

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-26-79

Time 2:15 p.m.

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979



ENROLLED

HOUSE BILL No. 1253

(By Mr. Tucker + Mr Tompkins)



Passed March 7, 1979

In Effect Ninety Days From Passage



No. 1253

ENROLLED

H. B. 1253

(By MR. TUCKER and MR. TOMPKINS)

[Passed March 7, 1979; in effect ninety days from passage.]

AN ACT to amend and reenact section thirty-nine-g, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to dishonored checks; complaint; notice of complaint; issuance of warrant; payment procedure; costs.

Be it enacted by the Legislature of West Virginia:

That section thirty-nine-g, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39g. Complaint; notice of complaint; issuance of warrant; payment procedures; costs.

1 After receipt of a complaint for warrant for a violation of
2 section thirty-nine or thirty-nine-a of this article the magis-
3 trate court shall proceed with the issuance of the warrant as is
4 provided by law: *Provided*, That no warrant shall issue for an
5 offense under sections thirty-nine or thirty-nine-a of this
6 article which, upon conviction, would be punishable as a mis-
7 demeanor, unless and until the payee or holder of the check,
8 draft or order which has been dishonored has sent notice
9 thereof to the drawer of the check, draft or order in accordance
10 with the provisions of section thirty-nine-e of this article, or
11 unless and until notice has been sent by the magistrate as

12 hereinafter provided. Proof that such notice was sent by the
13 payee or holder shall be evidenced by presentation of a return
14 receipt indicating that the notice was mailed to the drawer by
15 certified mail, or, in the event the mailed notice was not re-
16 ceived or was refused by the drawer, by presentation of the
17 mailed notice itself. The magistrate court shall receive and
18 hold the check, draft or order.

19 Upon receipt of a complaint for a misdemeanor warrant
20 unaccompanied by proof that notice was sent by the payee or
21 holder, the magistrate court shall immediately prepare and
22 mail to the drawer of such check, draft or order a notice in
23 form substantially as follows and shall impose additional
24 court costs in the amount of ten dollars. Such notice shall be
25 mailed to the drawer by United States mail, first class and
26 postpaid, at the address provided at the time of presenting such
27 check, draft or order. Service of such notice shall be complete
28 upon mailing. Such notice shall be in form substantially as
29 follows:

30 "You are hereby notified that a complaint for a warrant for
31 your arrest has been filed with this office to the following
32 effect and purpose by who upon
33 oath complains that on the day of
34 19....., you did unlawfully issue and deliver unto him a certain
35 check in the amount of drawn on
36 (name of bank) where you did not have funds
37 on deposit in or credit with said bank with which to pay the
38 same upon presentation and pray that a warrant issue and that
39 you be apprehended wherever you may be found by an officer
40 authorized to make such an arrest and dealt with in accor-
41 dance with the laws of the state of West Virginia.

42 A warrant for arrest will be issued on or after the
43 day of, 19.....

44 You can nullify the effect of said complaint and avoid arrest
45 by paying to the magistrate court clerk at
46 the amount due on said check and the costs of this proceeding
47 in the amount of on or before said
48 day of, 19....., at which time you will
49 be given a receipt with which you can obtain said check from

50 the magistrate named below. The complainant is forbidden by
51 law to accept payment.

52 Magistrate court of _____county

53 _____

54 Date _____.”

55 Such notice shall give the drawer of any such check, draft or
56 order ten days within which to make payment to magistrate
57 court. In the event such drawer pays the amount of the check
58 plus court costs to the magistrate court within the ten day
59 period no warrant shall issue. The payment may be made to
60 the magistrate court in person or by mail by cash, certified
61 check, bank draft or money order and, in the event such pay-
62 ment is made by mail, the magistrate court clerk shall forth-
63 with mail to the maker of such check the receipt hereinbelow
64 required. In the event such total amount is not so paid the
65 court shall proceed with the issuance of the warrant as is
66 provided by law.

67 Upon receipt of payment of such total amount the magistrate
68 court clerk shall issue to the drawer a receipt sufficiently
69 describing such check with which receipt the drawer shall be
70 entitled to receive the dishonored check, draft or order from
71 the magistrate holding the check, draft or order. No service
72 charge shall be charged or collected by the holder or payee of
73 a dishonored check, draft or order after filing a complaint for
74 warrant. The magistrate court clerk shall forward the amount
75 of the check to the payee or holder thereof, along with a de-
76 scription of the check, draft or order sufficient to enable the
77 person filing the complaint to identify such check, draft or
78 order and the transaction involved. Costs collected shall be
79 dealt with as is provided by law for other criminal proceedings.

80 The drawer of a check, draft or order against whom a war-
81 rant has been issued may at any time prior to trial pay to the
82 court the amount of the check plus such court costs as would
83 be assessed if such person were found guilty of the offense
84 charged. Such costs shall be imposed in accordance with the
85 provisions of section two, article three, chapter fifty of this
86 code.

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

James L. Davis
Chairman Senate Committee

Lawrence B. Thurston
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. P. McLaughlin
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

H. B. ...
President of the Senate

Clyde M. Lee, Jr.
Speaker House of Delegates

The within is approved this the 26
day of March, 1979.

John W. Ralston
Governor

RECEIVED

MAR 12 9 45 AM '79

OFFICE OF THE GOVERNOR

RECORDED

9 MAR 27 P 4: 26

ED. OF STATE