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66

ENROLLED BILL

Senate Bill No. 66

(By Mr. Watkins)

Passed March 11, 1931

In Effect Ninety days from Passage

Originated in the Senate Takes effect ninety days from Passage
M. S. Rogers Clerk of the Senate.
Clerk of the House of Delegates.

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Chairman House Committee.
Chairman Senate Committee.

ENROLLED BILL

(S. B. No. 66)

[Passed March 11, 1931; in effect ninety days from passage.]

AN ACT to expedite and simplify the collection and payment by
banks of checks and other instruments for the payment of
money.

Be it enacted by the Legislature of West Virginia:

Section 1. For the purposes of this act:

- 2 (a) The term "bank" shall include any person, firm or cor-
3 poration engaged in the business of receiving and paying de-
4 posits of money within this state. A branch or office of any
5 such bank shall be deemed a bank for the purpose of this act;
- 6 (b) The term "item" means any check, note or other in-
7 strument providing for the payment of money.

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Chairman Senate Committee.

Amos W. Adams
Chairman House Committee.

Sec. 2. Except as otherwise provided by agreement and ex-
cept as to subsequent holders of a negotiable instrument payable
to bearer or indorsed specially or in blank, where an item is
deposited or received for collection, the bank of deposit shall
be agent of the depositor for its collection and each subsequent
collecting bank shall be sub-agent of the depositor but shall be
authorized to follow the instructions of its immediate forward-
ing bank and any credit given by any such agent or sub-agent
bank therefor shall be revocable until such time as the proceeds
are received in actual money or an unconditional credit given
on the books of another bank, which such agent has requested
or accepted. Where any such bank allows any revocable credit
for an item to be withdrawn, such agency relation shall never-
theless continue except the bank shall have all the rights of an
owner thereof against prior and subsequent parties to the extent
of the amount withdrawn.

Sec. 3. A credit given by a bank for an item drawn on or
payable at such bank shall be provisional, subject to revocation
at or before the end of the day on which the item is deposited
in the event the item is found not payable for any reason.
Whenever a credit is given for an item deposited after banking

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6 hours such right of revocation may be exercised during the fol-
7 lowing business day.

Sec. 4. An indorsement of an item by the payee or other
2 depositor "for deposit" shall be deemed a restrictive indorse-
3 ment and indicate that the indorsee bank is an agent for collec-
4 tion and not owner of the item.

5 An indorsement "pay any bank or banker" or having equiva-
6 lent words shall be deemed a restrictive indorsement and shall
7 indicate the creation of an agency relation in any subsequent
8 bank to whom the paper is forwarded unless coupled with words
9 indicating the creation of a trustee relationship; and such in-
10 dorsement or other restrictive indorsement whether creating an
11 agency or trustee relationship shall constitute a guaranty by
12 the indorser to all subsequent holders and to the drawee or
13 payor of the genuineness of and the authority to make prior
14 indorsements and also to save the drawee or payor harmless in
15 the event any prior indorsement appearing thereon is defective
16 or irregular in any respect unless such indorsement is coupled
17 with appropriate words disclaiming such liability as guarantor.

18 Where a deposited item is payable to bearer or indorsed by
19 the depositor in blank or by special indorsement, the fact that

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20 such item is so payable or indorsed shall not change the relation
21 of agent of the bank of deposit to the depositor, but subsequent
22 holders shall have the right to rely on the presumption that the
23 bank of deposit is the owner of the item. The indorsement of
24 an item by the bank of deposit or by any subsequent holder in
25 blank or by special indorsement or its delivery when payable
26 to bearer, shall carry the presumption that the indorsee or
27 transferee is owner provided there is nothing upon the face of
28 the paper or in any prior indorsement to indicate an agency or
29 trustee relation of any prior party. But where an item is
30 deposited or is received for collection indorsed specially or in
31 blank, the bank may convert such an indorsement into a re-
32 strictive indorsement by writing over the signature of the in-
33 dorser the words "for deposit" or "for collection," or other
34 restrictive words to negative the presumption that such bank of
35 deposit or indorsee bank is owner; and in the case of an item
36 deposited or received for collection payable to bearer, may
37 negative such presumption by indorsing thereon the words "re-
38 ceived for deposit" or "received for collection" or words of
39 like import.

