

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4496

BY DELEGATES PHILLIPS, FRICH, WESTFALL, HOLLEN,

ROWE, CRISS, WHITE, BYRD AND MAYNARD

[Introduced February 12, 2018; Referred
to the Committee on Banking and Insurance then the
Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §47-11G-1, §47-11G-2, and §47-11G-3, all relating to establishing the
3 responsibilities of persons providing credit card processing services in the state; setting
4 forth the required disclosures and prohibitions; establishing a maximum early termination
5 fee; setting forth penalties and enforcement; and setting forth its applicability and
6 exclusions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11G. CREDIT CARD PROCESSING SERVICES.

§47-11G-1. Credit card processing service; required disclosures; prohibitions.

1 (a) (1) Any person or entity that offers a credit card processing service in this state shall
2 disclose the following information on any contract or agreement to render a credit card processing
3 service:

4 (A) The effective date of the contract;

5 (B) The term of the contract;

6 (C) The amount of any monthly minimum fee or charge for the credit card processing
7 service; and

8 (D) The amount of any fee or charge for terminating the contract or agreement.

9 (2) The disclosures required in subsection (a) of this section and any other terms and
10 conditions pertaining to the use of the credit card processing service shall be printed in 8-point
11 font at a minimum.

12 (b) A person or entity that offers a credit card processing service in this state shall not
13 charge:

14 (1) A fee of more than \$250 for terminating a contract for credit card processing service;

15 or

16 (2) A monthly minimum fee under a credit card processing service contract for more than
17 one month after the credit card processing service contract is terminated.

18 (c) Equipment rentals or lease purchase payments charged by a person or entity that
19 offers a credit card processing service shall not be considered to be fees for the purposes of this
20 article.

§47-11G-2. Penalties and enforcement.

1 (a) A violation of this article by a person or entity providing credit card processing service
2 constitutes an unfair trade practice, under §47-11A-1 et seq. of this code.

3 (b) All remedies, penalties, and authority granted to the Attorney General under other
4 provisions of this code are available to the Attorney General for the enforcement of this article.

§47-11G-3. Applicability and exclusions.

1 (a) Nothing contained in this article shall:

2 (1) Affect the jurisdiction of state or federal bank regulators over the regulation of credit
3 card processing services provided by state or national banks; or

4 (2) Limit the rights or remedies that are otherwise available to a person or an entity that
5 has contracted with a credit card processing service.

6 (b) This article does not apply to:

7 (1) A contract entered into before July 1, 2018;

8 (2) A state bank, a national bank, or a savings association, each as defined in 12 U.S.C.
9 §1813, as it existed on January 1, 2009; or

10 (3) The parent, affiliate, or subsidiary of a state bank, a national bank, or a savings
11 association, each as defined in 12 U.S.C. §1813, as it existed on January 1, 2009.

12 (c) The obligations under this article are cumulative and do not limit the obligations
13 imposed under any other state or federal law.

NOTE: The purpose of this bill is to establish the responsibilities of persons providing credit card processing services in the state. The bill would prevent the current practice of where a company has charged as much as \$18,000 to a small merchant for terminating the contract one month early. The bill sets forth the required disclosures and prohibitions. The bill establishes a maximum early termination fee. The bill sets forth penalties and

enforcement. The bill sets forth its applicability and exclusions.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.