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APPROVED AND SIGNED BY THE GOVERNOR

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983



ENROLLED

Com. Sub. for
HOUSE BILL No. 1317

(By Mr. Dannon, 15th Dist., & Mr. Chambers)



Passed March 11, 1983

In Effect July 1, 1983 ~~August~~



ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 1317

(By MR. DAMRON, 15th Dist., and MR. CHAMBERS)

[Passed March 11, 1983; in effect July 1, 1983.]

AN ACT to amend and reenact section thirty-nine-h, 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 three by adding thereto four new sections, designated sections thirty-nine-i, thirty-nine-j, thirty-nine-k and thirty-nine-l, relating to crimes against property generally; obtaining property in return for worthless checks; making and issuing worthless checks; providing for the payment of costs in worthless check cases; creating a fund designated the "Worthless Check Fund"; describing the disposition of costs paid into said fund; providing for the preparation of a list of worthless check warrants; establishing a procedure for the use of worthless check lists upon receipt of a complaint for warrant; setting forth a form for a notice of multiple worthless check warrants; describing the duties of the prosecuting attorney upon receipt of said notices; requiring the magistrate court clerk to advise the complainant of the prosecuting attorney's recommendation; requiring checks on consumer deposit accounts to show the date the account was opened; defining the term consumer deposit account and authorizing and empowering the commissioner of banking to order compliance.

Be it enacted by the Legislature of West Virginia:

That section thirty-nine-h, 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 three be further amended by adding thereto four new sections, designated thirty-nine-i, thirty-nine-j, thirty-nine-k and thirty-nine-l, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39h. Payment of costs in worthless check cases; disposition of certain costs.

1 In any prosecution under sections thirty-nine or thirty-nine-a
2 of this article such costs as may otherwise be imposed against
3 the drawer of any such check, draft or order shall be imposed
4 on the person initiating the prosecution if payment of the
5 check, draft or order is accepted by the payee or holder thereof
6 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 as
11 authorized by section thirty-nine-g of this article shall not be
12 paid into the special county fund created by the provisions of
13 section four, article three, chapter fifty of this code, but shall
14 be accounted for separately and retained by the county in a
15 fund designated the "worthless check fund," until the sheriff
16 shall issue warrants in furtherance of the allowable expenses
17 specifically provided for by this section. Such costs shall not
18 be included in any calculation of the amount of funds to be
19 retained by the county under the provisions of section four,
20 article three, chapter fifty of this code.

21 A county may, after agreement with the court administrator's
22 office of the supreme court of appeals, appropriate and spend
23 from the worthless check fund herein established such sums as
24 shall be necessary to pay or defray the expenses of providing
25 a deputy sheriff to serve warrants for worthless check offenses
26 and to pay or defray the expenses of providing additional de-
27 puty clerks in the office of the magistrate court clerk to pro-

28 cess cases involving worthless checks: *Provided*, That
 29 sums agreed to be appropriated for such deputy sheriffs or
 30 deputy clerks shall be proportionate to the time such employees
 31 devote to worthless check cases. After payment of such ex-
 32 penses, or after a determination that such services are not
 33 necessary, a county may appropriate and spend from such fund
 34 such sums as shall be necessary to defray the expenses of pro-
 35 viding bailiff and service of process services by the sheriff, to
 36 defray the cost of acquiring or renting magistrate court offices
 37 and providing utilities and telephones therefor to defray the
 38 cost of complying with section thirty-nine-i herein and to de-
 39 fray the expenses of such other services which are to be
 40 provided to magistrate courts by the county.

§61-3-39i. Preparation of list of worthless check warrants.

1 Beginning on the first day of July, one thousand nine hun-
 2 dred eighty-three, the magistrate court clerk of every county
 3 shall, between the first and fifth day of each month thereafter,
 4 prepare a cumulative list of all check warrants issued by the
 5 magistrates of the county during the preceding twelve calendar
 6 months and after the effective date of this section: *Provided*,
 7 That upon completion of each cumulative list, the list which
 8 was completed for the next preceding month and any copy
 9 thereof shall be destroyed by the magistrate court clerk. The
 10 persons charged in such warrants shall be listed alphabetically.
 11 Such list shall also contain the total number of warrants issued
 12 against each named person for the period covered by the re-
 13 port, the number assigned to each warrant, and the date each
 14 such warrant was issued. A copy of such cumulative list of
 15 worthless check warrants shall be forthwith forwarded to each
 16 magistrate in the county and to the prosecuting attorney
 17 thereof. Upon the request of magistrates or prosecutors in
 18 other counties of this state, such lists shall be regularly for-
 19 warded to them.

