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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Com. Sub. for
HOUSE BILL No. 4295

(By Delegates Staton, Huntwork, Pincus,
Whitman, Kessel, Trump and
L. White)



Passed March 12, 1994

In Effect Ninety Days from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4295

(By DELEGATES STATON, HUNTWORK, PINO, WHITMAN,
KESSEL, TRUMP AND L. WHITE)

[Passed March 12, 1994; in effect ninety days from passage.]

AN ACT to repeal section seventeen, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six, article eight, chapter seventeen-a of said code; to amend and reenact section nine-a, article one of said chapter; to amend and reenact section one, article two, chapter fifty of said code; to amend and reenact sections eight, twelve and thirteen, article five of said chapter; to amend and reenact sections thirteen, twenty-four, twenty-four-a, twenty-seven, thirty-four, and thirty-nine, article three, chapter sixty-one of said code; and to amend and reenact section three, article three-a of said chapter, all relating to jurisdiction of magistrate courts and circuit courts; defining the offenses of injury or tampering with a vehicle or special mobile equipment and providing penalties therefor; providing that offenses involving special mobile equipment may be either a misdemeanor or felony, depending on the dollar amount of any injury, damage, or breakage or removal of parts; increasing the number of magistrate court deputy clerks; prescribing the civil jurisdiction of magistrate courts and increasing the amount in controversy which defines the civil jurisdiction of magistrate courts; providing for election or demand for trial by jury

in magistrate court or trial to the court without a jury; providing for appeals in civil cases from magistrate court to circuit court; time periods, bonds, and fees for such appeals; electronic recording of jury trials; preparing and designating records for appeal; circuit court discretion to schedule oral argument, receive memoranda of law, and take evidence; time frame for circuit court review of magistrate proceedings; appeals in criminal cases; time frames, bonds, and stays for such appeals; electronic recording of jury trials, designation of records, and preparation of transcripts of magistrate proceedings; discretion of circuit court to hear oral argument and receive evidence; defining the felony and misdemeanor offenses of grand and petit larceny and establishing penalties therefor; defining the offenses of obtaining money, property, and services by false pretenses, disposing of property to defraud creditors, and theft of services and establishing penalties therefor; defining the misdemeanor and felony offenses of false pretenses and establishing penalties therefor; preserving existing rights, liabilities, and remedies for such offenses; defining offenses involving the attempted or fraudulent use, possession, forgery, and traffic of credit cards and possession and transfer of credit cards and credit card making equipment and establishing penalties therefor; defining the offense of false or fraudulent use of telephonic services and establishing penalties therefor; defining terminology related to credit card offenses; defining the misdemeanor and felony offenses involving the attempted or fraudulent use, possession, forgery, and traffic of credit cards and establishing penalties therefor; defining the offenses of malicious killing of animals by poison or otherwise and establishing penalties therefor; defining the misdemeanor and felony offenses involving taking or carrying away or injuring or destroying fruit, vegetables, grain or grass and establishing penalties therefor; defining misdemeanor and felony offenses of obtaining property in return for worthless checks and establishing penalties therefor; defining the misdemeanor and felony offenses of shoplifting and establishing penalties therefor; and authorizing home detention as an alternative sentence

for felony shoplifting.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section six, article eight, chapter seventeen-a of said code be amended and reenacted; that section nine-a, article one, chapter fifty of said code be amended and reenacted; that section one, article two of said chapter be amended and reenacted; that sections eight, twelve and thirteen, article five of said chapter be amended and reenacted; that sections thirteen, twenty-four, twenty-four-a, twenty-seven, thirty-four and thirty-nine of article three, chapter sixty-one of said code be amended and reenacted; and that section three, article three-a of said chapter be amended and reenacted, all to read as follows:

**CHAPTER 17A. MOTOR VEHICLE
ADMINISTRATION, REGISTRATION,
CERTIFICATE OF TITLE,
AND ANTITHEFT PROVISIONS.**

ARTICLE 8. SPECIAL ANTITHEFT LAWS.

§17A-8-6. Injuring or tampering with vehicle or special mobile equipment.

1 (a) Any person who either individually or in associa-
2 tion with one or more persons willfully injures or
3 tampers with any vehicle or breaks or removes any part
4 or parts of or from a vehicle without the consent of the
5 owner is guilty of a misdemeanor.

