

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1977

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ENROLLED

HOUSE BILL No. 1729

Originating in the
(By Mr. *House Committee on the Judiciary*.)

— ● —

PASSED April 7. 1977

In Effect - from - Passage

ENROLLED

H. B. 1729

(Originating in the House Committee on the Judiciary)

[Passed April 7, 1977; in effect from passage.]

AN ACT to amend and reenact section thirty-nine, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto seven new sections, designated sections thirty-nine-a, thirty-nine-b, thirty-nine-c, thirty-nine-d, thirty-nine-e, thirty-nine-f, thirty-nine-g and thirty-nine-l, all relating to crime of obtaining property with worthless checks when maker knows check to be worthless; subjecting person signing corporate check to provisions relating to personal checks; providing misdemeanor and felony penalties; crime of passing worthless check and penalties; providing that payment of check acts as defense to certain prosecutions; duty of bank to indicate reason why check is dishonored and providing that such given reason is prima facie evidence of the truth thereof; relating to evidentiary requirements regarding knowledge of sufficiency of funds and identity of maker of check; providing misdemeanor penalty for giving false information; providing for notice of dishonor from payee and the imposition of a service charge; effect of payment of check; providing form of complaint for warrant; providing for notice of filing of complaint for warrant from magistrate court to maker of check; and relating to imposition of court costs.

Be it enacted by the Legislature of West Virginia:

That section thirty-nine, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, be amended and reenacted; and that said article be further amended by adding thereto seven new sections, designated sections thirty-nine-a, thirty-nine-b, thirty-nine-c, thirty-nine-d, thirty-nine-e, thirty-nine-f, thirty-nine-g, and thirty-nine-h, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39. Obtaining property in return for worthless check; penalty.

1 It shall be unlawful for any person, firm or corporation to
2 obtain any money, services, goods or other property or thing
3 of value by means of a check, draft or order for the payment
4 of money or its equivalent upon any bank or other depository,
5 knowing at the time of the making, drawing, issuing, uttering
6 or delivering of such check, draft or order that there is not
7 sufficient funds on deposit in or credit with such bank or
8 other depository with which to pay the same upon presentation.
9 The making, drawing, issuing, uttering or delivery of any such
10 check, draft or order, for or on behalf of any corporation, or
11 its name, by any officer or agent of such corporation, shall
12 subject such officer or agent to the penalties of this section
13 to the same extent as though such check, draft or order was
14 his own personal act, when such agent or officer knows that
15 such corporation does not have sufficient funds on deposit in
16 or credit with such bank or depository from which such check,
17 draft or order can legally be paid upon presentment.

18 This section shall not apply to any such check, draft or
19 order when the payee or holder knows or has been expressly
20 notified prior to the acceptance of same or has reason to
21 believe that the drawer did not have on deposit or to his
22 credit with the drawee sufficient funds to insure payment as
23 aforesaid, nor shall this section apply to any postdated check,
24 draft or order.

25 No prosecution shall be confined to the provisions of this
26 section by virtue of the fact that worthless checks, drafts or
27 orders may be employed in the commission of some other
28 criminal act.

29 Any person who shall violate the provisions of this section,
30 if the amount of the check, draft or order is less than two
31 hundred dollars, shall be guilty of a misdemeanor, and, upon

32 conviction thereof, shall be fined not more than two hundred
33 dollars, or imprisoned not more than six months, or both
34 fined and imprisoned. Any person who shall violate the pro-
35 visions of this section, if the amount of the check, draft or
36 order is two hundred dollars or more, shall be guilty of a
37 felony, and, if convicted thereof, shall be fined not more than
38 five hundred dollars, or imprisoned not less than one year nor
39 more than five years, or both fined and imprisoned.

§61-3-39a. Issuing worthless checks; penalty.

1 It shall be unlawful for any person, firm or corporation to
2 make, draw, issue, utter or deliver any check, draft or order
3 for the payment of money or its equivalent upon any bank or
4 other depository, knowing or having reason to know there is
5 not sufficient funds on deposit in or credit with such bank or
6 other depository with which to pay the same upon presentation.
7 The making, drawing, issuing, uttering or delivering of any
8 such check, draft or order, for or on behalf of any corporation,
9 or its name, by any officer or agent of such corporation, shall
10 subject such officer or agent to the penalties of this section
11 to the same extent as though such check, draft or order was
12 his own personal act.

