
WEST VIRGINIA CODE CHAPTER 7
ARTICLE 6

WV Legislature

§7-6-1. Designation of depositories.

On or before June 30, of each year, the county commission of every county shall, by order of record, designate all of the banking institutions, as defined in section two, article one, chapter thirty-one-a of this code, situated in the county and duly incorporated under the laws of any state, or organized under the laws of the United States, as depositories of public moneys: Provided, That in any county where no such banking institutions exist, or where such banking institutions fail, refuse or neglect to comply with all the provisions and conditions of this article, the county commission shall designate some qualified banking institution in some other county of this state convenient to the county seat. Risk and expense of making deposits in county depositories located outside of the county seat shall be borne by the banking institution in which the deposits are made. When any banking institution, designated by the county commission as provided by this section, has complied with all of the requirements and provisions of this article, the commission shall declare it a county depository.

§7-6-2. Bond of depositories.

(a) No designation is binding on any county, nor shall any public money be deposited thereunder in excess of the amount insured by an agency of the federal government, until the banking institution designated executes a bond with good and sufficient sureties, to be accepted and approved by the county commission, payable to the State of West Virginia, in a sum as the county commission shall direct, and which may not be less than the amount of the deposit that exceeds the amount insured by an agency of the federal government in the depository at any one time. The bond shall be executed by at least four resident freeholders as sureties owning in the aggregate unencumbered real estate having an assessed valuation thereon equal to the penalty of the bond, or by a fidelity or indemnity company authorized to do business within the state, satisfactory to, and acceptable by the county commission, and having not less than \$600,000 capital; and the bond shall be conditioned for the receipt, safekeeping, and payment over of all money which may be deposited in or come under the custody of the banking institution designated a county depository under the provisions hereof, together with the interest thereon at the rate specified by this article; and the bond shall be further conditioned for the faithful performance, by the banking institution so designated, of all the duties imposed by this article upon a depository of public moneys: *Provided*, That the clerk of the county commission shall keep a record of each surety on all personal bonds given as hereinbefore provided and the clerk shall notify the county commission of every recorded conveyance of real estate made by any surety on said personal bond.

(b) An action shall lie on the bond at the instance of the county commission, or the sheriff, for the recovery of any money deposited in the depository, upon failure or default of the depository to fully and faithfully account for and pay over any and all public moneys deposited by the sheriff and of all interests earned and accrued thereon as required by this article. A bond may not be accepted by the county commission until it has been submitted to the prosecuting attorney, and certified by him or her to be in due and legal form, and conformable to the provisions of this article, which certificate shall be endorsed thereon.

(c) The county commission may, in lieu of the bond required pursuant to this section, accept as security for money deposited as aforesaid, interest-bearing securities of the United States, or of a state, county, district or municipal corporation, or of the federal land banks, or endorsed county and district warrants of the county in which the depository is located, or letters of credit of the federal land banks, or federal home loan banks, or any other letters of credit approved by the treasurer; the face value of which securities may not be less than the sum hereinbefore specified as the amount to be named in the bond in lieu of which the securities are accepted; or the county commission may accept the securities as partial security to the extent of their face value for the money so deposited, and require bond for the remainder of the full amount hereinbefore specified, to be named in the bond, and in the bond so required, the acceptance of securities as partial security, and the extent thereof, shall be set forth.

(d) A banking institution is not required to provide a bond or security in lieu of bond

pursuant to this section if the public deposits accepted are placed in certificates of deposit meeting the following requirements:

- (1) The funds are invested through a designated state depository selected by the county;
- (2) The selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the county;
- (3) The full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation;
- (4) The selected depository acts as custodian for the county with respect to such certificates of deposit issued for the county's account; and
- (5) On the same date the public moneys are redeposited by the public depository, the public depository may, in its sole discretion, choose whether to receive deposits, in any amount, from other banks, savings banks, or savings and loan associations.

(e) A banking institution is not required to provide a bond or security in lieu of bond pursuant to this section for deposits with any duly designated state depository that is selected and authorized by the county commission to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions:

- (1) On or after the date that the county commission funds are received, the selected depository:
 - (A) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and
 - (B) Serves as custodian for the county commission with respect to the funds deposited into such accounts;
- (2) The county commission funds deposited in a selected depository in accordance with this subsection and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance with subsection (a) or (c) of this section;
- (3) The full amount of the funds of the county commission redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to this subsection, plus accrued interest, if any, shall be insured by the Federal Deposit Insurance Corporation; and
- (4) On the same date that the funds of the county commission are redeposited pursuant to this subsection, the selected depository receives an amount of deposits from customers of other financial institutions through the direct placement program that are equal to the

amount of the county commission's funds redeposited by the selected depository.