6 Any person who with intent to commit any malicious
7 mischief, injury, or other crime climbs into or upon a
8 vehicle whether it is in motion or at rest or with like
9 intent attempts to manipulate any of the levers, starting
10 mechanism, brakes, or other mechanism or device of a
11 vehicle while the same is at rest and unattended or with
12 like intent sets in motion any vehicle while the same is
13 at rest and unattended is guilty of a misdemeanor.

14 (b) Any person, either individually or in association
15 with one or more persons, who shall willfully injure or

16 damage any item of special mobile equipment or break
17 or remove any parts from an item of special mobile
18 equipment, without the consent of the owner, which
19 injury, damage, or breakage or removal of parts shall
20 be of an amount of one thousand dollars or more, is
21 guilty of a felony. If the injury, damage, or breakage or
22 removal of parts shall be of an amount which is less than
23 one thousand dollars, such person is guilty of a
misdemeanor.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-9a. Magistrate court deputy clerks; salary; duties.

1 Whenever required by workload and upon the recom-
2 mendation of the judge of the circuit court, or the chief
3 judge thereof if there is more than one judge of the
4 circuit court, the supreme court of appeals may by rule
5 provide for the appointment of magistrate court deputy
6 clerks, not to exceed fifty-four in number. Such
7 magistrate court deputy clerks shall be appointed by the
8 judge of the circuit court, or the chief judge thereof if
9 there is more than one judge of the circuit court, with
10 such appointee to serve at his will and pleasure under
11 the immediate supervision of the magistrate court clerk.
12 Such magistrate court deputy clerk shall have such
13 duties, clerical or otherwise, as may be assigned by the
14 magistrate court clerk and as may be prescribed by the
15 rules of the supreme court of appeals or the judge of the
16 circuit court, or the chief judge thereof if there is more
17 than one judge of the circuit court. Such magistrate
18 court deputy clerks shall also have authority to exercise
19 the power and perform the duties of the magistrate
20 court clerk as may be delegated or assigned by such
21 magistrate court clerk.

22 Such magistrate court deputy clerk shall not be a
23 member of the immediate family of any magistrate,
24 magistrate court clerk, magistrate assistant or circuit
25 court judge within the same county, shall not have been
26 convicted of a felony or any misdemeanor involving
27 moral turpitude and shall reside in the state of West
28 Virginia. For the purpose of this section, "immediate

29 family” shall mean the relationships of mother, father,
30 sister, brother, child or spouse.

31 Magistrate court deputy clerks shall be paid a
32 monthly salary by the state. Such salary shall be paid
33 on the same basis and in the same applicable amounts
34 as for magistrate assistants in each county as provided
35 in section nine of this article.

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-1. Civil jurisdiction.

1 Except as limited herein and in addition to jurisdic-
2 tion granted elsewhere to magistrate courts, such courts
3 shall have jurisdiction of all civil actions wherein the
4 value or amount in controversy or the value of property
5 sought, exclusive of interest and cost, is not more than
6 five thousand dollars. Magistrate courts shall have
7 jurisdiction of all matters involving unlawful entry or
8 detainer of real property or involving wrongful occupa-
9 tion of residential rental property, so long as the title
10 to such property is not in dispute. Except as the same
11 may be in conflict with the provisions of this chapter,
12 the provisions of article three, chapter fifty-five of this
13 code, regarding unlawful entry and detainer, shall apply
14 to such actions in magistrate court. Magistrate courts
15 shall have jurisdiction of actions on bonds given
16 pursuant to the provisions of this chapter. Magistrate
17 courts shall have continuing jurisdiction to entertain
18 motions in regard to post-judgment process issued from
19 magistrate court and decisions thereon may be appealed
20 in the same manner as judgments.

21 Magistrate courts shall not have jurisdiction of actions
22 in equity, of matters in eminent domain, of matters in
23 which the title to real estate is in issue, of proceedings
24 seeking satisfaction of liens through the sale of real
25 estate, of actions for false imprisonment, of actions for
26 malicious prosecution or of actions for slander or libel
27 or of any of the extraordinary remedies set forth in
28 chapter fifty-three of this code.

29 Magistrates, magistrate court clerks, magistrate court
30 deputy clerks, and magistrate assistants shall have the

31 authority to administer any oath or affirmation, to take
32 any affidavit or deposition, unless otherwise expressly
33 provided by law, and to take, under such regulations as
34 are prescribed by law, the acknowledgment of deeds and
35 other writings.

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.

§50-5-8. Trial by jury; trial to the court.