13 This section shall not apply to any such check, draft or
14 order when the payee or holder knows or has been expressly
15 notified prior to the acceptance of same or has reason to be-
16 lieve that the drawer did not have on deposit or to his credit
17 with the drawee sufficient funds to insure payment as aforesaid,
18 nor shall this section apply to any postdated check, draft or
19 order. This section shall not apply when such insufficiency of
20 funds or credit is caused by any adjustment to the drawer's
21 account by the bank or other depository without notice to the
22 drawer or is caused by the dishonoring of any check, draft or
23 order deposited in the account unless there is knowledge or
24 reason to believe that such check, draft or order would be so
25 dishonored.

26 Any person who shall violate the provisions of this section
27 shall be guilty of a misdemeanor, and, upon conviction thereof,
28 shall be fined not more than one hundred dollars, or imprison-
29 ed not more than ten days, or both fined and imprisoned.

§61-3-39b. Payment as defense.

1 Payment of a dishonored check, draft or order shall not
2 constitute a defense or ground for dismissal of charges brought
3 under section thirty-nine of this article. Payment of a dishonor-
4 ed check, including any authorized charges or costs, shall
5 constitute a defense or grounds for dismissal of charges
6 brought under section thirty-nine-a of this article.

§61-3-39c. Reason for dishonor; duty of drawee.

1 It shall be the duty of the drawee of any check, draft or
2 order, before refusing to pay the same to the holder thereof
3 upon presentation, to cause to be written, printed or stamped
4 in plain language thereon or attached thereto, the reason for
5 drawee's dishonor or refusal to pay same. In all prosecutions
6 under section thirty-nine or thirty-nine-a of this article, the
7 introduction in evidence of any unpaid and dishonored check,
8 draft or other written order, having the drawee's refusal to pay
9 stamped or written thereon, or attached thereto, with the
10 reason therefor as aforesaid:

11 (a) Shall be prima facie evidence of the making or uttering
12 of said check, draft or other written order, and the due pres-
13 entation to the drawee for payment and the dishonor thereof,
14 and that the same was properly dishonored for the reasons
15 written, stamped or attached by the drawee on such dis-
16 honored checks, drafts or orders; and

17 (b) Shall be prima facie evidence, as against the maker or
18 drawer thereof, of the withdrawing from deposit with the
19 drawee named in the check, draft or other written order, of
20 the funds on deposit with such drawee necessary to insure pay-
21 ment of said check, draft or other written order upon presenta-
22 tion within a reasonable time after negotiation; and

23 (c) Shall be prima facie evidence of the drawing, making,
24 uttering or delivering of a check, draft or written order with
25 the knowledge of insufficient funds in or credit with such
26 drawee.

§61-3-39d. Prima facie evidence of knowledge; identity; penalty for providing false information.

1 (a) In any prosecution under section thirty-nine of this

2 article, the making, drawing, uttering or delivery of a check,
3 draft or order, the payment of which is refused by the drawee
4 because of lack of funds or credit, shall be prima facie evi-
5 dence that the drawer has knowledge at the time of making,
6 drawing, issuing, uttering or delivering such check, draft or
7 order that there is not sufficient funds or credit to pay the
8 same, unless the check, draft or order is paid along with any
9 charges or costs authorized by this article.

10 (b) In any prosecution under section thirty-nine-a of this
11 article, it shall constitute prima facie evidence of the identity
12 of the drawer of a check, draft or order if at the time of ac-
13 ceptance of such check, draft or order there is obtained the
14 following information: name and residence, business or mailing
15 address and either a valid motor vehicle operator's number or
16 the drawer's home or work phone number or place of employ-
17 ment. Such information may be recorded on the check, draft
18 or order itself or may be retained on file by the payee and
19 referred to on the check, draft or order by identifying number
20 or other similar means.

21 (c) Any person who shall provide false information when
22 information is requested prior to accepting a check, draft or
23 order either at the time such check, draft or order is presented
24 or for the purpose of obtaining a check cashing identification
25 card or similar check cashing privilege shall be guilty of a
26 misdemeanor, and, upon conviction thereof, shall be fined not
27 more than two hundred dollars, or imprisoned not more than
28 thirty days, or both fined and imprisoned.

§61-3-39e. Notice of dishonor by payee; service charge.

1 The payee or holder of a check, draft or order which has
2 been dishonored because of insufficient funds or credit may
3 send notice thereof to the drawer of the check, draft or order.
4 The payee or holder of any such dishonored check may im-
5 pose a service charge not to exceed five dollars. No service
6 charge shall be imposed or collected after a complaint for
7 warrant has been delivered to magistrate court. No payee or
8 holder of a check, draft or order which has been dishonored
9 because of insufficient funds or credit shall incur any civil or
10 criminal liability for the sending of a notice substantially in

11 the form provided herein, other provisions of law notwith-
12 standing. The form of such notice shall be substantially as
13 follows:

14 "You are hereby notified that a check, number _____,
15 issued by you on (date of check), drawn upon (name of bank),

16 and payable to _____, has been dishonored.
17 Pursuant to West Virginia law, you have ten days from the
18 date of this notice to tender payment of the full amount of
19 such check plus a five dollar service charge to the undersigned

20 at _____. You are further notified that
21 in the event the above amount is timely paid in full you will
22 not be subject to legal proceedings, civil or criminal.

