



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

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8/26/2016 4:01:37 PM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 3 -- NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY **Treasurer**
RULE TYPE **Legislative** AMENDMENT TO EXISTING RULE **Yes** TITLE-SERIES **112-**
RULE NAME **Procedure for Fees in Collections by Charge, Credit or Debit Card or by Electronic** **12**
Payment
CITE AUTHORITY **§12-3A-6**

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.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Diana Stout -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 112-12



Rule Id: 10246



Document: 28919



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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 1)

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PRIMARY CONTACT

Diana Stout
 1900 Kanawha Blvd., E.
 Bldg. 1, Room E-145
 Charleston, STATE ZIP

SECONDARY CONTACT

Wilma Harrison
 1900 Kanawha Blvd., E.
 Bldg. 1, Room E-145
 Charleston, STATE SECONDARY ZIP SECONDARY

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AUTHORIZING STATUTE(S) CITATION
§12-3A-6

DATE FILED IN STATE REGISTER WITH NOTICE OF HEARING OR PUBLIC COMMENT PERIOD
Wednesday, July 27, 2016

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?
The rule was posted on the State Treasurer's Office website: www.wvsto.gov/Legislative-Rules. Notices were sent to all State of West Virginia elected officials and Cabinet Secretaries offices with a request they be forwarded to interested parties within their agencies. Additionally, notices were sent to BB&T, Bowles Rice, City National Bank, United Bank, Wesbanco, West Virginia Association of Community Bankers and the West Virginia Bankers Association.

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED
Wednesday, July 27, 2016

Diana Stout -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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ATTACH LIST OF PERSONS WHO APPEARED AT HEARING, COMMENTS RECEIVED,
AMENDMENTS, REASONS FOR AMENDMENTS.

Attached

DATE YOU FILED IN STATE REGISTER THE AGENCY APPROVED PROPOSED LEGISLATIVE RULE
FOLLOWING PUBLIC HEARING: (BE EXACT)

Friday, August 26, 2016

**Diana Stout -- By my signature, I certify that I am the person authorized to file legislative rules, in
accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



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IF THE STATUTE UNDER WHICH YOU PROMULGATED THE SUBMITTED RULES REQUIRES CERTAIN FINDINGS AND DETERMINATIONS TO BE MADE AS A CONDITION PRECEDENT TO THE PROMULGATION. 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.

Diana Stout -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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DATE OF HEARING OR COMMENT PERIOD

ON WHAT DATE DID YOU FILE IN THE STATE REGISTER THE FINDINGS AND DETERMINATIONS
REQUIRED TOGETHER WITH THE REASONS THEREFOR?

ATTACH FINDINGS AND DETERMINATIONS AND REASONS
None

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

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SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

Revisions to the current rule will have no impact on the costs and revenues of state government.

Diana Stout -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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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.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	0	0	0
PERSONAL SERVICES	0	0	0
CURRENT EXPENSES	0	0	0
REPAIRS AND ALTERATIONS	0	0	0
ASSETS	0	0	0
OTHER	0	0	0
ESTIMATED TOTAL REVENUES	0	0	0

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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)

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CITE AUTHORITY **§12-3A-6**

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

The Treasurer's Office does not believe there will be any costs or revenues associated with the revisions to this rule.

Diana Stout -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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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.

None.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Diana Stout -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

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 CITE AUTHORITY **§12-3A-6**

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

Rule revisions add a sunset provision, update definitions and other provisions to include current information technology terminology, add definitions of service fee, STO and virtual terminal, clarify the process of a spending unit requesting to accept payments by charge, credit or debit cards electronically, delete section five of the rule and renumber the remaining provisions, and make technical clean ups.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Diana Stout -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 112-12



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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 6, 2014.~~

1.4. Effective Date. -- ~~July 1, 2014.~~

1.5. Sunset Provision. -- This rule remains in effect for five years after the effective date.

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

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.

2.4. "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.

2.5. "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.

2.6. "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.

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

2.8. "Debit Card" means a card issued for the purpose of obtaining money, property or services with the amount charged directly to the holder's financial institution account.

2.9. "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.

2.10. "Electronic Commerce" means the processing of transactions by electronic ~~means-techniques~~, including, but not limited to, the telephone, IVR, POS terminal, internet, ~~and~~ electronic payment, virtual terminal and online transaction processing.

2.11. "EFT" means electronic funds transfer.

2.12. "Electronic Payment" means an EFT, including, but not limited to, payment by ACH, ACH based electronic check, ~~and~~ wire transfer and online transaction processing.

2.13. "Financial Institution" means a state or national bank or a state or federal savings and loan association.

2.14. "Internet" means the computer-based global information system linking computer networks all over the world by ~~satellite~~ the use of internet protocol suite (TCP/IP).

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

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

2.17. "Point of Sale Terminal" or "POS Terminal" means a device 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, without limitation, devices used to implement and facilitate check guarantee and check authorization.

2.18. "Service 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.

~~2.18~~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.

~~2.19~~2.21. "Transaction" means one electronic purchase or payment.

~~2.20~~2.22. "Treasurer" means the West Virginia State Treasurer or his or her designee from the Treasurer's office.