(f) The hypothecation of the securities shall be by proper legal transfer as collateral security to protect and indemnify by trust any and all loss in case of any default on the part of the banking institution in its capacity as depository as aforesaid. All the securities shall be delivered to or deposited for the account of the county commission, and withdrawal or substitution thereof may be permitted from time to time upon approval by the county commission by order of record, but the collateral security shall be released only by order of record of the county commission when satisfied that full and faithful accounting and payment of all the moneys has been made under the provisions hereof. In the event actual possession of the hypothecated securities are delivered to the county commission, it shall make ample provision for the safekeeping thereof and the interest thereon when paid shall be turned over to the banking institution, so long as it is not in default as aforesaid. The county commission may permit the deposit under proper receipt of the securities with one or more banking institutions within or without the State of West Virginia and may contract with any institution for safekeeping and exchange of any hypothecated securities and may prescribe the rules for handling and protecting the same.

§7-6-2a. Dealer recovery fund created.

(a) There is hereby created a special fund in the State Treasury which is to be designated the "Dealer Recovery Fund." The fund shall consist of certain moneys received from persons engaged in the business of selling new or used motor vehicles, new or used motorcycles, trailers, semi-trailers or recreational vehicles or from grants, gifts, bequests or awards arising out of the settlement or adjudication of a claim. The fund is not to be treated by the Auditor and Treasurer as part of the general revenue of the state. The fund is to be a special revolving fund paid out upon order of the Commissioner of Motor Vehicles based on the recommendation of the dealer recovery fund control board created in this section, solely for the purposes specified in this section. The commissioner may use up to one percent of funds from the dealer recovery fund for the administrative expenses of operating the dealer recovery fund program.

(b) The dealer recovery fund control board shall consist of the Commissioner of Motor Vehicles or his or her designee, the Attorney General's designee representing the Office of Consumer Protection and one representative selected by the motor vehicle dealer's advisory board. The Commissioner of Motor Vehicles or his or her designee shall serve as chair and the board shall meet at least once a year during the month of July, and as required by the commissioner. The commissioner may propose rules for promulgation in accordance with article three, chapter twenty-nine-a of this code that are necessary to effectuate the provisions of this section. The commissioner may employ the necessary staff needed to operate the program. The board may prorate the amount paid on claims when the amount of valid claims submitted would exceed thirty-three percent of the fund. However, claims presented by the Division of Motor Vehicles for taxes and fees shall be paid in full. The board may purchase insurance at a cost not to exceed one percent of the fund to cover extraordinary or excess claims from the fund.

(c) Every applicant for either an original dealer license or renewal of an existing dealer license of the type enumerated in subsection (a) of this section shall pay, in addition to any other license fee, an annual dealer recovery fund fee of one hundred fifty dollars. All dealers shall continue to maintain a surety bond as required by this article and the dealer recovery fund payment unless exempt by one of the following requirements:

(1) Any dealer who, for the three years immediately preceding assessment of the fees, has not had a claim paid against their bond or against the dealer recovery fund, whose license has not been suspended or revoked and who has not been assessed any civil penalties is not required to continue to keep the bond required by this article. However, no dealer can submit a claim against the fund unless it has contributed to the fund for at least three years.

(2) If the dealer recovery fund reaches or exceeds the amount of three million dollars as of the first day of July of any year, a dealer who meets the requirements of subdivision (1) of this subsection, is exempt from payment of the annual dealer recovery fund fee. However, if the fund should, as of the first day of April of any year, drop below three million dollars, all dealers, regardless of any previous exemption shall pay the annual dealer recovery fee of

one hundred fifty dollars. The exemption prescribed in subdivision (1) of this subsection remains in effect regardless of the status of the fund.

(d) The dealer recovery fund control board may consider payment only after any dealer surety bond required pursuant to the provisions of section four of this article has been exhausted.

(e) When the fund reaches two hundred fifty thousand dollars, the board shall consider claims for payment.

(f) Claims against the fund are not to be made for any act or omission which occurred prior to the first day of July, two thousand two.

(g) Claims for payment shall be submitted within six months of the date of sale or the date the division is made aware of the claim.