23 Dated _____, 19_____.

24 _____ (Signed) ."

25 The provisions of this section shall not authorize the
26 making of any other written or oral threats of prosecution to
27 enforce or enhance the collection or honoring of said dishonor-
28 ed check, draft or order.

29 The holder or payee of any such check, draft or note shall
30 relinquish the check, draft or order to the maker upon tender
31 of the full amount due at any time before a complaint for
32 warrant has been presented to magistrate court. In the event
33 complaint for warrant has been presented to magistrate court,
34 payment may be made only through such court and any holder
35 or payee unlawfully accepting payment after such time shall be
36 liable for all costs which may be imposed by magistrate court
37 in the matter, including all costs which may have accrued by
38 the time the magistrate court is notified of such payment.

§61-3-39f. Manner of filing complaint for warrant; form.

1 Notwithstanding the provisions of section one, article one,
2 chapter sixty-two of this code, a complaint for warrant for
3 violations of section thirty-nine-a of this article need not be
4 made upon oath before a magistrate but may be made upon
5 oath before any magistrate court clerk or other court officer
6 authorized to administer oaths or before a notary public in any

7 county of the state and may be delivered by mail or otherwise
8 to the magistrate court of the county wherein venue lies.

9 A complaint for warrant for violations of section thirty-nine-
10 a of this article shall be deemed sufficient if it is in form sub-
11 stantially as follows:

12 "State of West Virginia

13 County of _____, to wit:

14 _____, upon oath com-
15 plains that:

16 (a) Within one year past, on the _____ day of
17 _____, 19____, in the County aforesaid
18 _____ did unlawfully issue and
19 (maker)

20 deliver unto _____ his certain check
21 of the words and figures as follows:

22 _____, 19____ NO. _____

23 _____
24 (Name of Bank)

25 Pay to the Order of _____ \$ _____
26 _____ Dollars

27 For _____

28 when he the said _____ did not have
29 funds on deposit in and credit with said bank with which to
30 pay same upon presentation against the Peace and Dignity
31 of the State of West Virginia and he the said _____
32 therefore prays a warrant issue and that said _____
33 (maker)

34 may be apprehended and held to answer the said warrant and
35 dealt with in relation thereto according to the law.

36 (b) At the time said check was delivered and before the
37 same was accepted there was either on the check or on a card
38 in the possession of complainant the following information
39 regarding the identity of aforesaid maker:

- 40 (1) Name
- 41 (2) Residence address
- 42 (3) Business address
- 43 (4) Mailing address
- 44 (5) Motor vehicle operator's number
- 45 (6) Home phone
- 46 (7) Work phone
- 47 (8) Place of employment

48 That since the time the check was delivered complainant has
49 ascertained to the best of his knowledge and belief the follow-
50 ing facts concerning the maker of said check:

- 51 Full name
- 52 Home address
- 53 Home phone no. Business phone no.
- 54 Place of employment
- 55 Race Sex Height
- 56 Date of birth
- 57 Day Month Year
- 58, Complainant
- 59
- 60 Address Phone No.

61 Taken, subscribed and sworn to before me, this

62 day of 19....

63

64

65 (Title)

66 My commission expires the day of

67, 19...."

68 The failure to supply information indicated in part (b) of
69 the foregoing complaint for warrant shall not affect the suf-
70 ficiency thereof.

§61-3-39g. Notice of complaint; payment procedure; costs.

1 After receipt of a complaint for warrant for a violation of
2 section thirty-nine or thirty-nine-a of this article no magistrate
3 court shall issue a warrant until after the provisions of this
4 section are complied with, unless complaint is made that the
5 drawer of such check, draft or order is about to flee the
6 jurisdiction. The magistrate court shall not receive or hold the
7 check, draft or order except as evidence during trial or
8 hearing.