Sec. 5. It shall be the duty of the initial or any subsequent

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2 agent collecting bank to exercise ordinary care in the collection
3 of an item and when such duty is performed such agent bank
4 shall not be responsible if for any cause payment is not received
5 in money or an unconditional credit given on the books of an-
6 other bank, which such agent bank has requested or accepted.
7 An initial or subsequent agent collecting bank shall be liable
8 for its own lack of exercise of ordinary care but shall not be
9 liable for the neglect, misconduct, mistakes or defaults of any
10 other agent bank or of the drawee or payor bank.

Sec. 6. (a) Where an item is received on deposit or by a
2 subsequent agent bank for collection, payable in another town
3 or city, it shall be deemed the exercise of ordinary care to for-
4 ward such item by mail, not later than the business day next
5 following its receipt either (*first*) direct to the drawee or payor
6 in the event such drawee or payor is a bank or (*second*) to an-
7 other bank collecting agent according to the usual banking cus-
8 tom, either located in the town or city where the item is payable
9 or in another town or city;

10 (b) Where an item is received on deposit or by a subsequent
11 agent bank for collection, payable by or at another bank in the
12 same town or city in which such agent bank is located, it shall

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13 be deemed the exercise of ordinary care to present the item for
14 payment at any time not later than the next business day fol-
15 lowing the day on which the item is received either (*first*) at the
16 counter of the drawee or payor by agent or messenger or
17 (*second*) through the local clearing house under the regular
18 established procedure, or according to the usual banking custom
19 where the collecting or payor bank is located in an outlying
20 district;

21 (c) The designation of the above methods shall not exclude
22 any other method of forwarding or presentment which under
23 existing rules of law would constitute ordinary care.

Sec. 7. Where the item is received by mail by a solvent
2 drawee or payor bank, it shall be deemed paid when the amount
3 is finally charged to the account of the maker or drawer.

Sec. 8. Where an agent bank forwards an item for collection,
2 it shall not be responsible for its loss or destruction in transit
3 or, when in the possession of others, for its inability to repossess
4 itself thereof, provided there has been no lack of ordinary care
5 on its part.

Sec. 9. Where ordinary care is exercised, any agent collecting
2 bank may receive in payment of an item without becoming

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3 responsible as debtor therefor, whether presented by mail,
4 through the clearing house or over the counter of the drawee or
5 payor, in lieu of money, either (a) the check or draft of the
6 drawee or payor upon another bank or (b) the check or draft
7 of any other bank upon any bank other than the drawee or
8 payor of the item or (c) such method of settlement as may be
9 customary in a local clearing house or between clearing banks
10 or otherwise: *Provided*, That whenever such agent collecting
11 bank shall request or accept in payment an unconditional credit
12 which has been given to it on the books of the drawee or payor
13 or on the books of any other bank, such agent collecting bank
14 shall become debtor for such item and shall be responsible there-
15 for as if the proceeds were actually received by it in money.

Sec. 10. Where ordinary care is exercised, any agent collect-
2 ing bank may receive from any subsequent bank in the chain of
3 collection in remittance for an item which has been paid, in
4 lieu of money, the check or draft of the remitting bank upon
5 any bank other than itself or the drawee or payor of the item
6 or such other method of settlement as may be customary: *Pro-*
7 *vided*, That whenever such agent collecting bank shall request
8 or accept an unconditional credit which has been given to it on

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9 the books of the remitting bank or on the books of any other
10 bank, such agent collecting bank shall become debtor for such
11 item and shall be responsible therefor as if the proceeds were
12 actually received by it in money.

Sec. 11. Where an item is duly presented by mail to the
2 drawee or payor, whether or not the same has been charged to
3 the account of the maker or drawer thereof or returned to such
4 maker or drawer, the agent collecting bank so presenting may,
5 at its election, exercised with reasonable diligence, treat such
6 item as dishonored by non-payment and recourse may be had
7 upon prior parties thereto in any of the following cases:

8 *First:* Where the check or draft of the drawee or payor bank
9 upon another bank received in payment therefor shall not be
10 paid in due course;

11 *Second:* Where the drawee or payor bank shall without re-
12 quest or authority tender as payment its own check or draft
13 upon itself or other instrument upon which it is primarily
14 liable;

15 *Third:* Where the drawee or payor bank shall give an un-
16 requested or unauthorized credit therefor on its books or the
16-a books of another bank; or

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17 *Fourth:* Where the drawee or payor shall retain such item
18 without remitting therefor on the day of receipt or on the day
19 of maturity if payable otherwise than on demand and received
20 by it prior to or on such day of maturity:

21 *Provided, however,* That in any case where the drawee or
22 payor bank shall return any such item unpaid not later than
23 the day of receipt or of maturity as aforesaid in the exercise
24 of its right to make payment only at its own counter, such item
25 cannot be treated as dishonored by non-payment and the delay
26 caused thereby shall not relieve prior parties from liability:

27 *Provided further,* That no agent collecting bank shall be
28 liable to the owner of an item where, in the exercise of ordinary
29 care in the interest of such owner, it makes or does not make
30 the election above provided or takes such steps as it may deem
31 necessary in cases two, three and four above.

