

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF THE SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Department of Administration TITLE NUMBER: 148

RULE TYPE: Legislative; CITE AUTHORITY §14-1-18b

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 NEW RULE BEING PROPOSED: 9

TITLE OF RULE BEING PROPOSED: Collection of Claims Due the State

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 October 6, 1992 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Department of Administration

1900 Kanawha Blvd., East

Building 1, Room E-119

Capitol Complex

Charleston, WV 25305

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

3.50

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION

State Capitol
Charleston, WV 25305

Gaston Caperton
Governor

Chuck Polan
Secretary

September 3, 1992

Honorable Ken Hechler
Secretary of State
Suite 157-K
Capitol Building
Charleston, West Virginia 25305

Re: Legislative Rules Collection of
Claims Due the State

Dear Mr. Hechler:

Approval is hereby given for filing of the legislative rule,
entitled "Collection of Claims Due the State," enclosed in
accordance with West Virginia Code §14-1-18b.

Sincerely,

A handwritten signature in cursive script that reads "Chuck Polan".

Chuck Polan
Secretary

CP:tj

Attachment

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Collection of Claims Due the State

Type of Rule: Legislative Interpretive Procedural

Agency Department of Administration Address 1900 Kanawha Blvd., East
Building 1, Room E-119 Capitol Complex Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ none	\$ none	\$ none	\$ none	\$ none
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates:

This rule attempts to ease and strengthen requirements for use of collection agencies, and should increase collections.

3. Objectives of these rules:

To clarify procedures for collecting claims due the State of West Virginia.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Rule will hopefully permit better collections.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date: September 3, 1992

Signature of Agency Head or Authorized Representative

Diana Stout

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148 CRS 9

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1992 SEP -3 PM 1:09
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 148
LEGISLATIVE RULES
WEST VIRGINIA DEPARTMENT OF ADMINISTRATION

OFFICE OF THE SECRETARY

SERIES 9
COLLECTION OF CLAIMS DUE THE STATE

§148-9-1 General

1.1 Scope.-- This legislative rule is an explanation and clarification of the operating procedure of State spending units and collection agencies who are collecting claims due the State of West Virginia.

1.2 Authority.-- See West Virginia Code §14-1-18b

1.3 Filing Date. --

1.4 Effective Date. --

§148-9-2 Definitions

2.1 "Claim" or "Claims" means any monies due and owed to a spending unit from any account, debt, loan or agreement by an individual, corporation, partnership or any other entity which is completely or partially unpaid as of the date last specified on the previous invoice.

2.2 "Debtor" means an individual, corporation, partnership or other entity owing or believed to owe a claim or claims to the State of West Virginia or its spending units.

2.3 "Secretary" means the Secretary of the Department of Administration, or his designee.

2.4 "Spending Unit" means an agency, department, institution, board, or any sub-division of each which is a part of State government for which an appropriation is made

by the Legislature.

2.5 Except as provided for previously in this section, all other definitions as used in these regulations shall have the same meaning as provided in §47-16-2 and §46A-2-122 of the West Virginia Code.

§148-9-3 Applicability

3.1 This legislative rule shall apply to all licensed collection agencies authorized by the Secretary to collect a debt owed the State of West Virginia. Each collection agency and State spending unit will be responsible for adhering to this rule and any applicable request from the Secretary of the Department of Administration.

3.2 This rule shall not apply to any spending unit which already has collection procedures in place which do not require the aid of a collection agency.

3.3 This rule shall not apply to the collection of any claim which is being collected in accordance with any Federal regulation pertaining to that particular type of claim.

§148-9-4 Requirements

4.1 In order for a collection agency to collect a claim or claims due the State of West Virginia, the collection agency must satisfy all of the requirements listed in this section.

4.2 License

4.2.1 The collection agency(ies) will apply for and obtain a business franchise registration certificate pursuant to W.Va. Code §11-12-2. If the collection agency maintains more than one office within the State, each separate office must obtain a separate business franchise registration certificate.

4.2.2 The collection agency must maintain an office within the State of West Virginia.

4.2.3 The collection agency must be bonded pursuant to sub-section 4.3 of this rule before a registration certificate can be obtained.

4.2.4 The business franchise registration certificate shall be deemed the collection agency's license.

4.3 Bond

4.3.1 Each collection agency shall file with the State Tax Commissioner a surety bond issued by a licensed fidelity and surety company authorized to do business in the State of West Virginia.

4.3.2 Each bond must be approved by the State Tax Commissioner.

4.3.3 A separate bond must be issued for each office operated by the collection agency in the state.

4.3.4 Each bond shall be in the amount of five thousand dollars (\$5,000.00) and made payable to the State of West Virginia.