9 Upon receipt of such complaint for warrant the magistrate
10 court shall immediately prepare and mail to the drawer of such
11 check, draft or order a notice in form substantially as follows
12 and shall impose additional court costs in the amount of ten
13 dollars. Such notice shall be mailed to the drawer by certified
14 mail, postpaid, return receipt requested, at the address provided
15 at the time of presenting such check, draft or order and service
16 of such notice shall be complete upon mailing. Such notice shall
17 be in form substantially as follows if prosecution is under
18 section thirty-nine of this article:

19 "You are hereby notified that a complaint for a warrant for
20 your arrest has been filed with this office to the following effect
21 and purpose by _____ who upon oath complains
22 that on the _____ day of _____, 19____, you did unlaw-
23 fully issue and deliver unto him a certain check in the amount
24 of _____ drawn on _____ where you did not have
25 _____ Bank
26 funds on deposit in or credit with said bank with which to pay
27 same upon presentation and pray that a warrant issue and that
28 you be apprehended wherever you may be found by an officer
29 authorized to make such an arrest and dealt with in ac-
30 cordance with the laws of the State of West Virginia.

31 Unless you make payment of the amount of the check plus
32 court costs in the amount of _____ to the Magistrate

33 Court Clerk at _____ on or before said
34 _____ day of _____, 19_____, you will be
35 presumed to have had criminal intent at the time of issuance
36 of the check and a warrant for your arrest will be issued on or
37 after the _____ day of _____, 19_____.
38 _____ Magistrate Court of _____ County
39 _____
40 Date: _____."

41 Such notice shall be in form substantially as follows if
42 prosecution is under section thirty-nine-a of this article:

43 "You are hereby notified that a complaint for a warrant
44 for your arrest has been filed with this office to the following
45 effect and purpose by _____ who upon oath
46 complains that on the _____ day of _____,
47 19_____ you did unlawfully issue and deliver unto him a certain
48 check in the amount of _____ drawn on
49 _____ where you did not have funds on
50 **Bank**
51 deposit in or credit with said bank with which to pay same
52 upon presentation and pray that a warrant issue and that you
53 be apprehended wherever you may be found by an officer
54 authorized to make such an arrest and dealt with in accordance
55 with the laws of the State of West Virginia.

56 A warrant for arrest will be issued on or after the _____
57 day of _____, 19_____.

58 You can nullify the effect of said complaint and avoid
59 arrest by paying to the Magistrate Court Clerk at _____
60 the amount due on said check and the costs of this proceeding
61 in the amount of _____ on or before said _____
62 day of _____, 19_____, at which time you will
63 be given a receipt with which you can obtain said check

66 Magistrate Court of _____ County
67 _____
68 Date _____"

81 Upon receipt of payment of such total amount the magistrate
82 court clerk shall issue to the drawer a receipt sufficiently
83 describing such check with which receipt the drawer shall be
84 entitled to receive the dishonored check, draft or order from
85 the holder or payee thereof. No service charge shall be
86 charged or collected by the holder or payee of a dishonored
87 check, draft or order after filing a complaint for warrant. The
88 magistrate court clerk shall forward the amount of the check to
89 the payee or holder thereof. The magistrate court clerk is here-
90 by authorized to establish a separate bank account for the pur-
91 pose of facilitating such transactions. Costs collected shall be
92 dealt with as is provided by law for other criminal pro-
93 ceedings.

94 The drawer of a check, draft or order against whom a war-
95 rant has been issued may at any time prior to trial pay to the
96 court the amount of the check plus any accrued court costs
97 plus such court costs as would be assessed if such person were
98 found guilty of the offense charged.

1 In any prosecution under sections thirty-nine or thirty-nine-

2 a of this article such costs as may otherwise be imposed against
3 the drawer of any such check, draft or order shall be im-
4 posed on the person initiating the prosecution if payment of the
5 check, draft or order is accepted by the payee or holder there-
6 of after the filing of a complaint for warrant; if the payee or
7 holder had reason to believe that the check, draft or order
8 would be dishonored or if the same was postdated; or if the
9 matter is dismissed for failure to prosecute.

10 Costs collected by magistrate court for issuance of notice
11 as authorized by section thirty-nine-g of this article shall be
12 paid into the special county fund created by the provisions of
13 section four, article three, chapter fifty of this code. Such
14 costs shall not be included in any calculation of the amount of
15 funds to be retained by the county but shall be accounted for
16 separately and retained by the county notwithstanding any
17 provision of law directing the payment of costs to the state.

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

James L. Davis
Chairman Senate Committee

Clarence C. Christensen Jr.
Chairman House Committee

Originated in the House.

Takes effect from passage.

J. C. Dullough
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. B. B. B. B. B.
President of the Senate

Donald L. Kopp
Speaker House of Delegates

The within *is approved* this the *24*
day of *April*, 1977.

John H. Rhyll
Governor



RECEIVED

APR 12 2 15 PM '77
OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date April 24, 1977

Time 3:10 p.m.

RECEIVED

77 APR 25 P 2:42

OFFICE
SECY. OF STATE