

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

ENROLLED

SENATE BILL NO. 186

(By Mr. Cram, Mr. President, and
Mr. Carrigan)

PASSED February 18, 1967

In Effect ninety days from Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-2-67

#186

ENROLLED

Senate Bill No. 186

(By MR. CARSON, MR. PRESIDENT, and MR. CARRIGAN)

[Passed February 18, 1967; in effect ninety days from passage.]

AN ACT to amend chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four, relating to the business of issuing and selling checks, drafts, money orders, personal money orders, or other instruments for the transmission or payment of money; requiring proof of financial responsibility to engage in such business and the deposit of adequate security; providing for an annual fee to engage in such business; providing certain exemptions; providing for judicial review; authorizing actions for injunctive relief; providing criminal penalties; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article four, to read as follows:

**ARTICLE 4. ISSUANCE AND SALE OF CHECKS, DRAFTS,
MONEY ORDERS, ETC.**

§32-4-1. Definitions.

As used in this article:

2 (1) "Person" means any individual, partnership, asso-
3 ciation, joint stock association, trust, or corporation, but
4 does not include the United States of America, any de-
5 partment, agency, commission or officer thereof, the state
6 of West Virginia, any department, agency, commission
7 or officer thereof, or any political subdivision of or any
8 municipality in this state;

9 (2) "Commissioner" means the commissioner of bank-
10 ing of this state;

11 (3) "Check" means any check, draft, money order, per-
12 sonal money order, or other instrument for the trans-
13 mission or payment of money;

14 (4) “Personal money order” means any instrument
15 for the transmission or payment of money in relation to
16 which the purchaser or remitter appoints or purports to
17 appoint the seller thereof as his agent for the receipt,
18 transmission, or handling of money, whether such instru-
19 ment be signed by the seller or by the purchaser or re-
20 mitter or some other person;

21 (5) “Securities” means all bonds, debentures or other
22 evidences of indebtedness (a) issued by the United States
23 of America or any agency thereof, or guaranteed by the
24 United States of America, or for which the credit of the
25 United States of America or any agency thereof is pledged
26 for the payment of the principal and interest thereof; and/
27 or (b) which are direct general obligations of this state, or
28 any other state if unconditionally guaranteed as to the
29 principal and interest by such other state and if such other
30 state has the power to levy taxes for the payment of the
31 principal and interest thereof and is not in default in the
32 payment of any part of the principal or interest owing by
33 it upon any part of its funded indebtedness; and/or (c)
34 which are general obligations of any county, school district

35 or municipality in this state issued pursuant to law and
36 payable from ad valorem taxes levied on all of the taxable
37 property located therein, if such county, school district or
38 municipality is not in default in the payment of any part
39 of the principal or interest on any debt evidenced by its
40 bonds, debentures or other evidences of indebtedness.

§32-4-2. Legislative findings and declaration of public policy.

The Legislature hereby determines and finds that many
2 innocent persons in various states have suffered severe
3 financial losses as a result of financially irresponsible per-
4 sons engaging in the business of issuing and selling checks;
5 that many of these states have, following the discovery
6 of such losses, promptly enacted legislation to assure that
7 persons engaged in the business of issuing and selling
8 checks are financially responsible; and that it is impera-
9 tive that legislation be enacted to assure that persons
10 engaged in the business of issuing and selling checks in
11 this state are financially responsible. It is, therefore,
12 declared to be the public policy of this state that the busi-
13 ness of issuing and selling checks affects the general wel-
14 fare of this state and its individual citizens; and that

15 financial losses as aforesaid may best be prevented in
16 this state and the interests of the citizens of this state
17 best served by requiring persons now engaged or to be
18 engaged in the business of issuing and selling checks to
19 meet the requirements set forth in this article.

**§32-4-3. Financial responsibility must be established and
security given; fee required.**

On and after the effective date of this article, no person
2 shall engage in the business of issuing and selling checks
3 as a service or for a fee or other compensation, unless (a)
4 the net worth of such person is at all times at least fifty
5 thousand dollars, computed according to generally ac-
6 cepted accounting principles and shown by financial
7 statements filed with and satisfactory to the commissioner,
8 and (b) such person either (1) keeps on deposit at all
9 times with the commissioner, or a bank in this state
10 designated by such person and approved for such pur-
11 pose by the commissioner, one hundred thousand dollars in
12 cash or securities satisfactory to the commissioner, or
13 (2) posts and maintains with the commissioner at all
14 times a surety bond in the penal sum of one hundred

15 thousand dollars, in form and with conditions satisfactory
16 to the commissioner and with corporate surety thereon
17 authorized to do business in this state and acceptable
18 to the commissioner. When securities are deposited as
19 aforesaid, the value of such securities must at all times
20 be one hundred thousand dollars, computed on the basis
21 of the principal amount or the market value thereof,
22 whichever is lower.