4.4 Records

4.4.1 Records will be kept by each office operated by the collection agency of all transactions made by that particular office.

4.4.2 Records will be kept for a period of six (6) years as of the date of the last transaction.

4.4.3 Each collection agency, or appropriate branch office therein, will make such records immediately available to the appropriate spending unit or to the Secretary upon request.

4.5 West Virginia Consumer Credit Act

All applicable provisions of West Virginia Code §47-16-1 et seq. and the West Virginia Consumer Credit and Protection Act (§46A-1-101 et seq.) not specifically stated in this rule are hereby made a part of this rule.

4.6 Other Requirements

4.6.1 The collection agency shall be a registered vendor with the Purchasing Division of the Department of Administration and shall comply with all rules and regulations of that Division.

4.6.2 The collection agency must be a full service agency and have the ability to handle several classifications of accounts separately, in order to provide the spending unit and the Department of Administration with information of the collection performance for each class of accounts. These accounts include educational, medical and any other account assigned to it.

4.6.3 The collection agency shall have the capacity to add accrued interest to applicable accounts on a monthly basis.

4.6.4 The collection agency must have the ability to collect claims from debtors anywhere within the United States.

§148-9-5 Areas defined and bidding determination

5.1 Areas defined

5.1.1 The State will be divided into two separate areas, with spending units assigned to an area based on their logistical location. The areas are shown on Exhibit A, attached and made a part of this rule. The Secretary of the Department of Administration reserves the right to amend or add to this exhibit on any future date.

5.1.2 One collection agency per area will be assigned to collect claims due the State.

5.2 Bidding

In making the determination of which collection agency will be assigned to each area the Purchasing Division of the Department of Administration will solicit bids in accordance with this rule and the applicable provisions of the West Virginia Code and the Purchasing Division's rules and regulations.

§148-9-6 Duties of State Spending Units

6.1 General

6.1.1 A spending unit asserting a claim in its name will have the initial responsibility of collecting the claim. The spending unit must make a diligent effort to collect the claim on its own and must do so for a period of three (3) months. The following steps shall be taken by the spending unit during the three (3) month timeframe:

a. An invoice must be sent to the debtor marked "final invoice" specifying the last date that payment will be made without interest and possible other fees being assessed to the debtor.

b. If after ten (10) days subsequent to last date

specified in §6.1.1(a) of this rule payment has not been received, a certified letter, return receipt requested, shall be sent to the debtor. In this letter the spending unit will inform the debtor of the following:

1. Explain in its entirety the claim asserted by the spending unit, including amount owed, plus accumulated interest (if applicable), and any other information that specifies why and how this assertion is made;

2. The debtor has thirty (30) day from the date of the letter to pay the spending unit;

3. If the debtor wishes to dispute any part of the claim, it has thirty (30) days from the date of the letter to notify the spending unit;

4. If the spending unit receives no response within thirty (30) days from the date of the letter, then the claim will be forwarded to a collection agency.

6.1.2 If pursuant to §6.1.1(b)(3) the party disputes the claim, in whole or in part, and the dispute cannot be rectified between the spending unit and the debtor within thirty (30) days of receipt of the notification of the dispute then the claim will bypass the process specified in subsequent sections of this rule and be forwarded directly to the Secretary. The Secretary, at his discretion, may attempt to resolve the dispute or forward the claim to the Office of the Attorney General for resolution or litigation.

6.1.3 Any claim not disputed by the party pursuant to §6.1.1 will be assumed a valid claim and shall be treated as such.

6.1.4 If after three (3) months the spending unit is still not able to collect the claim, then all information pertaining to this claim will be forwarded directly to the applicable collection agency with a copy to the Secretary.

6.1.5 In the case of a bad check issued to a state spending unit, a certified letter shall be sent to the issuer in accordance with 6.1.1(b) of this rule. If payment is not made in full after the thirty (30) day period allowed for, the check shall be sent directly to the Office of Attorney General who shall begin legal action pursuant to applicable state law. All other provisions of this section shall not apply in case of bad checks.

6.1.6 Any spending unit requesting that a claim be "written off" shall do so in accordance with State law. All such requests must be approved by the Office of the Attorney General.

6.1.7 Upon placement of an account with a collection agency, the spending unit will forward a letter of transmittal to the collection agency, with a copy to the Secretary. The transmittal will contain the following information:

- a. Type of account and description of service
- b. Name of whom the claim is made against
- c. Address, including zip code
- d. Balance due
- e. Date of service or age of account
- f. Telephone number (optional)
- g. Previous collection reports received on individual accounts when available
- h. Any other information deemed important by the spending unit

6.1.8 If the collection agency is unable to collect the claim in the timeframe authorized by §7.1.2 of this rule, the claim will be referred back to the spending unit.

