

H. B. 4397

(By Delegates Boggs and Reynolds)

(By Request of the Tax Department)

[Introduced February 4, 2014; referred to the
Committee on Finance.]

**FISCAL
NOTE**

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 rule-making.

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
acceptable means that the commissioner considers appropriate to the

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

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

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

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

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

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

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

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

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

17 (A) Specify which methods of payment by commercially
18 acceptable means are acceptable;

19 (B) Specify when payment by those means shall be considered
20 received;

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

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

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

15 (3) *Special provisions for use of credit cards.* -- If use of
16 credit cards is accepted as a method of payment of taxes pursuant
17 to subsection (a):

18 (A) To the extent allowed under federal law, a payment of
19 taxes or fees collected under this article (or in payment for
20 excise tax stamps and tax crowns) by a person by use of a credit
21 card shall not be subject to section 161 of the Truth in Lending
22 Act (15 U.S.C. §1666), or to any similar provisions of state law,
23 if the error alleged by the person is an error relating to the
24 underlying tax liability, rather than an error relating to the

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

4 (B) To the extent allowed under federal law, a payment of
5 taxes or fees collected under this article (or in payment for
6 excise tax stamps and tax crowns) shall not be subject to section
7 170 of the Truth in Lending Act (15 U.S.C. 1666i), or to any
8 similar provisions of state law;

9 (C) To the extent allowed under federal law, a payment of
10 taxes or fees collected under this article (or in payment for
11 excise tax stamps and tax crowns) by a person by use of a debit
12 card shall not be subject to section 908 of the Electronic Fund
13 Transfer Act (15 U.S.C. 1693f), or to any similar provisions of
14 state law, if the error alleged by the person is an error relating
15 to the underlying tax liability, rather than an error relating to
16 the debit card account such as a computational error or numerical
17 transposition in the debit card transaction or an issue as to
18 whether the person authorized payment by use of the debit card;

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

1 (E) Notwithstanding any other provisions of law to the
2 contrary, in the case of payment made by credit card or debit card
3 transaction of an amount owed to a person as the result of the
4 correction of an error under Section 161 of the Truth in Lending
5 Act (15 U.S.C. §1666) or Section 908 of the Electronic Fund
6 Transfer Act (15 U.S.C. §1693f), the Tax Commissioner is authorized
7 to provide such amount to such person as a credit to that person's
8 credit card or debit card account through the applicable credit
9 card or debit card system.

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

11 (1) *In general.* -- Except as otherwise authorized by this
12 subsection, no person may use or disclose any information relating
13 to credit card, debit card or charge card transactions other than
14 for purposes directly related to the processing of the transactions
15 or the billing or collection of amounts charged or debited pursuant
16 thereto.

17 (2) *Exceptions.* --

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

22 (B) Credit card, debit card or charge card issuers or others
23 directly involved in the processing of credit card, debit card or
24 charge card transactions or the billing or collection of amounts

1 charged or debited to the credit card, debit card or charge card,
2 may also use and disclose the information for purposes directly
3 related to:

- 4 (i) Statistical risk and profitability assessment;
- 5 (ii) Transferring receivables, accounts or interest therein;
- 6 (iii) Auditing the account information;
- 7 (iv) Complying with federal, state or local law; and
- 8 (v) Properly authorized civil, criminal or regulatory
9 investigation by federal, state or local authorities.

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