(h) The board shall pay claims in the following order:

(1) Claims submitted by the Division of Motor Vehicles for unpaid taxes and fees;

(2) Claims submitted by a retail purchaser of a vehicle from a dealer covered by the fund with an undisclosed lien or a retail purchaser of a vehicle from a dealer covered by the fund who finds that the lien on the vehicle traded in has not been satisfied by the selling dealer if the lien satisfaction was a condition of the purchase agreement;

(3) Claims submitted by a motor vehicle dealer contributing to the fund, which has purchased a vehicle or vehicles from another dealer covered by the fund with an undisclosed lien;

(4) Claims submitted by a retail purchaser of third party goods or services from a dealer covered by the fund for the unpaid charges when the dealer fails to pay the third party for the goods or services; or

(5) Claims submitted by the Division of Motor Vehicles, a retail purchaser or a motor vehicle dealer contributing to the fund, not authorized by subdivisions (1) through (4) of this subsection, but otherwise payable under the bond described in section four of this article, may be considered for payment by the board up to the amount of fifty thousand dollars for each licensing year the West Virginia dealer that is the subject of the complaint did not maintain the bond: Provided, That the board may not consider claims submitted by or on behalf of a financial institution for money owed by a dealer upon a loan to a dealer or credit extended to a dealer that is secured by a lien upon the inventory of the dealer, commonly referred to as a floor planner.

(i) The maximum claim against the fund for any unpaid lien of a used vehicle is the unpaid balance of the lien up to the loan value of the vehicle as of the date of the sale or other transaction as shown by a generally accepted motor vehicle value guide. The maximum

claim against the fund for any new or unused vehicle is the amount of the invoice less any amounts rebated or to be rebated to the dealer from the manufacturer. Payment is only to be made to a secured party who agrees to accept payment from the dealer recovery fund and who accepts the payment in full settlement of any claims, and who releases the lien and the title, if applicable, prior to receiving payment. Any dealer who agrees to accept payment from the dealer recovery fund shall release the title prior to receiving payment.

(j) On payment by the board to a claimant from the fund, the board shall immediately notify the licensee against whom a claim was paid and request full reimbursement within thirty days of notification. If a dealer fails to fully reimburse the board within the specified period of time, the commissioner shall immediately and without prior hearing revoke the dealer license of dealer against whom the claim was paid. No applicant with an unpaid claim is eligible for renewal or relicensure until the full amount of the reimbursement plus interest as determined by the board is paid to the fund. Nothing in this section shall limit the authority of the commissioner to suspend, revoke or levy civil penalties against a dealer, nor shall full repayment of the amount owed to the fund necessarily nullify or modify the effect of any action by the commissioner.

(k) Nothing in this section shall limit the right for any person to seek relief through civil action against any other person.

(l) The provisions of this section do not apply to those class DTR dealers in the business of selling manufactured housing and covered by the state manufactured housing recovery fund established by the Division of Labor pursuant to a legislative rule.

§7-6-3. Additional security; failure of depository to comply with article; removal of moneys; cessation of business.

The banking institutions designated in the manner hereinbefore provided shall, upon the acceptance by the county court of the bond and/or upon the hypothecation of the securities, as provided for hereinbefore, be the depositories of public moneys, and remain such for one year, but the county court, at any time it deems the same necessary, may require additional security from a depository in such sum as the court shall by order designate; and if a depository refuse or neglect, for the period prescribed by the court, to give such additional security, or to comply with the provisions of this article, the court may order the removal of the public moneys therefrom to some other depository and if no other county depository is available at the time, then to some reliable banking institution to be the depository thereof temporarily. Such removal, and all other removals, ordered by the county court under the provisions of this article, shall be made by order of record and upon the check of the county treasurer, countersigned by the county clerk, after notice to such depository. In the event any county depository shall cease to do business or shall suspend business, its rights as a depository shall cease, and the funds on deposit with it shall be transferred to the other depositories of the county, but in the event there is no other approved depository in the county, and pending the designation and approval of another depository, the county treasurer shall deposit public funds coming into his hands, in some reliable banking institution, designated by the county court as a temporary depository, until a depository is designated and approved in the manner herein prescribed. If the money, in case of such removal, be deposited in a banking institution, designated as a temporary depository, such banking institution shall, before the receipt by it of any such money, enter into a bond or hypothecate securities as required by this article; and the county court shall at once proceed to designate a new depository under this article.

§7-6-4. Deposit and disbursement of moneys by sheriff.

The sheriff, upon receipt of a certified copy of the order of the county court, showing that a depository has been designated and bond accepted in compliance with the provisions of this article, and naming the depository or depositories, shall deposit therein to the credit of the county treasurer all public money in his possession, except such as may be necessary to meet current demands; and, thereafter, he shall make daily deposits in the public depositories of all public money received by him, except as hereinafter provided, the deposit of such money to be made as early as practicable after the receipt or collection thereof, and such money shall be payable by the depository only on an order issued by the county court, after such order has been endorsed by the county treasurer directing payment by the depository. If at any time the cash in the hands of the sheriff is not sufficient to meet current demands, he is authorized to withdraw sufficient cash from the depository to meet such current demands, such withdrawals to be made by check drawn by the sheriff and countersigned by the county clerk. Such current demands shall not be anticipated more than a week in advance. All moneys due the sheriff are to be drawn from the depository on an order issued by the sheriff. At the end of each month the president and clerk of the county court shall sign proper orders on the sheriff, in his favor, to pay him the moneys due him. All moneys belonging to the state, or any municipality, or Board of Education, shall be disbursed from the depository on a check drawn by the sheriff, payable to the Auditor of the State of West Virginia, or to the treasurer of the municipality or to the treasurer of the county board of education, unless the sheriff is designated as the treasurer, as provided in section six, article nine, chapter eighteen of this code.

