

SB 510

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STATE OF WEST VIRGINIA

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999



## ENROLLED

SENATE BILL NO. 510

(By Senator Regiore, et al.)



PASSED March 2, 1999

In Effect ninety days from Passage

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SENATE OF WEST VIRGINIA

## ENROLLED

### Senate Bill No. 510

(BY SENATORS PREZIOSO, CRAIGO, SPROUSE, PLYMALE,  
MCKENZIE, MITCHELL, SHARPE, ROSS, BOWMAN, JACKSON,  
MINARD, KESSLER, UNGER AND BALL)

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[Passed March 2, 1999; in effect ninety days from passage.]

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AN ACT to amend and reenact section five-n, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article two, chapter twelve of said code, all relating to payment of taxes and other amounts due state; permitting taxes to be paid by credit, charge or debit card or other commercially acceptable means; authorizing the tax commissioner to promulgate legislative rules; setting forth special provisions for the use of credit, debit or charge cards; and providing for confidentiality of information.

*Be it enacted by the Legislature of West Virginia:*

That section five-n, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one,

article two, chapter twelve of said code be amended and reenacted, all to read as follows:

## CHAPTER 11. TAXATION.

### ARTICLE 10. PROCEDURE AND ADMINISTRATION.

#### §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  
4 crowns) any commercially acceptable means that the  
5 commissioner considers appropriate to the extent and  
6 under the conditions provided in rules proposed by the  
7 commissioner for legislative approval in accordance with  
8 article three, chapter 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,  
11 debit card or charge card received in payment of taxes or  
12 fees or tax stamps or crowns is not duly paid, or is paid  
13 and subsequently charged back to the tax commissioner,  
14 the person by whom the check, money order or other  
15 method of payment was tendered remains liable for  
16 payment of the tax or fee or for the tax stamps or crowns,  
17 and for all legal penalties and additions thereto, to the  
18 same extent as if the check, money order or other method  
19 of payment had not been tendered.

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

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

41 (d) *Bad check charge.* – If any check or money order  
42 tendered in payment of any amount of tax or fee or tax  
43 stamps or crowns or any interest, additions to tax or  
44 penalties is not duly paid, then, in addition to any other  
45 penalties provided by law, there shall be paid as a penalty  
46 by the person who tendered the check, upon written notice  
47 and demand by the tax commissioner, in the same manner  
48 as tax, an amount equal to the service charge which the  
49 bank or other financial institution charged the state for  
50 each check returned to the tax commissioner because the  
51 account is closed or there are insufficient funds in the  
52 account.

53 (e) *Payment by other means.* –

54 (1) *Authority to prescribe rule.* – The tax commissioner  
55 shall propose rules for legislative approval, in accordance  
56 with article three, chapter twenty-nine-a of this code, as  
57 the tax commissioner considers necessary to receive  
58 payment by commercially acceptable means, including  
59 rules that:

60 (A) Specify which methods of payment by commercially  
61 acceptable means are acceptable;

62 (B) Specify when payment by those means shall be  
63 considered received;

64 (C) Identify types of nontax matters related to payment  
65 by those means that are to be resolved by persons ulti-  
66 mately liable for payment and financial intermediaries,  
67 without the involvement of the tax commissioner; and

68 (D) Ensure that tax matters shall be resolved by the tax  
69 commissioner, without the involvement of financial  
70 intermediaries.

71 (2) *Obtaining services.*—The tax commissioner shall use  
72 the state treasurer’s contracts and system for receiving  
73 payments by credit card, debit card, charge card or any  
74 other commercially acceptable means. The tax commis-  
75 sioner may not pay any fee or provide any other consider-  
76 ation in obtaining these services. The state treasurer may  
77 not pay any fee or provide any consideration for receiving  
78 payments of taxes or fees (or in payment for excise tax  
79 stamps and tax crowns) described in this section by credit  
80 card, debit card, charge card or any other commercially  
81 acceptable means, and any cost for processing the payment  
82 shall be included, in advance, in the amount of the trans-  
83 action and assessed to the party making the payment.

84 (3) *Special provisions for use of credit cards.* — If use of  
85 credit cards is accepted as a method of payment of taxes  
86 pursuant to subsection (a):

87 (A) To the extent allowed under federal law, a payment  
88 of taxes or fees collected under this article (or in payment  
89 for excise tax stamps and tax crowns) by a person by use  
90 of a credit card shall not be subject to section 161 of the  
91 Truth in Lending Act (15 U.S.C. 1666), or to any similar  
92 provisions of state law, if the error alleged by the person  
93 is an error relating to the underlying tax liability, rather  
94 than an error relating to the credit card account such as a  
95 computational error or numerical transposition in the  
96 credit card transaction or an issue as to whether the  
97 person authorized payment by use of the credit card;

98 (B) To the extent allowed under federal law, a payment  
99 of taxes or fees collected under this article (or in payment  
100 for excise tax stamps and tax crowns) shall not be subject  
101 to section 170 of the Truth in Lending Act (15 U.S.C.  
102 1666i), or to any similar provisions of state law;