23 The deposit or bond, as the case may be, shall be for the
24 benefit and protection of the purchasers or holders of
25 checks sold in this state by the person making the deposit
26 or posting the bond as principal, and the commissioner or
27 any aggrieved person may by appropriate civil actions en-
28 force claims on any such check or checks against such de-
29 posit or bond. The aggregate liability of the surety in
30 no event shall exceed the principal sum of the bond. The
31 surety on such band shall have a right to cancel such
32 bond upon giving thirty days' notice to the commissioner
33 and thereafter shall be relieved of liability for any breach
34 of condition occurring after the effective date of said
35 cancellation. So long as the person making a deposit is not

36 in violation of any of the provisions of this article, such
37 person shall be permitted to receive all interest and divi-
38 dends on said deposit, and shall have the right, with the
39 approval of the commissioner, to substitute other securi-
40 ties. If the deposit is made at a bank, any custodial fees
41 therefor shall be paid by the person making such deposit.
42 At the time any such deposit is made or any such bond
43 is posted, and annually thereafter, the person making such
44 deposit or posting such bond shall pay to the commis-
45 sioner a fee of one hundred dollars. All such fees shall
46 be deposited in the state treasury to the credit of the
47 general revenue fund.

**§32-4-4. Persons who establish financial responsibility and give
security may engage in business; agents need not com-
ply with section three.**

Any person who complies with the provisions of sec-
2 tion three of this article may engage in the business of
3 issuing and selling checks at one or more locations in
4 this state and through or by means of such agent or
5 agents as such person may designate and appoint from
6 time to time, and no such agent shall be required to
7 comply with the provisions of said section three.

§32-4-5. Exemptions.

The provisions of section three of this article shall not
2 apply to banks, trust companies, building and loan as-
3 sociations, savings and loan associations, industrial loan
4 companies and small loan companies organized under
5 the laws of this state or authorized to do business in this
6 state, or to the receipt of money by an incorporated tele-
7 graph company at any office or agency thereof for trans-
8 mission by telegraph.

§32-4-6. Judicial review.

Any person aggrieved by any action of the commission-
2 er under the provisions of this article may appeal such
3 action by filing a petition, at the election of such person,
4 in either the circuit court of Kanawha county, West Vir-
5 ginia, or with the judge thereof in vacation, or in the cir-
6 cuit court of the county in which such person resides or
7 does business, or with the judge thereof in vacation, with-
8 in ninety days after such action.

9 The judgment of the circuit court shall be final unless
10 reversed, vacated or modified on appeal to the supreme
11 court of appeals. Any such appeal shall be sought in the

12 manner and within the time provided by law for appeals
13 from circuit courts in other civil cases.

§32-4-7. Injunctive relief.

Whenever it appears to the commissioner that any per-
2 son has been or is violating or is about to violate any pro-
3 vision of this article, the commissioner may apply in the
4 name of the state, to the circuit court of the county in
5 which the violation or violations or any part thereof has
6 occurred, is occurring or is about to occur, or the judge
7 thereof in vacation, for an injunction against such person
8 and any other persons who have been, are or are about to
9 be involved in any practices, acts or omissions, so in viola-
10 tion, enjoining such person or persons from any such
11 violation or violations. Such application may be made
12 and prosecuted to conclusion whether or not any such
13 violation or violations have resulted or shall result in
14 prosecution or conviction under the provisions of section
15 eight of this article.

16 Upon application by the commissioner, the circuit courts
17 of this state may by mandatory or prohibitory injunction
18 compel compliance with the provisions of this article.

19 The court may issue a temporary injunction in any case
20 pending a decision on the merits of any application filed.

21 The judgment of the circuit court upon any application
22 permitted by the provisions of this section shall be final
23 unless reversed, vacated or modified on appeal to the
24 supreme court of appeals. Any such appeal shall be
25 sought in the manner and within the time provided by
26 law for appeals from circuit courts in other civil cases.

§32-4-8. Penalties.

Any person who directly or through another violates
2 or attempts to violate any provision of this article shall
3 be guilty of a misdemeanor and upon conviction thereof
4 shall be punished by a fine of not less than one hundred
5 dollars nor more than one thousand dollars. Each transac-
6 tion in violation of this article and each day that a viola-
7 tion continues shall be a separate offense.

§32-4-9. Severability.

If any provision of this article or the application thereof
2 to any person or circumstance is held invalid, such in-
3 validity shall not affect the remainder of the article or the
4 application of such provision to other persons or circum-

5 stances, and to this end the provisions of this article are
6 declared to be severable.

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

William Tompos

Chairman Senate Committee

Clayton C. Davidson

Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Thomas M. Myser

Clerk of the Senate

C. A. Blankenship

Clerk of the House of Delegates

Howard E. Hanson

President of the Senate

H. Laban White

Speaker House of Delegates

The within *approved* this the *1st*
day of *March*, 1967.

Huete C. Smith

Governor

PRESENTED TO THE
GOVERNOR

Date 2-24-67
Time 1:45 P.M.