§61-3-39j. Use of worthless check list upon receipt of complaint for warrant.

1 On and after the first day of July, one thousand nine hun-
 2 dred eighty-three, when a complaint for worthless check war-
 3 rant is received by a magistrate court, the person receiving the

4 complaint shall consult the current list of worthless check war-
5 rants for the county and any current lists of other counties in
6 his possession to determine whether the defendant named in the
7 complaint for warrant is also named on the list or lists as a
8 person who has had worthless check warrants issued against
9 him during the period covered by the lists. If the list or lists
10 consulted indicate that the person named in the complaint has
11 had not more than one worthless check warrant issued against
12 him within the time period covered by the lists, the person
13 receiving the complaint for warrant shall proceed to have a
14 warrant issued or a notice served, as may be appropriate, in
15 accordance with the provisions of section thirty-nine-g of this
16 article. If the list or lists consulted indicate that the person
17 named in the complaint has had two or more worthless check
18 warrants issued against him within the time period covered by
19 the lists, the person receiving the complaint for warrant shall
20 not cause a warrant to be issued, but shall instead forthwith
21 prepare a "Notice of Multiple Worthless Check Warrants,"
22 which shall be in a form substantially as follows:

23 "NOTICE OF MULTIPLE WORTHLESS
24 CHECK WARRANTS

25 THIS NOTICE IS TO BE ISSUED ONLY WHEN AN INDI-
26 VIDUAL HAS HAD TWO OR MORE WORTHLESS
27 CHECK WARRANTS ISSUED IN THE PRECEDING
28 TWELVE MONTHS

29 To: Prosecuting Attorney ofCounty

30 From: Magistrate Court of County

31 This is to notify you that

32 who resides at
33 has issued worthless checks during the preceding twelve months
34 for which warrants have been issued.

35 In accordance with the provisions of section thirty-nine-i,
36 article three, chapter sixty-one of the code of West Virginia
37 you have ten days to advise this court on how to proceed in
38 this matter."

39 A list of the worthless check warrants shall be attached to

40 said notice, along with information concerning the check which
41 is the subject of the pending complaint for worthless check
42 warrant. Warrant numbers, check numbers, dates of checks,
43 amounts of checks, payees, and drawee financial institutions
44 for the checks listed shall be set forth.

45 Immediately upon preparation of the said notice, a copy
46 thereof shall be forwarded to the prosecuting attorney of each
47 county upon whose list of worthless check warrants the de-
48 fendant's name appears.

**§61-3-39k. Duties of prosecuting attorney upon receipt of notice of
multiple worthless check warrants; magistrate court
clerk to advise complainant.**

1 (a) Within ten days after receiving a notice of multiple
2 worthless check warrants forwarded in accordance with the
3 provisions of the preceding section, a prosecuting attorney
4 shall review the information contained therein, may consult
5 additional current lists of worthless check warrants and make
6 other investigation, and shall make a written recommendation
7 to the magistrate court which forwarded the notice:

8 (1) That a warrant should be issued or a notice should
9 be forwarded, as may be appropriate, in accordance with the
10 provisions of section thirty-nine-g of this article, or

11 (2) That a warrant should be issued for an offense de-
12 fined under section twenty-four of this article, or

13 (3) That no action should be taken by the magistrate
14 court pending a presentation to the appropriate grand jury of
15 a bill seeking an indictment for an offense defined under section
16 twenty-four of this article.

17 (b) Upon receipt of the recommendation of the prosecuting
18 attorney, the magistrate court clerk of the magistrate court
19 holding the pending complaint for worthless check warrant
20 shall forward a copy of the prosecuting attorney's recom-
21 mendation to the complainant, shall inform the complainant
22 that the prosecuting attorney's recommendation is advisory
23 only, and shall request the complainant to advise the court in
24 what manner he desires to proceed.

