WEST VIRGINIA CODE CHAPTER 12 ARTICLE 3A

WV Legislature

§12-3A-1. Legislative purpose and findings.

The Legislature finds that state government should facilitate and promote electronic commerce, particularly in the electronic receipting and disbursing of state funds. As many individuals receiving recurring state funds do not have bank accounts for the purpose of receiving direct deposits, and as the state desires that all payments be made electronically by the year two thousand two, it is the intent of the Legislature to provide a mechanism for all payees to receive payments by electronic funds transfers through direct deposit or through state issued debit cards. Further, as usage of electronic commerce grows, state spending units need the ability to accept payments electronically. To meet these goals, the Legislature seeks to ensure proper management oversight and accountability are maintained.

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§12-3A-2. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) "Document" means any authentication, certificate, claim, form, invoice, record, report, requisition, security, statement or other similar item that may be in a tangible or electronic form.

(b) "Electronic" means electrical, digital, magnetic, wireless, optical, electromagnetic, biometric, or any other technology that is similar to these technologies.

(c) "Electronic commerce" means using electronic techniques for accomplishing business transactions, including electronic mail or messaging, electronic bulletin board, Internet technology, electronic funds transfers, electronic data interchange (EDI) techniques, and any other related electronic technologies.

(d) "Security procedure" means a methodology or procedure for the purpose of:

(1) Preventing access by unauthorized parties;

(2) Verifying that an electronic record or electronic signature is that of a specific party or created by a specific electronic point of origin; or

(3) Detecting error or alteration in the communication, content, or storage of an electronic record since a specific point in time.

(e) "WEB commerce" means electronic commerce on the Internet.

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§12-3A-3. Financial electronic commerce.

(a) The State Auditor and the State Treasurer shall implement electronic commerce capabilities for each of their offices to facilitate the performance of their duties under this code. The State Treasurer shall competitively bid the selection of vendors needed to provide the necessary banking, investment and related goods and services, and the provisions of article one-b, chapter five, and articles three and seven, chapter five-a of this code shall not apply, unless requested by the State Treasurer.

(b) A document or a signature received, issued or used by the Auditor or the Treasurer shall be considered an original and may not be denied legal effect on the ground that it is in electronic form.

(c) The Auditor or Treasurer may, in his or her discretion, require documents filed with or submitted to his or her respective office be filed or submitted in a prescribed electronic format.

(d) The Auditor or Treasurer, in his or her discretion, may waive:

(1) Any requirements for a document filed or submitted in an electronic format; or

(2) Any requirements for the certification, notarization or verification of a document filed or submitted in an electronic format.

(e) The head of each spending unit is responsible for adopting and implementing security procedures to ensure adequate integrity, security, confidentiality and auditability of the business transactions of his or her spending unit when utilizing electronic commerce.

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§12-3A-4. Payment by a West Virginia pay card.

The State Auditor and the State Treasurer may jointly establish a state-stored value debit card program known as the "West Virginia Pay Card" for recipients of employee payroll, retirement benefits, entitlement programs, vocational rehabilitation services funds disbursed pursuant to §18-10A-6 of this code, foster care and adoption stipends, subsidies, and other payments made under programs administered by the Department of Human Services, payments to contractors of the state, or other eligible payees of state funds, who do not possess a federally insured depository institution account. The State Auditor and the State Treasurer shall use every reasonable effort to encourage all identified unbanked recipients to obtain a federally insured depository account. The State Auditor shall include an unbanked recipient in the program upon determining that good cause exists. Once an unbanked recipient is included in the program, the State Auditor shall provide the State Treasurer with an electronic file containing the necessary unbanked recipient information. The State Treasurer shall issue a request for proposals in accordance with §12-3A-3 of this code to aid in the administration of the program. The State Auditor shall assist in the review of pay card proposals. In carrying out the purposes of this article, the State Treasurer shall not compete with banks or other federally insured financial institutions, or for profit.

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§12-3A-5. Limited establishment and use of point of sale terminals, etc., for special purposes and circumstances relating to certain public assistance payments.

(a) The State Treasurer shall have authority to contract with banking institutions and other entities to establish point of sale terminals ("POS terminals"), as defined in section twelve-b, article eight, chapter thirty-one-a of this code, that accept the West Virginia check card and the cards issued by state spending units to recipients of state or federal funds, food or other benefits. If other entities decline to provide the POS terminals in a manner that meets the requirements of this section, the treasurer is authorized to establish, own and operate POS terminals. The treasurer may place the POS terminals and associated equipment at any location within this state where he or she or the Department of Human Services determines the equipment is needed to provide reasonable access to users of the cards. The POS terminals authorized pursuant to this section may be used to provide any amount of cash payment or allowable purchase of retail items or other benefits as determined by the State Treasurer, pursuant to state law and rules and, where necessary, in cooperation with any appropriate federal agencies.

