



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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7/29/2021 11:42:47 AM

Office of West Virginia
Secretary Of State

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

AGENCY: Treasurer TITLE-SERIES: 112-12
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 112-12 Procedures for Fees in Collections by Charge, Credit or Debit Card or by Electronic Payment

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §12-3A-6

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

§12-3A-6 provides authority for the State Treasurer to promulgate this legislative rule.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/28/2021

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/28/2021

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The 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 electronic payment. The changes to the rule include updating the sunset provision and re-numbering of the rule to comply with updated drafting standards.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Updating the sunset provision of the rule.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. 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
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

James G Fuerhoff -- 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 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 1, 2017.~~

1.4. Effective Date. – ~~June 1, 2017.~~

1.5. Sunset Provision. – This rule shall terminate and have no further force or effect on ~~June 1, 2022~~ August 1, 2027.

§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 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.

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- 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 techniques, including, but not limited to, the telephone, IVR, POS terminal, internet, 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, 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 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.
- 2.19. "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 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, 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 brands.

4.4. The Treasurer may contract with one or more card payment service providers.

§112-12-5. Duties of Spending Units.

5.1. The spending unit shall acquire the necessary computer system, software, and other matters required to process transactions.

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

~~5.2.a.~~ 5.2.1. A complete description of the goods or services offered;

~~5.2.b.~~ 5.2.2. The returning merchandise and refund policy;

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~~5.2.c.~~ 5.2.3. A customer service contact, including an electronic mail address and telephone number;

~~5.2.d.~~ 5.2.4. A statement that the transaction currency is US dollars;

~~5.2.e.~~ 5.2.5. Any legal or other restrictions;

~~5.2.f.~~ 5.2.6. The policy on order fulfillment, including, but not limited to, delivery policy and practices;

~~5.2.g.~~ 5.2.7. 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;

~~5.2.h.~~ 5.2.8. The privacy policy approved by the Treasurer;

~~5.2.i.~~ 5.2.9. 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;

~~5.2.j.~~ 5.2.10. A guarantee to not sell or share the names and addresses of customers unless specific authorization is granted in the West Virginia Code;

~~5.2.k.~~ 5.2.11. Appropriate security controls; and

~~5.2.l.~~ 5.2.12. A conspicuous disclosure of the nature and amount of the convenience or service fees.

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

5.4. 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.

5.5. 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~~ accept electronic payments ~~to~~ from customers.

5.6. 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.

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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.~~ 5.8.1. Appropriate security controls and security updates and

~~5.8.b.~~ 5.8.2. Current equipment.

§112-12-6. Treasurer's Duties.

6.1. The Treasurer shall:

~~6.1.a.~~ 6.1.1. Provide the training and assistance needed for a spending unit to accept payments for electronic commerce;

~~6.1.b.~~ 6.1.2. 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;

~~6.1.c.~~ 6.1.3. Obtain merchant account numbers for spending units authorized to collect payments for electronic commerce; and

~~6.1.d.~~ 6.1.4. Test the acceptance process prior to implementing the acceptance of payments.

6.2. The Treasurer may audit the spending unit's web site as needed.

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