

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.

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) ~~Bad check charge.~~ – If any check or money order
42 Charges and fees due to insufficient funds or nonpayment by
43 financial institution.– If any check, money order or any other
44 commercially acceptable method of payment permitted under
45 this article, its amendments and related rules, tendered in
46 payment of any amount of tax or fee or tax stamps or crowns
47 or any interest, additions to tax or penalties is not duly paid,
48 then, in addition to any other penalties provided by law, there
49 shall be paid as a penalty by the person who tendered the
50 check payment, regardless of its form, upon written notice
51 and demand by the Tax Commissioner, in the same manner
52 as tax, an amount equal to the service charge or fee which the
53 bank or other financial institution charged the state for each
54 check payment returned or not duly paid to the Tax
55 Commissioner because the account is closed, ~~or~~ there are
56 insufficient funds in the account, payment was stopped or
57 payment was refused by the bank, financial institution or

58 other entity, including the state or political subdivision
59 thereof. Recovery of such charges and fees will apply to all
60 methods of payment permitted under this section. The Tax
61 Commissioner may propose rules necessary to carry out this
62 subsection and to provide guidelines and requirements
63 necessary to ensure uniform administrative practices
64 statewide to effect the intent of this subsection, all in
65 accordance with article three, chapter twenty-nine-a of this
66 code: *Provided*, That for purposes of this subsection, the
67 term “payment” includes any transaction performed at the
68 request of the taxpayer, including claims for refund that
69 result in a service charge or fee.

70 (e) *Payment by other means.*–

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

77 (A) Specify which methods of payment by commercially
78 acceptable means are acceptable;

79 (B) Specify when payment by those means shall be
80 considered received;

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

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

88 (2) *Obtaining services.*— The Tax Commissioner shall
89 use the State Treasurer’s contracts and system for receiving
90 payments by credit card, debit card, charge card or any other
91 commercially acceptable means. The Tax Commissioner
92 may not pay any fee or provide any other consideration in
93 obtaining these services. The State Treasurer may not pay
94 any fee or provide any consideration for receiving payments
95 of taxes or fees (or in payment for excise tax stamps and tax

96 crowns) described in this section by credit card, debit card,
97 charge card or any other commercially acceptable means, and
98 any cost for processing the payment shall be included, in
99 advance, in the amount of the transaction and assessed to the
100 party making the payment.

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

104 (A) To the extent allowed under federal law, a payment
105 of taxes or fees collected under this article (or in payment for
106 excise tax stamps and tax crowns) by a person by use of a
107 credit card shall not be subject to Section 161 of the Truth in
108 Lending Act (15 U. S. C. §1666), or to any similar provisions
109 of state law, if the error alleged by the person is an error
110 relating to the underlying tax liability, rather than an error
111 relating to the credit card account such as a computational
112 error or numerical transposition in the credit card transaction
113 or an issue as to whether the person authorized payment by
114 use of the credit card;

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

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

131 (D) To the extent allowed under federal law, the term
132 “creditor” under Section 103(f) of the Truth in Lending Act
133 (15 U. S. C. §1602(f)) shall not include the Tax

134 Commissioner with respect to credit card transactions in
135 payment of taxes or fees collected under this article (or in
136 payment for excise tax stamps and tax crowns); and

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

146 (f) *Confidentiality of information.*—

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

153 (2) *Exceptions.*—

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

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

- 164 (i) Statistical risk and profitability assessment;
- 165 (ii) Transferring receivables, accounts or interest therein;
- 166 (iii) Auditing the account information;
- 167 (iv) Complying with federal, state or local law; and
- 168 (v) Properly authorized civil, criminal or regulatory
169 investigation by federal, state or local authorities.

170 (3) *Procedures.*— Use and disclosure of information
171 under this paragraph shall be made only to the extent

172 authorized by written procedures promulgated by the Tax
173 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.)