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Senate Bill No. 402

(By Senators Prezioso, Edgell and Plymale)

[Introduced January 22, 2014; referred to the Committee on Banking and Insurance; and then to the Committee on Finance.]

A BILL to amend and reenact §11-10-5n of the Code of West Virginia, 1931, as amended, relating to recovery of service charges and fees charged to the Tax Commissioner by financial institutions relating to all permitted forms of payment returned or not duly paid; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

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

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

1 ~~check payment~~ returned or not duly paid to the Tax Commissioner
2 because the account is closed, ~~or~~ there are insufficient funds in
3 the account, payment was stopped or payment was refused by the bank,
4 financial institution or other entity, including the state or
5 political subdivision thereof. Recovery of such charges and fees
6 will apply to all methods of payment permitted under this section.
7 The Tax Commissioner may propose rules necessary to carry out this
8 subsection and to provide guidelines and requirements necessary to
9 ensure uniform administrative practices statewide to effect the
10 intent of this subsection, all in accordance with article three,
11 chapter twenty-nine-a of this code: *Provided, That for purposes of*
12 this subsection, the term "payment" includes any transaction
13 performed at the request of the taxpayer, including claims for
14 refund that result in a service charge or fee.

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

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

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

1 (B) Specify when payment by those means shall be considered
2 received;

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

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

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

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

1 to subsection (a) of this section:

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

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

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

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

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

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

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

21 (1) *In general.*-- Except as otherwise authorized by this
22 subsection, no person may use or disclose any information relating

1 to credit card, debit card or charge card transactions other than
2 for purposes directly related to the processing of the transactions
3 or the billing or collection of amounts charged or debited pursuant
4 thereto.

5 (2) *Exceptions.*--

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

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

16 (I) Statistical risk and profitability assessment;

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

18 (iii) Auditing the account information;

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

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

22 (3) *Procedures.*-- Use and disclosure of information under this

1 paragraph shall be made only to the extent authorized by written
2 procedures promulgated by the Tax Commissioner.

(NOTE: The purpose of this bill is to permit recovery of service charges and fees charged to the Tax Commissioner by financial institutions relating to all permitted forms of payment returned or not duly paid. The bill authorizes rule-making.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)