

1 **ENROLLED**

2 **Senate Bill No. 402**

3 (BY SENATORS PREZIOSO, EDGELL AND PLYMALE)

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5 [Passed February 20, 2014; in effect ninety days from passage.]  
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10 AN ACT to amend and reenact §11-10-5n of the Code of West Virginia,  
11 1931, as amended, relating to recovery of service charges and  
12 fees charged to the Tax Commissioner by financial institutions  
13 relating to all permitted forms of payment returned or not  
14 duly paid; and authorizing rulemaking.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §11-10-5n of the Code of West Virginia, 1931, as amended,  
17 be amended and reenacted to read as follows:

18 **ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.**

19 **§11-10-5n. Payment by commercially acceptable means.**

20 (a) *Authority to receive.*-- The Tax Commissioner may receive  
21 in payment for taxes or fees collected under this article (or in  
22 payment for excise tax stamps and tax crowns) any commercially

1 acceptable means that the commissioner considers appropriate to the  
2 extent and under the conditions provided in rules proposed by the  
3 commissioner for legislative approval in accordance with article  
4 three, chapter twenty-nine-a of this code.

5       (b) *Ultimate liability.*-- If a check, money order or other  
6 method of payment, including payment by credit card, debit card or  
7 charge card received in payment of taxes or fees or tax stamps or  
8 crowns is not duly paid, or is paid and subsequently charged back  
9 to the Tax Commissioner, the person by whom the check, money order  
10 or other method of payment was tendered remains liable for payment  
11 of the tax or fee or for the tax stamps or crowns, and for all legal  
12 penalties and additions thereto, to the same extent as if the check,  
13 money order or other method of payment had not been tendered.

14       (c) *Liability of bank and others.*-- If any certified,  
15 treasurer's or cashier's check (or other guaranteed draft), any  
16 money order or any means of payment that has been guaranteed by a  
17 financial organization (such as a credit card, debit card or charge  
18 card transaction which has been guaranteed expressly by a financial  
19 organization), is received for payment of taxes or fees or tax  
20 stamps or crowns and is not duly paid, the State of West Virginia  
21 shall, in addition to its right to exact payment from the party  
22 originally indebted therefor, have a lien for:

1           (1) The amount of the check (or draft) upon all the assets of  
2 the financial institution on which it is drawn;

3           (2) The amount of the money order upon all the assets of the  
4 issuer thereof; or

5           (3) The guaranteed amount of any other transaction upon all  
6 assets of the institution making the guarantee; and the amount shall  
7 be paid out of the assets in preference to any other claims  
8 whatsoever against the financial institution, issuer or guaranteeing  
9 institution, except the necessary costs and expenses of  
10 administration and perfected liens that are prior in time.

11           (d) *Charges and fees due to insufficient funds or nonpayment*  
12 *by financial institution.*-- If any check, money order or any other  
13 commercially acceptable method of payment permitted under this  
14 article, its amendments and related rules, tendered in payment of  
15 any amount of tax or fee or tax stamps or crowns or any interest,  
16 additions to tax or penalties is not duly paid, then, in addition  
17 to any other penalties provided by law, there shall be paid as a  
18 penalty by the person who tendered the payment, regardless of its  
19 form, upon written notice and demand by the Tax Commissioner, in the  
20 same manner as tax, an amount equal to the service charge or fee  
21 which the bank or other financial institution charged the state for  
22 each payment returned or not duly paid to the Tax Commissioner

1 because the account is closed, there are insufficient funds in the  
2 account, payment was stopped or payment was refused by the bank,  
3 financial institution or other entity, including the state or  
4 political subdivision thereof. Recovery of such charges and fees  
5 will apply to all methods of payment permitted under this section.  
6 The Tax Commissioner may propose rules necessary to carry out this  
7 subsection and to provide guidelines and requirements necessary to  
8 ensure uniform administrative practices statewide to effect the  
9 intent of this subsection, all in accordance with article three,  
10 chapter twenty-nine-a of this code: *Provided*, That for purposes of  
11 this subsection, the term "payment" includes any transaction  
12 performed at the request of the taxpayer, including claims for  
13 refund that result in a service charge or fee.

14 (e) *Payment by other means.--*

15 (1) *Authority to prescribe rule.--* The Tax Commissioner shall  
16 propose rules for legislative approval, in accordance with article  
17 three, chapter twenty-nine-a of this code, as the Tax Commissioner  
18 considers necessary to receive payment by commercially acceptable  
19 means, including rules that:

20 (A) Specify which methods of payment by commercially acceptable  
21 means are acceptable;

22 (B) Specify when payment by those means shall be considered

1 received;

2 (C) Identify types of nontax matters related to payment by  
3 those means that are to be resolved by persons ultimately liable for  
4 payment and financial intermediaries, without the involvement of the  
5 Tax Commissioner; and

6 (D) Ensure that tax matters shall be resolved by the Tax  
7 Commissioner, without the involvement of financial intermediaries.

