

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

Form #4

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Treasurer's Office TITLE NUMBER: 112

CITE AUTHORITY: §12-3A-6

AMENDMENT TO AN EXISTING RULE: YES NO

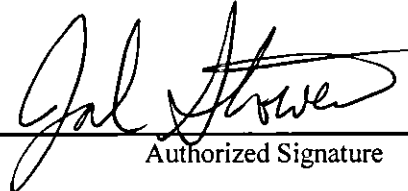
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 12

TITLE OF RULE BEING AMENDED: Procedure for Fees in Collection by Charge, Credit or Debit Card or by Electronic Payment

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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.


Authorized Signature

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

TITLE 112
LEGISLATIVE RULE
STATE TREASURER'S OFFICE

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.~~

~~2.32.2.~~ "Card Issuer" means the financial institution issuing a charge, credit or debit card.

~~2.42.3.~~ "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.

~~2.52.4.~~ "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~~ a state or national bank or a state or federal savings and loan association.

~~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~~ without limitation, 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.

~~2-20~~ "STO" means the ~~West Virginia State Treasurer's office.~~

~~2-212.19.~~ "Transaction" means one electronic purchase or payment.

~~2-222.20.~~ "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~~ Treasurer 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~~ use of convenience fees shall 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 Treasurer.

5.2. A spending unit interested in accepting payments and payments with convenience fees for electronic commerce shall deal exclusively with the STO Treasurer, 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~~ spending unit shall complete an application provided by the Treasurer. The application shall require information on the spending unit, the nature of the proposed transactions, the goals and expectations of the spending unit and any other information the Treasurer determines necessary.

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

~~5.55.4.~~ The STO will Treasurer shall review each submitted application.

~~5.65.5.~~ The STO Treasurer 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 Treasurer may reject the application.

~~5.75.6.~~ The STO Treasurer shall return a rejected applications with explanations application with an explanation of the reasons for rejection.

~~5.85.7.~~ If the STO Treasurer determines alternative methods to the payment methods selected by the spending unit may be better suited to the activity, the STO Treasurer shall inform the spending unit of the alternative methods. The STO will Treasurer shall 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~~ shall acquire 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) a complete description of the goods or services offered;

(b) the returning merchandise and refund policy;

(c) a customer service contact, including an electronic mail address and telephone number;

(d) a statement that the transaction currency is US dollars;

(e) any legal or other restrictions;

(f) the policy on order fulfillment, including, but not limited to, delivery policy and practices;

(g) re-direct services to re-direct customers to the STΘ Treasurer's payment gateway to select the method of payment and execute the payment. The spending unit ~~is also responsible for developing~~ shall also develop the "front end" website that will connect to the STΘ Treasurer's payment gateway;

(h) the privacy policy approved by the STΘ Treasurer;

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

(j) a guarantee to 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) a 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~~ State Treasury. The spending unit shall ~~expend the convenience fees collected~~ received to defray the costs

of providing internet services, to pay charge, credit or debit card ~~payments or fees~~ and to make electronic payments to customers.

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

§112-12-7. ~~STO~~ Treasurer's Duties.

7.1. The ~~STO~~ Treasurer 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~~ Treasurer may audit the spending units web site as needed.

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