

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

2013 JUL 24 11:11:50

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Treasurer's Office TITLE NUMBER: 112

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

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12

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

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

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

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 July 24, 2013 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

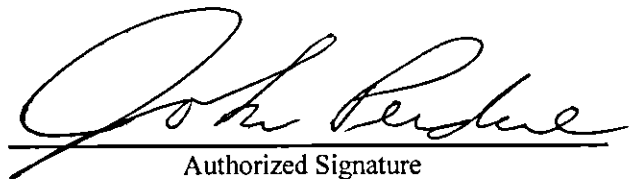
Diana Stout, General Counsel

WV State Treasurer's Office  
Bldg. 1, Room E-145

1900 Kanawha Blvd., E.  
Charleston, WV 25305

(304) 558-5000  
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THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

## 112 CSR 12

### Summary

Revisions being made to 112 CSR 12, Procedures for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment, are to update the rule to conform to the West Virginia Code and current practice, as well as to make technical corrections. Definitions are amended and the definition of card processor is deleted since the term is not used. The rule adds provisions that the Treasurer may grant an exemption when another entity may offer services that best meet the needs of the spending unit and that convenience fees must follow merchant rules of card networks.

TITLE 112  
LEGISLATIVE RULE  
STATE TREASURER'S OFFICE

2013 JUN 24 AM 11:50

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. -- W. Va. Code § 12-3A-6.

1.3. Filing Date. ~~May 11, 2005~~ \_\_\_\_\_.

1.4. Effective Date. ~~June 1, 2005~~ \_\_\_\_\_.

**§112-12-2. Definitions.**

2.1. "ACH" means automated clearinghouse, a national EFT network which enables participating financial institutions to distribute electronic credit and debit entries to accounts and to settle the entries.

~~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~~2.2. "Card Issuer" means the financial institution issuing a charge, credit or debit card.

~~2.4~~2.3. "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~~2.4. "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.

~~2-62.5.~~ "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.

~~2-72.6.~~ "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.

~~2-82.7.~~ "Customer" means any person or entity purchasing from a spending unit.

~~2-92.8.~~ "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~~.

~~2-102.9.~~ "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.

~~2-112.10.~~ "Electronic Commerce" means the processing of transactions by electronic means, including, but not limited to, the telephone, IVR, POS terminal, internet and electronic payment.

~~2-122.11.~~ "EFT" means electronic funds transfer.

~~2-132.12.~~ "Electronic Payment" means an EFT, including, but not limited to, payment by ACH, ~~and ACH based electronic check and wire transfer~~.

~~2-142.13.~~ "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.

~~2-152.14.~~ "Internet" means the computer-based global information system linking computer networks all over the world by satellite.

~~2-162.15.~~ "IVR" means a telephone interactive voice response system.

~~2-172.16.~~ "Merchant" means any state spending unit that accepts charge, credit or debit cards.

~~2-182.17.~~ "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.

~~2-192.18.~~ "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.

~~2-202.19.~~ "STO" means the West Virginia State Treasurer's office.

~~2-212.20.~~ "Transaction" means one electronic purchase or payment.

~~2-222.21.~~ "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.

3.4. The Treasurer may grant an exemption to a spending unit when the STO determines another entity may best meet the needs of the spending unit.

### **§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~~ use of convenience fees must follow the merchant rules established by card networks.

4.4. 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 or the Treasurer has granted an exemption.

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) 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. The spending unit shall deposit all convenience fees ~~collected by the spending unit~~ it receives in an account in the state treasury. The spending unit shall expend the convenience fees ~~collected~~ received 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~~ amounts 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 units 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.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: 112 CSR 12 Procedures for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment

Type of Rule:  Legislative  Interpretive  Procedural

Agency: Treasurer's Office

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

Phone Number: (304) 558-5000 Email: diana.stout@wvsto.com

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

112 CSR 12 is being updated to conform to West Virginia Code and current practice, as well as make technical corrections. It is not anticipated to have any impact on costs and revenues of state government.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

Rule Title: 112 CSR 12 Procedures for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment

Rule Title:

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

N/A

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

N/A

Date: June 19, 2013

Signature of Agency Head or Authorized Representative

*Diana Stout*