103 (C) To the extent allowed under federal law, a payment  
104 of taxes or fees collected under this article (or in payment  
105 for excise tax stamps and tax crowns) by a person by use  
106 of a debit card shall not be subject to section 908 of the  
107 Electronic Fund Transfer Act (15 U.S.C. 1693f), or to any  
108 similar provisions of state law, if the error alleged by the  
109 person is an error relating to the underlying tax liability,  
110 rather than an error relating to the debit card account

111 such as a computational error or numerical transposition  
112 in the debit card transaction or an issue as to whether the  
113 person authorized payment by use of the debit card;

114 (D) To the extent allowed under federal law, the term  
115 “creditor” under section 103(f) of the Truth in Lending Act  
116 (15 U.S.C. 1602 (f)) shall not include the tax commissioner  
117 with respect to credit card transactions in payment of  
118 taxes or fees collected under this article (or in payment for  
119 excise tax stamps and tax crowns); and

120 (E) Notwithstanding any other provisions of law to the  
121 contrary, in the case of payment made by credit card or  
122 debit card transaction of an amount owed to a person as  
123 the result of the correction of an error under section 161 of  
124 the Truth in Lending Act (15 U.S.C. 1666) or section 908 of  
125 the Electronic Fund Transfer Act (15 U.S.C. 1693f), the tax  
126 commissioner is authorized to provide such amount to  
127 such person as a credit to that person’s credit card or debit  
128 card account through the applicable credit card or debit  
129 card system.

130 (f) *Confidentiality of information.* –

131 (1) *In general.* – Except as otherwise authorized by this  
132 subsection, no person may use or disclose any information  
133 relating to credit card, debit card or charge card transac-  
134 tions other than for purposes directly related to the  
135 processing of the transactions or the billing or collection  
136 of amounts charged or debited pursuant thereto.

137 (2) *Exceptions.* –

138 (A) Credit card, debit card or charge card issuers or  
139 others acting on behalf of the issuers may also use and  
140 disclose the information for purposes directly related to  
141 servicing an issuer’s accounts.

142 (B) Credit card, debit card or charge card issuers or  
143 others directly involved in the processing of credit card,  
144 debit card or charge card transactions or the billing or  
145 collection of amounts charged or debited to the credit  
146 card, debit card or charge card, may also use and disclose  
147 the information for purposes directly related to:

- 148 (i) Statistical risk and profitability assessment;  
149 (ii) Transferring receivables, accounts or interest  
150 therein;  
151 (iii) Auditing the account information;  
152 (iv) Complying with federal, state or local law; and  
153 (v) Properly authorized civil, criminal or regulatory  
154 investigation by federal, state or local authorities.  
155 (3) *Procedures.* – Use and disclosure of information  
156 under this paragraph shall be made only to the extent  
157 authorized by written procedures promulgated by the tax  
158 commissioner.

## CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

### ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

#### §12-2-1. How and to whom taxes and other amounts due the state or any political subdivision, official, depart- ment, board, commission or other collecting agency thereof may be paid.

1 All persons, firms and corporations shall promptly pay  
2 all taxes and other amounts due from them to the state, or  
3 to any political subdivision, official, department, board,  
4 commission or other collecting agency thereof authorized  
5 by law to collect the taxes and others amounts due by any  
6 authorized commercially acceptable means, in money,  
7 United States currency or by check, bank draft, certified  
8 check, cashier's check, post office money order or express  
9 money order payable and delivered to the official, depart-  
10 ment, board, commission or collecting agency thereof  
11 authorized by law to collect the taxes and other amounts  
12 due and having the account upon which the taxes or  
13 amounts due are chargeable against the payer of the taxes  
14 or amounts due. The duly elected or appointed officers of  
15 the state and of its political subdivisions, departments,  
16 boards, commissions and collecting agencies having the  
17 account on which the taxes or other amounts due are  
18 chargeable against the payer of the taxes or other amounts  
19 due and authorized by law to collect the, taxes or other

20 amounts due, and their respective agents, deputies,  
21 assistants and employees shall in no case be the agent of  
22 the payer in and about the collection of the taxes or other  
23 amounts, but shall at all times and under all circumstances  
24 be the agent of the state, its political subdivision, official,  
25 department, board, commission or collecting agency  
26 having the account on which the taxes or amounts are  
27 chargeable against the payer of the taxes or other amounts  
28 due and authorized by law to collect the same.



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

*Wayte Brown*  
.....  
Chairman Senate Committee

*Joe F. Smith*  
.....  
Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

*Darrell K. Brown*  
.....  
Clerk of the Senate

*Gregg Z. Brown*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*Glenn R. Thielen*  
.....  
Speaker House of Delegates

The within..... *approved* ..... this the *9th*  
Day of ..... *March* ....., 1999

*Earl K. Anderson*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date. 13/5/99

Time 3:46pm