1 (a) A party to a civil action in magistrate court has
2 the right to elect that the matter be tried with a jury
3 when the amount in controversy exceeds twenty dollars
4 or involves possession to real estate. The election must
5 be made in writing at any time after the commencement
6 of the action and not later than twenty days after the
7 service of any first timely filed answer to the complaint.
8 Failure to elect within such time constitutes a waiver
9 of the right to trial by jury.

10 (b) A defendant in any criminal trial for a misdemea-
11 nor offense triable before a magistrate has the right to
12 demand that the matter be tried with a jury, and the
13 defendant shall be advised of the right to trial by jury
14 in writing. A demand by the defendant for a jury trial
15 must be made in writing not later than twenty days
16 after the defendant's initial appearance before the
17 magistrate: *Provided*, That in the case of an indigent for
18 whom counsel is to be appointed, the twenty-day period
19 shall not commence to run until counsel is appointed.
20 Failure to demand within such time constitutes a waiver
21 of the right to trial by jury.

22 (c) If a jury trial is elected or demanded to determine
23 the issues of fact, the election or demand may not be
24 withdrawn over the objection of any party appearing at
25 the trial, and the magistrate shall cause a jury to be
26 selected, empaneled and sworn which will hear the
27 parties and their evidence, receive the instructions of the
28 court relative to the law involved, and, after delibera-
29 tion, deliver a verdict: *Provided*, That in a criminal
30 proceeding, any such verdict must be unanimous.

31 (d) A magistrate court jury shall consist of six persons,
32 to be selected from a panel of ten persons. The selection

33 and summoning of jurors shall be conducted in accor-
34 dance with the provisions of article one, chapter fifty-
35 two of this code and the supervisory rules of the supreme
36 court of appeals. Jurors shall be paid by the state in
37 accordance with such rules.

38 (e) For purposes of appeal, when a jury trial is had
39 in magistrate court, the magistrate court shall be a
40 court of limited record. Trials before a magistrate when
41 a jury is empaneled shall be recorded electronically. A
42 magnetic tape or other electronic recording medium on
43 which a trial is recorded shall be indexed and securely
44 preserved by the magistrate court clerk. When re-
45 quested by either of the parties in a civil action, by the
46 state or the defendant in a criminal proceeding, or by
47 any interested person, the magistrate court clerk shall
48 provide a duplicate copy of the tape or other electronic
49 recording medium of each trial held. For evidentiary
50 purposes, a duplicate of such electronic recording
51 prepared by the magistrate court clerk shall be a
52 "writing" or "recording" as those terms are defined in
53 rule 1001 of the West Virginia rules of evidence, and
54 unless the duplicate is shown not to reflect the contents
55 accurately, it shall be treated as an original in the same
56 manner that data stored in a computer or similar data
57 is regarded as an "original" under such rule. Unless a
58 party requesting the copy has been permitted to proceed
59 in a civil action without prepayment in accordance with
60 the provisions of section one, article two, chapter fifty-
61 nine of this code, or in a criminal proceeding as an
62 indigent, the party shall pay to the magistrate court an
63 amount equal to the actual cost of the tape or other
64 medium or the sum of five dollars, whichever is greater.

65 (f) If neither party to a civil action demands a jury
66 trial, or if the defendant in a criminal proceeding waives
67 the right to trial by jury, the matter shall be tried by
68 the magistrate sitting without a jury. For purposes of
69 appeal, when a non-jury trial is had in magistrate court,
70 the magistrate court shall not be a court of limited
71 record and the magistrate shall not electronically record
72 the action or proceeding.

73 (g) The designation in this section of magistrate courts

74 as "courts of limited record" shall not be construed to
75 give standing or eligibility to magistrates to participate
76 or be included in the retirement system for judges of
77 courts of record established under the provisions of
78 article nine, chapter fifty-one of this code.

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.

§50-5-12. Appeals in civil cases.