8 (2) *Obtaining services.*-- The Tax Commissioner shall use the  
9 State Treasurer's contracts and system for receiving payments by  
10 credit card, debit card, charge card or any other commercially  
11 acceptable means. The Tax Commissioner may not pay any fee or  
12 provide any other consideration in obtaining these services. The  
13 State Treasurer may not pay any fee or provide any consideration for  
14 receiving payments of taxes or fees (or in payment for excise tax  
15 stamps and tax crowns) described in this section by credit card,  
16 debit card, charge card or any other commercially acceptable means,  
17 and any cost for processing the payment shall be included, in  
18 advance, in the amount of the transaction and assessed to the party  
19 making the payment.

20 (3) *Special provisions for use of credit cards.*-- If use of  
21 credit cards is accepted as a method of payment of taxes pursuant  
22 to subsection (a) of this section:

1           (A) To the extent allowed under federal law, a payment of taxes  
2 or fees collected under this article (or in payment for excise tax  
3 stamps and tax crowns) by a person by use of a credit card shall not  
4 be subject to Section 161 of the Truth in Lending Act (15 U. S.  
5 C.§1666), or to any similar provisions of state law, if the error  
6 alleged by the person is an error relating to the underlying tax  
7 liability, rather than an error relating to the credit card account  
8 such as a computational error or numerical transposition in the  
9 credit card transaction or an issue as to whether the person  
10 authorized payment by use of the credit card;

11           (B) To the extent allowed under federal law, a payment of taxes  
12 or fees collected under this article (or in payment for excise tax  
13 stamps and tax crowns) shall not be subject to Section 170 of the  
14 Truth in Lending Act (15 U. S. C.1666i), or to any similar  
15 provisions of state law;

16           (C) To the extent allowed under federal law, a payment of taxes  
17 or fees collected under this article (or in payment for excise tax  
18 stamps and tax crowns) by a person by use of a debit card shall not  
19 be subject to Section 908 of the Electronic Fund Transfer Act (15  
20 U. S. C.1693f), or to any similar provisions of state law, if the  
21 error alleged by the person is an error relating to the underlying  
22 tax liability, rather than an error relating to the debit card

1 account such as a computational error or numerical transposition in  
2 the debit card transaction or an issue as to whether the person  
3 authorized payment by use of the debit card;

4 (D) To the extent allowed under federal law, the term  
5 "creditor" under Section 103(f) of the Truth in Lending Act (15 U.  
6 S. C.§1602(f)) shall not include the Tax Commissioner with respect  
7 to credit card transactions in payment of taxes or fees collected  
8 under this article (or in payment for excise tax stamps and tax  
9 crowns); and

10 (E) Notwithstanding any other provisions of law to the  
11 contrary, in the case of payment made by credit card or debit card  
12 transaction of an amount owed to a person as the result of the  
13 correction of an error under Section 161 of the Truth in Lending Act  
14 (15 U. S. C.§1666) or Section 908 of the Electronic Fund Transfer  
15 Act (15 U. S. C.§1693f), the Tax Commissioner is authorized to  
16 provide such amount to such person as a credit to that person's  
17 credit card or debit card account through the applicable credit card  
18 or debit card system.

19 (f) *Confidentiality of information.--*

20 (1) *In general.--* Except as otherwise authorized by this  
21 subsection, no person may use or disclose any information relating  
22 to credit card, debit card or charge card transactions other than

1 for purposes directly related to the processing of the transactions  
2 or the billing or collection of amounts charged or debited pursuant  
3 thereto.

4 (2) *Exceptions.*--

5 (A) Credit card, debit card or charge card issuers or others  
6 acting on behalf of the issuers may also use and disclose the  
7 information for purposes directly related to servicing an issuer's  
8 accounts.

9 (B) Credit card, debit card or charge card issuers or others  
10 directly involved in the processing of credit card, debit card or  
11 charge card transactions or the billing or collection of amounts  
12 charged or debited to the credit card, debit card or charge card,  
13 may also use and disclose the information for purposes directly  
14 related to:

15 (I) Statistical risk and profitability assessment;

16 (ii) Transferring receivables, accounts or interest therein;

17 (iii) Auditing the account information;

18 (iv) Complying with federal, state or local law; and

19 (v) Properly authorized civil, criminal or regulatory  
20 investigation by federal, state or local authorities.

21 (3) *Procedures.*-- Use and disclosure of information under this  
22 paragraph shall be made only to the extent authorized by written

1 procedures promulgated by the Tax Commissioner.