

WEST VIRGINIA LEGISLATURE
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ENROLLED

Senate Bill No. 402

(BY SENATORS PREZIOSO, EDGELL AND PLYMALE)

[PASSED FEBURARY 20, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

E N R O L L E D

Senate Bill No. 402

(BY SENATORS PREZIOSO, EDGELL AND PLYMALE)

[Passed February 20, 2014; in effect ninety days from passage.]

AN ACT 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.

1 (a) *Authority to receive.*— The Tax Commissioner may
2 receive in payment for taxes or fees collected under this
3 article (or in payment for excise tax stamps and tax crowns)
4 any commercially acceptable means that the commissioner
5 considers appropriate to the extent and under the conditions
6 provided in rules proposed by the commissioner for
7 legislative approval in accordance with article three, chapter
8 twenty-nine-a of this code.

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

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

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

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

34 (3) The guaranteed amount of any other transaction upon
35 all assets of the institution making the guarantee; and the
36 amount shall be paid out of the assets in preference to any
37 other claims whatsoever against the financial institution,
38 issuer or guaranteeing institution, except the necessary costs
39 and expenses of administration and perfected liens that are
40 prior in time.

41 (d) *Charges and fees due to insufficient funds or*
42 *nonpayment by financial institution.*— If any check, money
43 order or any other commercially acceptable method of
44 payment permitted under this article, its amendments and
45 related rules, tendered in payment of any amount of tax or fee
46 or tax stamps or crowns or any interest, additions to tax or
47 penalties is not duly paid, then, in addition to any other
48 penalties provided by law, there shall be paid as a penalty by
49 the person who tendered the payment, regardless of its form,
50 upon written notice and demand by the Tax Commissioner,
51 in the same manner as tax, an amount equal to the service
52 charge or fee which the bank or other financial institution
53 charged the state for each payment returned or not duly paid
54 to the Tax Commissioner because the account is closed, there
55 are insufficient funds in the account, payment was stopped or
56 payment was refused by the bank, financial institution or
57 other entity, including the state or political subdivision
58 thereof. Recovery of such charges and fees will apply to all
59 methods of payment permitted under this section. The Tax
60 Commissioner may propose rules necessary to carry out this
61 subsection and to provide guidelines and requirements
62 necessary to ensure uniform administrative practices
63 statewide to effect the intent of this subsection, all in
64 accordance with article three, chapter twenty-nine-a of this
65 code: *Provided*, That for purposes of this subsection, the term
66 “payment” includes any transaction performed at the request
67 of the taxpayer, including claims for refund that result in a
68 service charge or fee.

69 (e) *Payment by other means.*—

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

75 (A) Specify which methods of payment by commercially
76 acceptable means are acceptable;

77 (B) Specify when payment by those means shall be
78 considered received;

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

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

86 (2) *Obtaining services.*— The Tax Commissioner shall use
87 the State Treasurer’s contracts and system for receiving
88 payments by credit card, debit card, charge card or any other
89 commercially acceptable means. The Tax Commissioner
90 may not pay any fee or provide any other consideration in
91 obtaining these services. The State Treasurer may not pay
92 any fee or provide any consideration for receiving payments
93 of taxes or fees (or in payment for excise tax stamps and tax
94 crowns) described in this section by credit card, debit card,
95 charge card or any other commercially acceptable means, and
96 any cost for processing the payment shall be included, in
97 advance, in the amount of the transaction and assessed to the
98 party making the payment.

99 (3) *Special provisions for use of credit cards.*— If use of
100 credit cards is accepted as a method of payment of taxes
101 pursuant to subsection (a) of this section:

102 (A) To the extent allowed under federal law, a payment
103 of taxes or fees collected under this article (or in payment for
104 excise tax stamps and tax crowns) by a person by use of a

105 credit card shall not be subject to Section 161 of the Truth in
106 Lending Act (15 U. S. C. §1666), or to any similar provisions
107 of state law, if the error alleged by the person is an error
108 relating to the underlying tax liability, rather than an error
109 relating to the credit card account such as a computational
110 error or numerical transposition in the credit card transaction
111 or an issue as to whether the person authorized payment by
112 use of the credit card;

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

118 (C) To the extent allowed under federal law, a payment
119 of taxes or fees collected under this article (or in payment for
120 excise tax stamps and tax crowns) by a person by use of a
121 debit card shall not be subject to Section 908 of the
122 Electronic Fund Transfer Act (15 U. S. C. 1693f), or to any
123 similar provisions of state law, if the error alleged by the
124 person is an error relating to the underlying tax liability,
125 rather than an error relating to the debit card account such as
126 a computational error or numerical transposition in the debit
127 card transaction or an issue as to whether the person
128 authorized payment by use of the debit card;

129 (D) To the extent allowed under federal law, the term
130 “creditor” under Section 103(f) of the Truth in Lending Act
131 (15 U. S. C. §1602(f)) shall not include the Tax
132 Commissioner with respect to credit card transactions in
133 payment of taxes or fees collected under this article (or in
134 payment for excise tax stamps and tax crowns); and

135 (E) Notwithstanding any other provisions of law to the
136 contrary, in the case of payment made by credit card or debit

137 card transaction of an amount owed to a person as the result
138 of the correction of an error under Section 161 of the Truth
139 in Lending Act (15 U. S. C. §1666) or Section 908 of the
140 Electronic Fund Transfer Act (15 U. S. C. §1693f), the Tax
141 Commissioner is authorized to provide such amount to such
142 person as a credit to that person's credit card or debit card
143 account through the applicable credit card or debit card
144 system.

145 (f) *Confidentiality of information.*—

146 (1) *In general.*— Except as otherwise authorized by this
147 subsection, no person may use or disclose any information
148 relating to credit card, debit card or charge card transactions
149 other than for purposes directly related to the processing of
150 the transactions or the billing or collection of amounts
151 charged or debited pursuant thereto.

152 (2) *Exceptions.*—

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

157 (B) Credit card, debit card or charge card issuers or others
158 directly involved in the processing of credit card, debit card
159 or charge card transactions or the billing or collection of
160 amounts charged or debited to the credit card, debit card or
161 charge card, may also use and disclose the information for
162 purposes directly related to:

163 (i) Statistical risk and profitability assessment;

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

165 (iii) Auditing the account information;

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

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

169 (3) *Procedures.*— Use and disclosure of information under
170 this paragraph shall be made only to the extent authorized by
171 written procedures promulgated by the Tax Commissioner.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the

Day of, 2014.

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Governor