Sec. 12. In case of the dishonor of an item duly presented
2 by mail as provided for in the next preceding section, notice
3 of dishonor of such item to prior parties shall be sufficient if
4 given with reasonable diligence after such dishonor; and further
5 in the event of failure to obtain the return of any such item
6 notice of dishonor may be given upon a copy or written par-

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Chairman House Committee.

7 tieulars thereof, and delay in giving notice of dishonor caused
8 by an attempt with reasonable diligence to obtain return of such
9 item shall be excused.

Sec. 13. *First:* When the drawee or payor, or any other
2 agent collecting bank shall fail or be closed for business by
3 (official to be designated) or by action of the board of directors
4 or by other proper legal action, after an item shall be mailed
5 or otherwise entrusted to it for collection or payment but be-
6 fore the actual collection or payment thereof, it shall be the
7 duty of the receiver or other official in charge of its assets to
8 return such item, if same is in his possession, to the forwarding
9 or presenting bank with reasonable diligence;

10 *Second:* Except in cases where an item or items is treated as
11 dishonored by nonpayment as provided in section eleven, when
12 a drawee or payor bank has presented to it for payment an
13 item or items drawn upon or payable by or at such bank and
14 at the time has on deposit to the credit of the maker or drawer
15 an amount equal to such item or items and such drawee or
16 payor shall fail or close for business as above, after having
17 charged such item or items to the account of the maker or
18 drawer thereof or otherwise discharged his liability thereon but

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19 without such item or items having been paid or settled for by
20 the drawee or payor either in money or by an unconditional
21 credit given on its books or on the books of any other bank,
22 which has been requested or accepted so as to constitute such
23 drawee or payor or other bank debtor therefor, the assets of
24 such drawee or payor shall be impressed with a trust in favor
25 of the owner or owners of such item or items for the amount
26 thereof, or for the balance payable upon a number of items
27 which have been exchanged, and such owner or owners shall be
28 entitled to a preferred claim upon such assets, irrespective of
29 whether the fund representing such item or items can be traced
30 and identified as part of such assets or has been intermingled
31 with or converted into other assets of such failed bank;

32 *Third:* Where an agent collecting bank other than the drawee
33 or payor shall fail or be closed for business as above, after
34 having received in any form the proceeds of an item or items
35 entrusted to it for collection, but without such item or items
36 having been paid or remitted for by it either in money or by an
37 unconditional credit given on its books or on the books of any
38 other bank which has been requested or accepted so as to con-
39 stitute such failed collecting or other bank debtor therefor, the

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Chairman House Committee.

Joseph D. Smith

Chairman Senate Committee.

40 assets of such agent collecting bank which has failed or been
41 closed for business as above shall be impressed with a trust in
42 favor of the owner or owners of such item or items for the
43 amount of such proceeds and such owner or owners shall be
44 entitled to a preferred claim upon such assets, irrespective of
45 whether the fund representing such item or items can be traced
46 and identified as part of such assets or has been intermingled
47 with or converted into other assets of such failed bank.

Sec. 14. The provisions of this act shall not apply to trans-
2 actions taking place prior to the time when it takes effect.

Sec. 15. In any case not provided for in this act the rules
2 of law and equity, including the law merchant and those rules
3 of law and equity relating to trusts, agency, negotiable instru-
4 ments and banking, shall continue to apply.

Sec. 16. This act shall be so interpreted and construed as to
2 effectuate its general purpose to make uniform the law of those
3 states which enact it.

Sec. 17. This act may be cited as the bank collection code.

Sec. 18. All acts or parts of acts inconsistent with this act
are hereby repealed.

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Joseph W. D. Smith
Chairman Senate Committee.

George W. D. Smith
Chairman House Committee.

J. Alfred Taylor
Speaker of the House of Delegates.

R. H. Kell
Clerk of the House of Delegates.

M. J. Woods
President of the Senate.

M. S. Hodges
Clerk of the Senate.

The within is.....

this.....day of....., 1931.

.....
Governor.

Filed in the office of the Secretary of State
of West Virginia. **MAR 17 1931**
GEORGE W. SMITH,
Secretary of State.