1 (a) Any person may appeal the judgment of a mag-
2 istrate court to the circuit court as a matter of right by
3 requesting such appeal not later than twenty days after
4 such judgment is rendered or not later than twenty days
5 after a decision is rendered upon a motion to set aside
6 such judgment. Such person shall be required to post a
7 bond with good security in a reasonable amount not less
8 than the reasonable court costs of the appeal nor more
9 than the sum of the judgment and the reasonable court
10 costs of the appeal, upon the condition that such person
11 will satisfy the judgment and any court costs which may
12 be rendered against him on any such appeal. The bond
13 and the circuit court filing fee shall be collected by the
14 magistrate court clerk or deputy clerk at the time the
15 appeal is filed, and be forwarded to the clerk of the
16 circuit court along with other appropriate documents
17 regarding the appeal. No bond shall be required of any
18 governmental agency or authority or of a person who
19 has been permitted to proceed without prepayment in
20 accordance with the provisions of section one, article
21 two, chapter fifty-nine of this code. If an appeal is not
22 perfected within such twenty-day period, the circuit
23 court of the county may, not later than ninety days after
24 the date of judgment, grant an appeal upon a showing
25 of good cause why such appeal was not perfected within
26 such twenty-day period. The filing or granting of an
27 appeal shall automatically stay further proceedings to
28 enforce the judgment.

29 (b) In the case of an appeal of a civil action tried
30 before a jury, the hearing on the appeal before the
31 circuit court shall be a hearing on the record. In the case
32 of an appeal of a civil action tried before the magistrate
33 without a jury, the hearing on the appeal before the

34 circuit court shall be a trial de novo, triable to the court,
35 without a jury.

36 (c) In the case of an appeal of a civil action tried before
37 a jury, the following provisions shall apply:

38 (1) To prepare the record for appeal, the party seeking
39 the appeal shall file with the circuit court a petition
40 setting forth the grounds relied upon, and designating
41 those portions of the testimony or other matters
42 reflected in the recording, if any, which he or she will
43 rely upon in prosecuting the appeal. The responding
44 party or parties may designate additional portions of the
45 recording. Unless otherwise ordered by the circuit
46 court, the preparation of a transcript of the designated
47 portions of the recording and the payment of the cost
48 thereof shall be the responsibility of the party request-
49 ing the transcript: *Provided*, That a party may be
50 permitted to proceed without prepayment in accordance
51 with the provisions of section one, article two, chapter
52 fifty-nine of this code. The circuit court may, by general
53 order or by order entered in a specific case, dispense
54 with preparation of a transcript and review the
55 designated portions of the recording aurally.

56 (2) The designated portions of the recording or the
57 transcript thereof, as the case may be, and the exhibits,
58 together with all papers and requests filed in the
59 proceeding, constitute the exclusive record for appeal
60 and shall be made available to the parties.

61 (3) After the record for appeal is filed in the office of
62 the circuit clerk, the court may, in its discretion,
63 schedule the matter for oral argument or require the
64 parties to submit written memoranda of law. The circuit
65 court shall consider whether the judgment or order of
66 the magistrate is:

67 (A) Arbitrary, capricious, an abuse of discretion or
68 otherwise not in conformance with the law;

69 (B) Contrary to constitutional right, power, privilege
70 or immunity;

71 (C) In excess of statutory jurisdiction, authority or
72 limitations or short of statutory right;

73 (D) Without observance of procedure required by law;

74 (E) Unsupported by substantial evidence; or

75 (F) Unwarranted by the facts.

76 (4) The circuit court may take any of the following
77 actions which may be necessary to dispose of the
78 questions presented on appeal, with justice to the
79 parties:

80 (A) Dismiss the appeal;

81 (B) Reverse, affirm, or modify the judgment or order
82 being appealed;

83 (C) Remand the case for further proceedings, with
84 instructions to the magistrate;

85 (D) Finally dispose of the action by entering judgment
86 on appeal; or

87 (E) Retain the matter and retry the issues of fact, or
88 some part or portions thereof, as may be required by the
89 provisions of subdivision five of this subsection.

90 (5) If the circuit court finds that a record for appeal
91 is deficient as to matters which might be affected by
92 evidence not considered or inadequately developed, the
93 court may proceed to take such evidence and make
94 independent findings of fact to the extent that questions
95 of fact and law may merge in determining whether the
96 evidence was such, as a matter of law, as to require a
97 particular finding. If the party appealing the judgment
98 is also a party who elected to try the action before a jury
99 in the magistrate court, and if the circuit court finds
100 that the proceedings below were subject to error to the
101 extent that the party was effectively denied a jury trial,
102 the circuit court may, upon motion of the party, empanel
103 a jury to re-examine the issues of fact, or some part or
104 portions thereof.

105 (6) The review by the court and a decision on the
106 appeal shall be completed within ninety days after the
107 appeal is regularly placed upon the docket of the circuit
108 court.

