

SB700

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
*Regular Session, 2004*



**ENROLLED**

*Committee Substitute for*

SENATE BILL NO. 700

(By Senator Love, et al )



PASSED March 13, 2004

In Effect <sup>90 Days</sup> From Passage

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COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 700**

(SENATORS LOVE, DEMPSEY, SHARPE  
AND MINEAR, *original sponsors*)

\_\_\_\_\_ <sup>90 days</sup>  
[Passed March 13, 2004; in effect <sup>90 days</sup> from passage.]

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AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-7-4a, relating to payments for telecommunications services; providing legislative findings; creating a special revenue account; requiring certain duties of the information services and communications division; requiring state spending units budget for telecommunications services and submit payment or transfer funds to pay for services; authorizing secretary of department of administration to transfer funds to pay for telecommunications services and certain fees and penalties from funds supporting the administration of a spending unit; providing for payment and determination of contested telecommunications charges; requiring payment of telecommunications services within ninety days of receipt of invoice; providing for discontinuance of telecommunications services; authorizing fees for administration of section; and authorizing legislative and emergency rules.

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

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5A-7-4a, to read as follows:

**ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS DIVISION.**

**§5A-7-4a. Payment of legitimate uncontested invoices for telecommunications services; procedures and powers of the information and communications division and secretary of administration.**

1 (a) The Legislature finds that it is in the best interest of  
2 the state, its spending units and those vendors supplying  
3 telecommunications services to the state and its spending  
4 units that any properly registered and qualified vendor  
5 supplying telecommunications services to two or more  
6 spending units under a shared account is entitled to  
7 prompt payment upon presentation of a legitimate uncon-  
8 tested invoice for telecommunications services to the  
9 division, as provided in the following subsections.

10 (b) To facilitate the administration and payment of  
11 telecommunications services, there is hereby created in the  
12 state treasury a special revenue account to be known as  
13 the "Telecommunication Services Payment and Reserve  
14 Fund". All moneys transferred from state spending units  
15 pursuant to the requirements of this section shall be  
16 deposited in the account. Expenditures from the fund  
17 shall be made by the director for the exclusive purposes set  
18 forth in this section: *Provided*, That no more than one  
19 hundred and fifty thousand dollars or the actual amount  
20 collected pursuant to subsection (i) of this section in any  
21 fiscal year, whichever is less, may be expended from the  
22 fund in any fiscal year to defray the costs of administra-  
23 tion of this section.

24 (c) Upon receipt of any telecommunications charges from  
25 a properly registered and qualified vendor, the director  
26 shall fully apportion telecommunications charges among  
27 spending units based on the spending unit's service and

28 usage, as determined by the director. The director shall  
29 send each spending unit a statement of the spending unit's  
30 proportionate share of any telecommunications charges  
31 within thirty days of receipt by the division of the invoice  
32 detailing the telecommunications charges. The statement  
33 is to provide a date of no more than thirty calendar days  
34 from the date the division sends the statement by which  
35 the spending unit shall submit payment or transfer to the  
36 telecommunications services payment and reserve fund all  
37 funds necessary to pay for the spending unit's charges in  
38 full: *Provided*, That the statement sent in last month of  
39 the fiscal year shall provide that the transfer shall be made  
40 by the thirty-first day of July. If feasible for the spending  
41 unit, the preferable method of payment is by intergovern-  
42 mental transfer.

43 (d) All spending units shall budget for telecommunica-  
44 tions service expenses. Prior to the date provided in each  
45 statement sent to a spending unit pursuant to subsection  
46 (c) of this section, each spending unit shall pay or transfer  
47 the statement amount to the telecommunication services  
48 payment and reserve fund.

49 (e) If a spending unit fails to pay or transfer funds by the  
50 date specified in the statement sent pursuant to subsection  
51 (c) of this section, the secretary of the department of  
52 administration shall transfer to the telecommunication  
53 services payment and reserve fund the statement amount  
54 plus an additional penalty in the amount of three percent  
55 of the statement amount from any funds supporting the  
56 administration of that spending unit: *Provided*, That the  
57 secretary shall complete all such transfers by the thirty-  
58 first day of July of each fiscal year. Upon exercising a  
59 transfer under the authority of this subsection, the director  
60 shall provide a notification to the spending unit, including,  
61 but not limited to, the date, time, total amount of the  
62 transfer, statement amount and penalty amount. If a  
63 participating spending unit does not maintain funds in the  
64 state treasury, the secretary may transfer funds by wire

65 from any depository outside the state treasury. A partici-  
66 pating spending unit maintaining funds in depositories  
67 outside the state treasury shall furnish the secretary access  
68 to those funds for the exclusive purposes of this section.