6.1.9 If after the time frame specified in §7.1.2 has been exhausted and the collection agency has forwarded the claim back to the spending unit, the spending unit will forward all information to the Secretary for his determination of whether legal action is appropriate. If legal action is deemed appropriate by the Secretary, he will forward those claims to the Attorney General's Office for litigation.

§148-9-7 Duties of the Collection Agency

7.1 General

7.1.1 At all times throughout the attempt to collect the claim, the collection agency shall comply with all applicable State and Federal laws, and in particular the West Virginia Consumer Credit Act, Chapter 46A of the West Virginia Code; and the Federal Fair Debt Collection Practices Act, 15 USC 1692.

7.1.2 The designated collection agency will have one hundred eighty (180) calendar days to collect a claim under this rule. Upon expiration of the one hundred eighty (180) days, the collection agency will

transfer all uncollected claims back to the referring spending unit.

7.1.3 The designated collection agency will not be required to transfer a claim back to a spending unit if payments are still being received at the expiration of the one hundred eighty (180) day period, or if the spending unit determines that a claim is validly in dispute or nearing settlement; however all accounts not paid in full at the end of two (2) years, inclusive of the one hundred eighty (180) day period, will be referred back to the spending unit unless exempted by the Secretary.

7.1.4 The designated collection agency will submit a completed litigation referral form when returning a claim to the referring State spending unit. This form will contain the information requested on exhibit B, attached.

7.1.5 The designated collection agency will forward all payments collected during any month by the fifteenth (15) day of the following month to the spending unit owed the claim(s). The report specified in §7.1.6 of this rule will accompany each payment.

7.1.6 The designated collection agency must send a complete report to the referring spending unit, with a copy to the Secretary of the Department of Administration, on or before the fifteenth day of every month. The following information must be included in each report by debtor in alphabetical order:

- a. Debtor's name(s) and social security number(s) or other identification number(s) as agreed upon by the spending unit and the collection agency
- b. Placement date of accounts
- c. Beginning amounts to collect
- d. Additional amounts authorized for collection
- e. Amounts previously collected, amounts collected for current month and total collections to date
- f. Balance owed
- g. Amount(s) forwarded to spending unit and balance due spending unit
- h. Fees assessed, amount collected and balance due
- i. Reason for returned or closed accounts (if applicable)
- j. Remarks
- k. Percent of dollar amounts collected to date

7.2 Confidentiality Required

At all times information obtained or disseminated pursuant to this rule will remain strictly confidential and all safeguards to protect confidentiality shall be used.