§7-6-5. Interest on deposits.

The county treasurer is authorized to establish with such depositories two accounts, one to be designated "demand deposit account" and the other to be designated "time deposit account." When it appears to any of the various fiscal bodies of the county that funds on deposit in its demand deposit account exceed the current requirements or demands, or that funds should be deposited in the time deposit account, and that a transfer or deposit of such funds or a portion thereof to or in the time deposit account would earn interest thereon, the treasurer shall, with the approval in writing of each fiscal body whose funds are involved, transfer or deposit such funds or a portion of such funds to said time deposit account.

The depositories shall pay interest on public funds deposited therein in time deposit accounts at a rate of interest equal to but not more than that paid by such depositories on private funds deposited in similar time deposit accounts. Nothing herein contained shall be construed as requiring the transfer or deposit of any portion of public funds to time deposit accounts and such shall not be done except at the direction of a fiscal body. When interest is credited to any such time deposit account, the depository shall report in writing the amount thereof to the clerk of the county court and the treasurer, each separately, before noon of the next business day. All of such interest shall be allocated by the treasurer to each fiscal body whose funds were on deposit in such time deposit account, such allocation to be made on the basis of the amount of funds of each fiscal body in such time deposit account and the length of time each body's funds were in such account. Within ten days after receipt of the depository's report showing that interest has been credited to such time deposit account, the treasurer shall make the foregoing allocation of interest and report the same to each of the fiscal bodies whose funds are involved.

§7-6-5a. County treasurer authorized to make funds available to state investments; allocation of income.

Notwithstanding any other provision of this code, when it appears to any of the various fiscal bodies of the county that funds on deposit in its demand deposit account exceed the current requirements or demands, and it further be determined by the county treasurer that the available interest rate offered by an acceptable depository in such treasurer's county be less than the interest rate, net of any administrative fees, offered it through state investments, the county treasurer may, with the approval in writing of each fiscal body whose funds are involved, make such funds available for investment by the West Virginia Investment Management Board in accordance with the provisions of §12-6-1 *et seq.* of this code or the West Virginia Board of Treasury Investments in accordance with the provisions of §12-6C-1 *et seq.* of this code.

Any income earned on such investment shall be allocated by such treasurer to the fiscal body whose funds were made available, such allocation to be made in accordance with the accounting and allocation principles established by the West Virginia Investment Management Board or the West Virginia Board of Treasury Investments, as applicable.

§7-6-6. Monthly statement of amount of deposits.

On the first business day of each month a county depository under the provisions of this article shall furnish to the clerk of the county court a written statement, showing the amount on deposit to the credit of the county treasurer at the close of each day of the preceding month, which statement shall be filed and kept in the office of the clerk of the county court, as part of the public records.

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§7-6-7. Account of deposits and disbursements.

The treasurer shall keep an account with each depository showing each deposit and disbursement. The depository upon payment of any order or draft drawn by authority of the county court or Board of Education on the treasurer, and indorsed by for payment, or upon payment of any check drawn by the treasurer for the purposes herein authorized, shall cancel the same, showing clearly the payment thereof and the date of payment. The orders or drafts and checks so paid shall be delivered by the depository to the treasurer upon his demand, and the orders or drafts shall be by preserved for settlement with the county court, and the checks shall be filed and preserved as part of the records of his office.

§7-6-8. Meaning of "public moneys."

The term "public moneys," as used in this article, shall include all money which by law the sheriff in his capacity as such, and as treasurer of the county and districts, is authorized to collect, receive and disburse for public purposes, including state, county, districts, school districts, independent school districts and municipalities.

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§7-6-9. Liability of sheriff for violation of depository law.

If any sheriff shall willfully fail, refuse or neglect to comply with the requirements and provisions of this article, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding \$500, or confined in the county jail not exceeding six months, or both, and shall forfeit his office. When the sheriff shall have fully complied with all the provisions of this article, he shall not be held personally liable on account of any loss that the county or any district may sustain by reason of the default or failure of any such depository that has given bond approved by the county court.