69 (f) If a spending unit contests any portion of its state-  
70 ment, it shall nonetheless remit payment for the entire  
71 statement amount and notify the division in writing within  
72 thirty days of statement receipt by the spending unit. The  
73 secretary shall consider any contested apportionments of  
74 charges and provide a final determination on the appor-  
75 tionment of legitimate charges. Corrections or adjustments  
76 to apportionments may be effected on future transfer  
77 payments: *Provided*, That legitimate vendor charges are to  
78 be fully apportioned. If the basis of the contest is vendor  
79 error, overcharge, service failure, failure to terminate  
80 services as required by the division, or other failure of or  
81 error in vendor performance, the director shall withhold  
82 the contested amount from current or future vendor  
83 payments, pending resolution by the secretary, and the  
84 director shall bring the contested matter to the attention  
85 of the vendor. The director and the vendor shall attempt  
86 to resolve the matter in good faith. Within ninety days of  
87 the receipt of the vendor's invoice or a time period mutu-  
88 ally agreed to by the vendor and secretary, the secretary  
89 shall make the final decision as to the legitimacy of the  
90 contested amount and determine if payment is warranted.  
91 If the final decision of the secretary is to refuse to pay any  
92 amount, the vendor may proceed in accordance with the  
93 provisions of article two, chapter fourteen of this code.

94 (g) The director shall provide for full payment of legiti-  
95 mate, uncontested telecommunications charges within  
96 ninety days of receipt of an invoice detailing the telecom-  
97 munications charges by the division. Payment for the  
98 charges shall be made by the director from the telecommu-  
99 nications services payment and reserve fund.

100 (h) The director may direct the discontinuance of tele-  
101 communications services to any spending unit that fails to

102 comply with the provisions of this section and the vendor  
103 supplying telecommunication services shall comply with  
104 the written direction of the director on discontinuance of  
105 services.

106 (i) To help defray the additional cost of administering  
107 this section, the director may assess a proportional fee of  
108 up to one hundred fifty thousand dollars in aggregate per  
109 fiscal year to the participating spending units based on  
110 each spending unit's portion of service and usage. This fee  
111 is to be included in the statement sent to spending units  
112 pursuant to subsection (c) of this section and transferred  
113 to the telecommunication service payment and reserve  
114 fund by the date specified in the statement for the transfer  
115 of payment.

116 (j) Notwithstanding any other provision of this code to  
117 the contrary, for purposes of this section, an invoice is  
118 considered received by the division on the date on which  
119 the invoice is marked as received by the division, or three  
120 business days after the date of the postmark made by the  
121 United States postal service as evidenced on the envelope  
122 in which the invoice is mailed, whichever is earlier:  
123 *Provided*, That if an invoice is received by the division  
124 prior to the date on which the telecommunications services  
125 covered by the invoice are delivered or fully performed, for  
126 purposes of determining the ninety-day time period for  
127 payment in subsection (g) of this section, the invoice is  
128 considered received on the date on which the telecommu-  
129 nications services covered by the invoice were delivered or  
130 fully performed.

131 (k) For purposes of this section, "telecommunications  
132 service" means and includes not only telephone service  
133 regulated under chapter twenty-four of this code or under  
134 federal law, but also may include, at the discretion of the  
135 secretary of administration, wireless service, voice over  
136 internet protocol service, internet service and any other  
137 service or equipment used for the electronic transmission  
138 of voice or data.

139 (l) The director may propose rules for legislative ap-  
140 proval in accordance with the provisions of article three,  
141 chapter twenty-nine-a of this code to effectuate the  
142 purposes of this section. The initial rule filed by the  
143 division pursuant to this subsection shall be filed as an  
144 emergency rule.

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

*Calley I. H...*  
.....  
Chairman Senate Committee

*Greg Butcher*  
.....  
Chairman House Committee

Originated in the Senate.

In effect <sup>ninety days or less</sup> from passage.

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

*Gregory D. Boy*  
.....  
Clerk of the House of Delegates

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

*Robert Stiss*  
.....  
Speaker House of Delegates

The within *is approved* this the *7th*  
Day of *April*, 2004.  
*Bob Wise*  
.....  
Governor

PRESENTED TO THE

GOVERNOR/

DATE 3/22/04

TIME 4:16p