(b) POS terminals established pursuant to this section may be jointly owned and operated with private sector financial institutions and may be established for the sole purpose of providing access to electronically transmitted government benefits or payments. However, if the State Treasurer establishes POS terminals, they shall be made available for use by the general public and the retailer shall reimburse the state for each transaction as per an agreement entered into at the time the POS terminals are established.

(c) Any retailer, agency or other person providing cash withdrawal services for state administered electronic cards from its own funds through POS terminals established pursuant to this section are limited to charging a fee for the service in the amount of the higher of $1 or one percent of the amount of cash withdrawn.

(d) There is created in the State Treasury a separate special revenue account, which shall be an interest bearing account, to be known as the "Point of Sale Terminals Collection Account". The account shall contain any funds received from transactions on POS terminals installed by the State Treasurer and any other funds authorized by the Legislature. Moneys in the account shall be used by the treasurer to pay the fees and costs associated with the POS terminals and related equipment, and for such other purposes as determined by the Legislature.

(e) In carrying out the purposes of this article, the treasurer shall not compete with private sector providers of POS terminals, banks or other financial institutions, or for profit. If a private sector provider, bank or other financial institution certifies to the treasurer that it can provide POS terminals to meet the requirements contained within this article, the treasurer shall not establish or maintain equipment in the locations identified in the certification. Nothing in this article shall authorize the treasurer to establish or operate automatic teller machines.

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§12-3A-6. Receipting of electronic commerce purchases.

(a)(1) The State Treasurer may establish a system for acceptance of credit card and other payment methods for electronic commerce purchases from spending units. Notwithstanding any other provision of this code to the contrary, each spending unit, utilizing WEB commerce, electronic commerce, or other method that offers products or services for sale shall utilize the State Treasurer's system for acceptance of payments, except as provided in subsection (b) of this section.

(2) Notwithstanding any other provision of code to the contrary, the costs associated with the acceptance of credit card and other payment methods in the State Treasurer's system for electronic commerce purchases may be invoiced in a commercially reasonable manner, according to the legislative rules promulgated pursuant to subsection (f) of this section.

(3) For the purposes of this section, "spending unit" has the same meaning provided in §12-1-2 of this code.

(b) A state institution of higher education may receive credit card payments from systems of acceptance other than that provided by the State Treasurer if:

(1) The proposed alternate system is compliant with the payment card industry data security standards for acceptance of payments, and the institution is proposing to use the alternate system for the sole purpose of:

(A) Processing the payment of academic transcripts; or

(B) Accepting payment for applications for admission, if necessary, to participate in a national or regional program for applications for admission; or

(2) The institution certifies that the use of the alternate system will not cause a reduction in the volume of credit card revenues by more than 10 percent as compared to previous credit card revenues processed on behalf of the institution during the previous fiscal year and the State Treasurer consents to the use.

(c) To facilitate electronic commerce, the State Treasurer may charge a spending unit for the banking and other expenses incurred by the Treasurer on behalf of the spending unit and for any work performed, including, without limitation, assisting in the development of a website and utilization of the Treasurer's payment gateway. A special revenue account, entitled the Treasurer's Financial Electronic Commerce Fund, is created in the State Treasury to receive the amounts charged by the Treasurer. The Treasurer may expend the funds received in the Treasurer's Financial Electronic Commerce Fund only for the purposes of this article and for other purposes as determined by the Legislature.

(d) The State Treasurer may authorize a spending unit to assess and collect a fee to recover or pay the cost of accepting bank, charge, check, credit, or debit cards from amounts collected.

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(e) On or before March 1, 2023, all political subdivisions shall offer a system, with an online presence for acceptance of payments, that will allow persons to submit payments to political subdivisions electronically. Payments that shall be accepted through the required system shall include, but not be limited to, payments or fees for services provided by the political subdivision or any fee, fine, penalty, or other monetary payment collected by the political subdivision. Upon written request from a political subdivision, the State Treasurer may provide services of his or her office to a political subdivision and charge for the services.

(f)(1) The State Treasurer shall propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq*. of this code to implement the provisions of this section.

(2) The State Treasurer is authorized to promulgate legislative rules to establish a system by which the State Treasurer may exempt a political subdivision from the requirements of subsection (e) of this section. The rules authorized by this subsection shall include monetary threshold criteria for granting exemptions, based on the amount of revenue collections and the operations of the political subdivision applying for an exemption.

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§12-3A-7. Method of sale or disposal of personal property.

(a) Notwithstanding any other provision in this code to the contrary, the Treasurer, or any other state spending unit that has the authority to sell or dispose of personal property in its possession, may do so by using electronic commerce.

(b) The sale of property by the Treasurer, or other state spending unit, by using electronic commerce is, for all purposes, deemed a sale of personal property within the State of West Virginia.

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