hansford Street  
Charleston, WV 25301-5929

Paul Nusbaum  
Dept. of Health & Human  
Resources  
Bldg. 3, Room 206

Dr. J. Michael Mullen  
Higher Education Policy Com.  
1018 Kanawha Blvd., E. Suite 700  
Charleston, WV 25301-2827

Christy Morris  
Dept. of Military Affairs & Public  
Safety  
Bldg. 6, Room B122

Chairman  
Public Service Commission  
201 Brooks Street  
P.O. Box 812  
Charleston, WV 25323-0812

Executive Director  
Real Estate Commission  
1033 Quarrier Street, Suite 400  
Charleston, WV 25301-2315

Commissioner  
Bureau of Senior Services  
1900 Kanawha Blvd., E.  
Bldg. 10  
Charleston, WV 25305-0160

State Bar  
2006 Kanawha Blvd, E.  
Charleston, WV 25311-2204

Supreme Court of Appeals  
Bldg. 1, Room E-317

Cabinet Secretary  
Dept. of Tax & Revenue  
Bldg. 1, Room W-300

Cabinet Secretary  
Dept. of Transportation  
Bldg. 5, Room A109

WV Board of Accountancy  
122 Capitol Street, Suite 100  
Charleston, WV 25301

WV Board of Acupuncture  
P. O. Box 252  
Huntington, WV 25707

WV Board of Architects  
P. O. Box 589  
Huntington, WV 25701-0589

Bd. Of Barbers & Cosmetologists  
1716 Pennsylvania Ave., Suite 7  
Charleston, WV 25302

Bd. of Chiropractic Examiners  
P.O. Box 153  
St. Albans, WV 25177

Bd. of Examiners in Counseling  
P.O. Box 129  
Ona, WV 25545

Board of Medicine  
101 Dee Drive  
Charleston, WV 25311

Nursing Home Administrators  
Licensing Board  
5303 Kensington Drive  
Cross Lanes, WV 25313-5313

Bd. of Occupational Therapy  
119 S. Price Street  
Kingwood, WV 26537

Board of Optometry  
101 Micheal Street  
Clarksburg, WV 26301-3937

Board of Osteopathy  
334 Penco Road  
Weirton, WV 26062-3813

Board of Pharmacy  
232 Capitol Street  
Charleston, WV 25301-2206

Board of Physical Therapy  
153 Main Street, Suite 103  
Clarksburg, WV 26301

Board of Psychologists  
P.O. Box 15  
Barracksville, WV 26559

Bd. of Radiologic Technologists  
1715 Flat Top Road  
P. O. Box 638  
Cool Ridge, WV 25825

Real Estate Appraiser Licensing &  
Certification Board  
2110 Kanawha Blvd., E., Suite 101  
Charleston, WV 25311

Board of Registered Nurses  
101 Dee Drive  
Charleston, WV 25311

Board of Respiratory Care  
106 Dee Drive  
Charleston, WV 25311

Board of Review  
Bldg. 6, Room 817B

Board of Sanitarians  
815 Quarrier Street  
Room 418  
Charleston, WV 25301

Bd. of Social Work Examiners  
P.O. Box 5459  
Charleston, WV 25361

Bd. of Exam Speech Language  
Pathology & Audiology  
HC 78, Box 9A  
Troy, WV 26443-9707

Tree Fruit Assessment Board  
P.O. Box 865  
Kearneysville, WV 25430

Bd. of Veterinary Medicine  
1900 Kanawha Blvd., E.  
Charleston, WV 25305

Bluefield State College  
219 Rock Street  
Bluefield, WV 24701

Concord College  
P.O. Box 1000  
Athens, WV 24712

Eastern WV Community &  
Technical College  
204 Washington Street, Ste B1  
Moorefield, WV 26836

Fairmont State College  
1201 Locust Avenue  
Fairmont, WV 26554

Glenville State College  
200 High Street  
Glenville, WV 26351

Marshall University  
400 Hal Greer Blvd.  
Huntington, WV 25755

Potomac State College  
Fort Avenue  
Keyser, WV 26726

Shepherd College  
P.O. Box 3210  
Shepherdstown, WV 25443

So. WV Community & Technical  
College  
P.O. Box 2900  
Mount Gay, WV 25637

West Liberty State College  
General Delivery  
West Liberty, WV 26074

WV Northern Com. College  
1704 Market Street  
Wheeling, WV 26003

WV School of Osteopathic Medicine  
400 North Lee Street  
Lewisburg, WV 24901

WV State University  
P. O. Box 1000  
Institute, WV 25112

West Virginia University  
P.O. Box 6001  
Morgantown, WV 26506

WVU at Parkersburg  
300 Campus Drive  
Parkersburg, WV 26101

WVU Institute of Technology  
405 Fayette Pike  
Montgomery, WV 25136

Director  
Division of Natural Resources  
Bldg. 3, Room 669

Commisisoner  
Div. of Tourism  
90 MacCorkle Ave. SW,  
South Charleston, WV 25303,

Commissioner  
Div. of Motor Vehicles  
Bldg. 3, Room 113

Commissioner  
Div. of Labor  
Bldg. 6, Room 749B

Helen Wilson  
IS&C  
Bldg. 6, Room B110

David Tincher  
Purchasing Div.  
2019 Washington Street, E.

Secretary  
Library Commission  
The Cultural Center  
1900 Kanawha Blvd., E.

WVNET  
837 Chestnut Ridge Rd.  
Morgantown, WV 26505

Greg Burton  
Worker's Compensation  
4700 MacCorkle Ave., SE  
Charleston, WV 25304

Marshall University  
Athletic Department  
400 Hal Greer Blvd.,  
Huntington, WV 25755

WVU Athletic Dept.  
P. O. Box 6001  
Morgantown, WV 26506