§61-3-39I. Checks on consumer deposit accounts to show date account was opened; consumer deposit account defined.

1 (a) Beginning on the first day of July, one thousand nine
2 hundred eighty-three, all checks, drafts, or similar negotiable
3 or nonnegotiable instruments or orders of withdrawal which are
4 thereafter printed to be used for drawing against funds held
5 in a consumer deposit account by a supervised financial or-
6 ganization located in the state of West Virginia shall have
7 clearly printed on the face thereof the words "Account
8 opened" and a six-digit combination of numbers and letters as
9 follows:

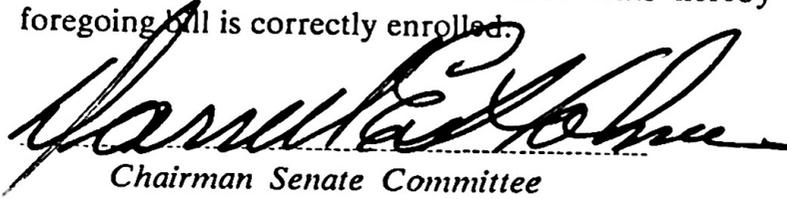
10 (1) In the case of a consumer deposit account which
11 has been open for less than one year, the first two digits,
12 running from 01 through 12, shall numerically identify the
13 month the account was opened, the third and fourth digits,
14 running from 01 through 31, shall identify the day of the
15 month the account was opened, and the fifth and sixth digits
16 shall be the last two numbers of the year in which the account
17 was opened.

18 (2) In the case of a consumer deposit account which has
19 been open for one year or more, the six digits shall be
20 "OneYr+": *Provided*, That a new account or an account
21 which has been open for less than one year may be treated
22 as an account which has been open for one year or more
23 when a person authorized to draw against funds in the account
24 shall demonstrate to the supervised financial organization
25 through the production of account statements that he has
26 had a demand or other similar deposit account or share
27 account at the same or another financial institution for twelve
28 months immediately preceding his request for printed checks.

29 (b) For purposes of this section the term "consumer
30 deposit account" means a demand or other similar deposit
31 account or share account established and maintained by a
32 natural person with a supervised financial organization and
33 operated primarily for personal, family or household purposes.
34 The term "supervised financial organization" shall have the
35 same meaning as is ascribed to such term in section one
36 hundred two, article one, chapter forty-six-a of this code.

37 (c) The commissioner of banking is authorized and em-
38 powered to order any supervised financial institution to comply
39 with the provisions of this section and may apply to any state
40 or federal court of competent jurisdiction for appropriate
41 orders, writs, processes and remedies in aid of enforcement.

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

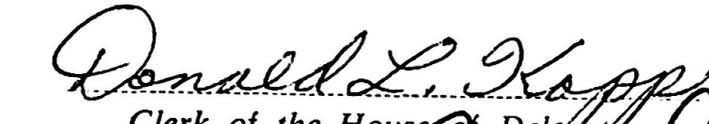

Chairman Senate Committee

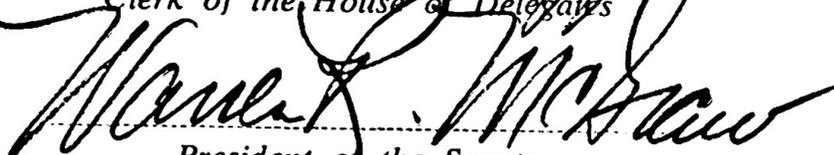

Chairman House Committee

Originating in the House.

Takes effect July 1, 1983.

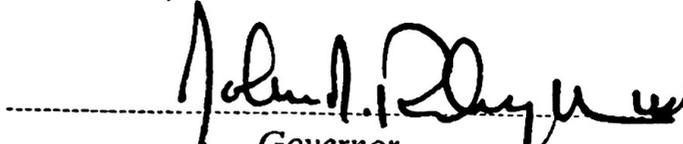

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 29
day of March, 1983.


Governor

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