7.3 Fees

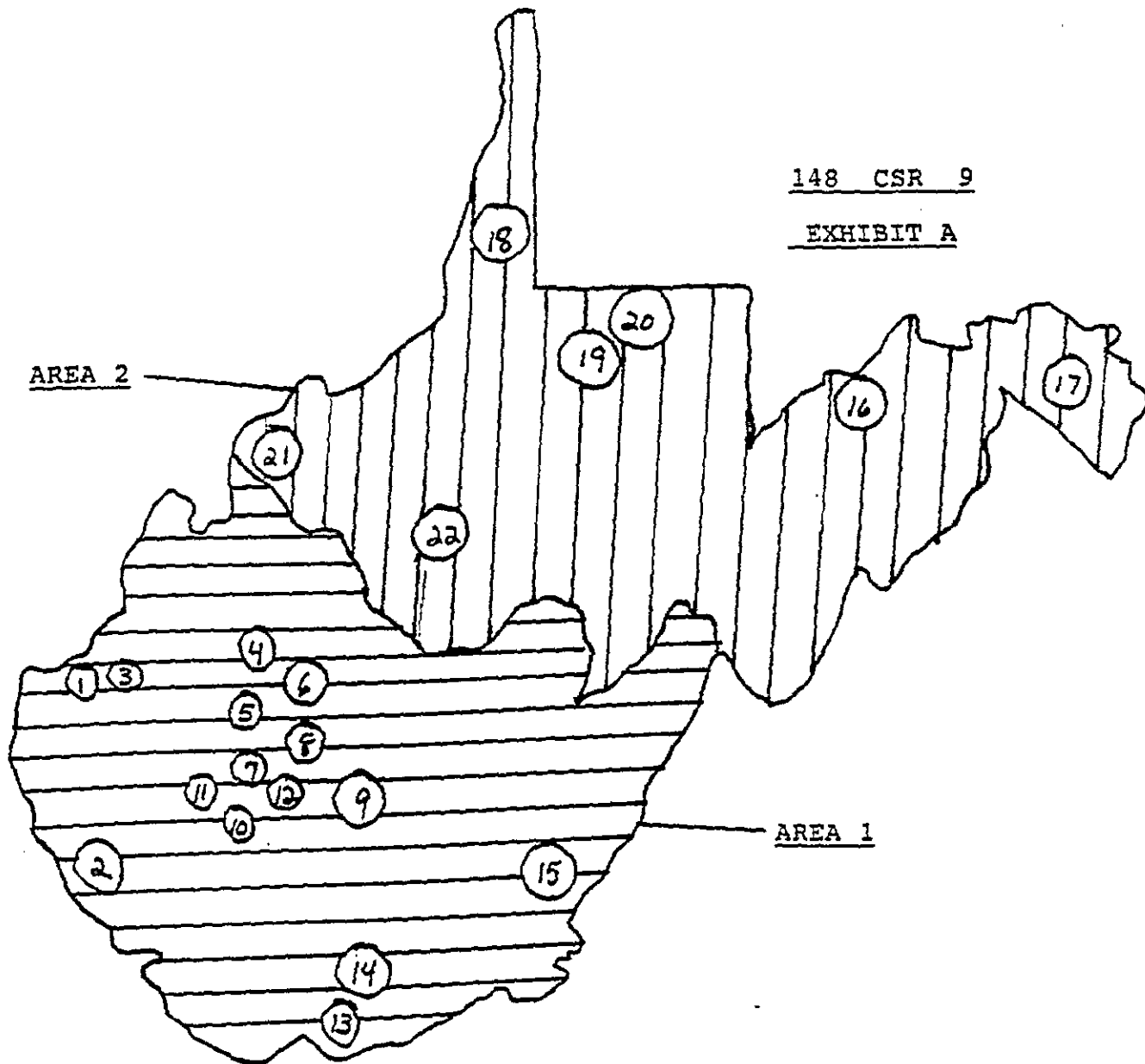
7.3.1 The fee assessed to the spending unit by the collection agency for collecting a claim shall never exceed the fee specified in the purchase order issued by the Purchasing Division of the Department of Administration.

7.3.2 Upon payment to the spending unit, the collection agency shall invoice the spending unit for the fee assessed.

SUMMARY .

This rule is to clarify the operating procedures of State spending units and collection agencies who are collecting claims due the State of West Virginia.

EXHIBIT A



AREA 1

1. Marshall University
2. Southern WV Comm. College
3. WV Dept. of Veterans Affairs
4. College of Graduate Studies
5. WV State College
6. Dept. of Highways
7. Dept. of Health
8. Dept. of Commerce
9. WV Institute of Technology
10. State Tax Department
11. Dept. of Energy
12. Workers' Compensation Fund
13. Bluefield State College
14. Concord College
15. WV School of Osteopathic Medicine

AREA 2

16. Potomac State College
17. Shepherd College
18. WV Northern Com. Coll.
19. Fairmont State College
20. West Virginia Univ.
21. Parkersburg Com. Coll.
22. Glenville State Coll.

STATE OF WEST VIRGINIA
LITIGATION REFERRAL FORM

148 CSR 9
EXHIBIT B

FROM: _____ DATE: _____

SPENDING UNIT: _____ UNIT CONTRACT: _____

DEBTOR INFORMATION

Debtor Name: _____
Address: _____
City: _____ State _____ Zip _____
Telephone (____) _____
Social Security No: _____ - _____ - _____

EMPLOYMENT

Name: _____
Address: _____
City: _____ State _____ Zip _____
Title _____
Time on Job: _____ yr(s) _____ mo(s)
Pay Schedule: _____
_____ Wkly _____ Bi-Mo _____ Mo _____ Other _____

BANK

Name: _____
Address: _____
City: _____ State _____ Zip _____
Account Types:
_____ Checking \$ _____
_____ Savings \$ _____
_____ Other \$ _____

REAL ESTATE

Type: _____
Address: _____
City: _____ State _____ Zip _____
Mortgage Holder: _____

OTHER ASSETS

Automobile _____ yes _____ no
Year _____ Make _____ Model _____
Miscellaneous _____

CO-SIGNER INFORMATION

Name: _____
Address: _____
City: _____ State _____ Zip _____
_____ Own _____ Rent _____

BANK

Name: _____
Address: _____
City: _____ State _____ Zip _____

EMPLOYMENT

Name: _____
Address: _____
City: _____ State _____ Zip _____

Account Types:

_____ Savings \$ _____ _____ Checking \$ _____ _____ Other \$ _____