WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED

SENATE BILL NO. 186

(By Mr. Cavanagh, 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
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:

(1) "Person" means any individual, partnership, association, joint stock association, trust, or corporation, but does not include the United States of America, any department, agency, commission or officer thereof, the state of West Virginia, any department, agency, commission or officer thereof, or any political subdivision of or any municipality in this state;

(2) "Commissioner" means the commissioner of banking of this state;

(3) "Check" means any check, draft, money order, personal money order, or other instrument for the transmission or payment of money;
(4) "Personal money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his agent for the receipt, transmission, or handling of money, whether such instrument be signed by the seller or by the purchaser or remitter or some other person;

(5) "Securities" means all bonds, debentures or other evidences of indebtedness (a) issued by the United States of America or any agency thereof, or guaranteed by the United States of America, or for which the credit of the United States of America or any agency thereof is pledged for the payment of the principal and interest thereof; and/or (b) which are direct general obligations of this state, or any other state if unconditionally guaranteed as to the principal and interest by such other state and if such other state has the power to levy taxes for the payment of the principal and interest thereof and is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness; and/or (c) which are general obligations of any county, school district
or municipality in this state issued pursuant to law and payable from ad valorem taxes levied on all of the taxable property located therein, if such county, school district or municipality is not in default in the payment of any part of the principal or interest on any debt evidenced by its 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 innocent persons in various states have suffered severe financial losses as a result of financially irresponsible persons engaging in the business of issuing and selling checks; that many of these states have, following the discovery of such losses, promptly enacted legislation to assure that persons engaged in the business of issuing and selling checks are financially responsible; and that it is imperative that legislation be enacted to assure that persons engaged in the business of issuing and selling checks in this state are financially responsible. It is, therefore, declared to be the public policy of this state that the business of issuing and selling checks affects the general welfare of this state and its individual citizens; and that
financial losses as aforesaid may best be prevented in this state and the interests of the citizens of this state best served by requiring persons now engaged or to be engaged in the business of issuing and selling checks to 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 shall engage in the business of issuing and selling checks as a service or for a fee or other compensation, unless (a) the net worth of such person is at all times at least fifty thousand dollars, computed according to generally accepted accounting principles and shown by financial statements filed with and satisfactory to the commissioner, and (b) such person either (1) keeps on deposit at all times with the commissioner, or a bank in this state designated by such person and approved for such purpose by the commissioner, one hundred thousand dollars in cash or securities satisfactory to the commissioner, or (2) posts and maintains with the commissioner at all times a surety bond in the penal sum of one hundred
thousand dollars, in form and with conditions satisfactory to the commissioner and with corporate surety thereon authorized to do business in this state and acceptable to the commissioner. When securities are deposited as aforesaid, the value of such securities must at all times be one hundred thousand dollars, computed on the basis of the principal amount or the market value thereof, whichever is lower.

The deposit or bond, as the case may be, shall be for the benefit and protection of the purchasers or holders of checks sold in this state by the person making the deposit or posting the bond as principal, and the commissioner or any aggrieved person may by appropriate civil actions enforce claims on any such check or checks against such deposit or bond. The aggregate liability of the surety in no event shall exceed the principal sum of the bond. The surety on such band shall have a right to cancel such bond upon giving thirty days' notice to the commissioner and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation. So long as the person making a deposit is not
in violation of any of the provisions of this article, such
person shall be permitted to receive all interest and divi-
dends on said deposit, and shall have the right, with the
approval of the commissioner, to substitute other securi-
ties. If the deposit is made at a bank, any custodial fees
therefor shall be paid by the person making such deposit.
At the time any such deposit is made or any such bond
is posted, and annually thereafter, the person making such
deposit or posting such bond shall pay to the commis-
sioner a fee of one hundred dollars. All such fees shall
be deposited in the state treasury to the credit of the
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-
tion three of this article may engage in the business of
issuing and selling checks at one or more locations in
this state and through or by means of such agent or
agents as such person may designate and appoint from
time to time, and no such agent shall be required to
comply with the provisions of said section three.
§32-4-5. Exemptions.

The provisions of section three of this article shall not apply to banks, trust companies, building and loan associations, savings and loan associations, industrial loan companies and small loan companies organized under the laws of this state or authorized to do business in this state, or to the receipt of money by an incorporated telegraph company at any office or agency thereof for transmission by telegraph.

§32-4-6. Judicial review.

Any person aggrieved by any action of the commissioner under the provisions of this article may appeal such action by filing a petition, at the election of such person, in either the circuit court of Kanawha county, West Virginia, or with the judge thereof in vacation, or in the circuit court of the county in which such person resides or does business, or with the judge thereof in vacation, within ninety days after such action.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the
§32-4-7. Injunctive relief.

Whenever it appears to the commissioner that any person has been or is violating or is about to violate any provision of this article, the commissioner may apply in the name of the state, to the circuit court of the county in which the violation or violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section eight of this article.

Upon application by the commissioner, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article.
The court may issue a temporary injunction in any case pending a decision on the merits of any application filed. The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil cases.

§32-4-8. Penalties.

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

§32-4-9. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the remainder of the article or the application of such provision to other persons or circum-
stances, and to this end the provisions of this article are declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tong
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Ole Anderson
Clerk of the Senate

Clerk of the House of Delegates

Howard C. Cannon
President of the Senate

A. Saban Totzke
Speaker House of Delegates

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

Hulet E. Smith
Governor
PRESENTED TO THE GOVERNOR

Date  2-24-67

Time  1:45 P.M.