2.23 "Virtual Terminal" means a web-browser based access to an acquirer, processor or third party service provider website to authorize payment card transactions where the merchant manually enters payment card data via a securely connected web browser. Unlike physical terminals, virtual terminals do not read data directly from a payment card.

§112-12-3. General Information.

3.1. Spending units shall use the methods provided by the Treasurer to accept payments, including payments by electronic commerce with convenience or service fees, unless the spending unit is authorized by the West Virginia Code to use other methods.

3.2. Electronic commerce methods available from the Treasurer include, but are not limited to, telephone, IVR, POS terminal, ~~internet~~, EFT, virtual terminal, online transaction processing, 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. To accept payments, a spending unit shall provide all information the Treasurer requests and fully complete all STO required forms and an authorized officer of the spending unit shall execute STO required agreements.

3.5 The Treasurer shall review each submitted request and agreement. If the Treasurer determines the requested payment methods are appropriate and all required forms are complete, the Treasurer shall authorize the spending unit to use the payment methods requested. If the Treasurer determines the requested payment methods are not appropriate, alternative methods would be better or the required forms are not complete, the Treasurer shall inform the spending unit and work with the spending unit to meet its needs.

§112-12-4. Convenience Fees or Service Fees.

4.1. The Treasurer may authorize the use of convenience fees or service fees unless use is prohibited by law.

4.2. The Treasurer shall set the amount of the convenience fees or service fees authorized.

4.3. The use of convenience fees or service fees shall follow the merchant rules or regulations established by card ~~networks~~ brands.

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 Treasurer.~~

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

~~5.3. The 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. The spending unit shall ensure the application is signed by an authorized person and return it to the Treasurer.~~

~~5.4. The Treasurer shall review each submitted application.~~

~~5.5. The 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, the Treasurer may reject the application.~~

~~5.6. The Treasurer shall return a rejected application with an explanation of the reasons for rejection.~~

~~5.7. If the Treasurer determines alternative methods to the payment methods selected by the spending unit may be better suited to the activity, the Treasurer shall inform the spending unit of the alternative methods. The Treasurer shall provide only the methods selected by the spending unit.~~

§112-12-6~~5~~. Duties of Spending Units.

~~6-15.1.~~ The spending unit shall acquire the necessary computer system, software, and other matters required to process transactions.

~~6.25.2.~~ For internet transactions, the website of a spending unit shall contain:

- ~~6.2.a~~5.2.a. a complete description of the goods or services offered;
- ~~6.2.b~~5.2.b. the returning merchandise and refund policy;
- ~~6.2.c~~5.2.c. a customer service contact, including an electronic mail address and telephone number;
- ~~6.2.d~~5.2.d. a statement that the transaction currency is US dollars;
- ~~6.2.e~~5.2.e. any legal or other restrictions;
- ~~6.2.f~~5.2.f. the policy on order fulfillment, including, but not limited to, delivery policy and practices;
- ~~6.2.g~~5.2.g. re-direct services to re-direct customers to the Treasurer's payment gateway to select the method of payment and execute the payment. The spending unit shall also develop the "front end" website that will connect to the Treasurer's payment gateway;
- ~~6.2.h~~5.2.h. the privacy policy approved by the Treasurer;
- ~~6.2.i~~5.2.i. an opt-in system for customers to receive mail, electronic or regular US mail, that only retains information provided by a customer that has authorized maintenance of that information;
- ~~6.2.j~~5.2.j. a guarantee to not sell or share the names and addresses of customers unless specific authorization is granted in the West Virginia Code;
- ~~6.2.k~~5.2.k. appropriate security controls; and
- ~~6.2.l~~5.2.l. a conspicuous disclosure of the nature and amount of the convenience fees.

~~6.35.3.~~ The spending unit is responsible for all discount and other fees and amounts assessed or charged for providing the selected methods of receiving payment.

~~6.45.4.~~ The spending unit shall not store charge, credit or debit card or electronic payment account numbers. 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.

~~6.55.5.~~ The spending unit shall deposit all convenience fees and service fees it receives in an account in the State Treasury. The spending unit shall expend the convenience fees or service fees received to defray the costs of providing internet services, to pay charge, credit or debit card fees and to make electronic payments to customers.

~~6.65.6.~~ The spending unit shall reconcile receipts with the amounts reported.

5.7. The spending unit shall comply with all regulations, certifications and all other matters required by the card industry to accept charge, credit or debit cards.

5.8. For other means of charge, credit or debit card transactions, including, without limitation, POS terminal and other devices, the spending unit shall maintain:

5.8.a. appropriate security controls and security updates and

5.8.b. current equipment.

§112-12-76. Treasurer's Duties.

~~7.16.1.~~ The Treasurer shall:

~~7.1.a6.1.a.~~ provide the training and assistance needed for a spending unit to accept payments for electronic commerce;

~~7.1.b6.1.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;

~~7.1.c6.1.c.~~ obtain merchant account numbers for spending units authorized to collect payments for electronic commerce; and

~~7.1.d6.1.d.~~ test the acceptance process prior to implementing the acceptance of payments.

~~7.26.2.~~ The Treasurer may audit the spending units web site as needed.

~~7.36.3.~~ The Treasurer may assess or require the assessment of the system security of the spending unit at any time.