109 (d) In the case of an appeal of a civil action tried

110 without a jury, the following provisions shall apply:

111 (1) The party seeking the appeal shall file with the
112 circuit court a petition for appeal and trial de novo. The
113 exhibits, together with all papers and requests filed in
114 the proceeding, constitute the exclusive record for
115 appeal and shall be made available to the parties.

116 (2) If, after the appeal is regularly placed upon the
117 docket of the circuit court, neither party brings the
118 matter on to hearing before the end of the second term
119 thereafter at which it is called for trial, unless good
120 cause for a continuance is shown, the appeal shall be
121 considered as abandoned and shall be dismissed at the
122 cost of the appellant unless sufficient cause is shown for
123 a further continuance and the judgment of the magis-
124 trate court shall stand. No appeal which shall have been
125 so dismissed by the circuit court shall be reinstated after
126 the close of the next regular term after such dismissal.

§50-5-13. Appeals in criminal cases.

1 (a) Any person convicted of an offense in a magistrate
2 court may appeal such conviction to circuit court as a
3 matter of right by requesting such appeal within twenty
4 days after the sentencing for such conviction. The
5 magistrate may require the posting of bond with good
6 security conditioned upon the appearance of the defend-
7 ant as required in circuit court, but such bond may not
8 exceed the maximum amount of any fine which could
9 be imposed for the offense. The bond may be upon the
10 defendant's own recognizance. If no appeal is perfected
11 within such twenty-day period, the circuit court may,
12 not later than ninety days after the sentencing, grant an
13 appeal upon a showing of good cause why such appeal
14 was not filed within the twenty-day period. The filing
15 or granting of an appeal shall automatically stay the
16 sentence of the magistrate.

17 (b) In the case of an appeal of a criminal proceeding
18 tried before a jury, the hearing on the appeal before the
19 circuit court shall be a hearing on the record. In the case
20 of an appeal of a criminal proceeding tried before the
21 magistrate without a jury, the hearing on the appeal
22 before the circuit court shall be a trial de novo, triable

23 to the court, without a jury.

24 (c) In the case of an appeal of a criminal proceeding
25 tried before a jury, the following provisions shall apply:

26 (1) To prepare the record for appeal, the defendant
27 shall file with the circuit court a petition setting forth
28 the grounds relied upon, and designating those portions
29 of the testimony or other matters reflected in the
30 recording, if any, which he or she will rely upon in
31 prosecuting the appeal. The prosecuting attorney may
32 designate additional portions of the recording. Unless
33 otherwise ordered by the circuit court, the preparation
34 of a transcript of the portions of the recording desig-
35 nated by the defendant, and the payment of the cost
36 thereof shall be the responsibility of the defendant:
37 *Provided*, That such costs may be waived due to the
38 defendant's indigency. The circuit court may, by general
39 order or by order entered in a specific case, dispense
40 with preparation of a transcript and review the
41 designated portions of the recording aurally.

42 (2) The designated portions of the recording or the
43 transcript thereof, as the case may be, and the exhibits,
44 together with all papers and requests filed in the
45 proceeding, constitute the exclusive record for appeal,
46 and shall be made available to the defendant and the
47 prosecuting attorney.

48 (3) After the record for appeal is filed in the office of
49 the circuit clerk, the court may, in its discretion,
50 schedule the matter for oral argument or require the
51 parties to submit written memoranda of law. The circuit
52 court shall consider whether the judgment or order of
53 the magistrate is:

54 (A) Arbitrary, capricious, an abuse of discretion or
55 otherwise not in conformance with the law;

56 (B) Contrary to constitutional right, power, privilege
57 or immunity;

58 (C) In excess of statutory jurisdiction, authority or
59 limitations or short of statutory right;

60 (D) Without observance of procedure required by law;

61 (E) Unsupported by substantial evidence; or

62 (F) Unwarranted by the facts.

63 (4) The circuit court may take any of the following
64 actions which may be necessary to dispose of the
65 questions presented on appeal, with justice to the
66 defendant and the state:

67 (A) Dismiss the appeal;

68 (B) Reverse, affirm, or modify the judgment or order
69 being appealed;

70 (C) Remand the case for further proceedings, with
71 instructions to the magistrate; or

72 (D) Finally dispose of the action by entering judgment
73 on appeal.

74 (E) Retain the matter and retry the issues of fact, or
75 some part or portions thereof, as may be required by the
76 provisions of subdivision five of this subsection.

77 (5) If the circuit court finds that a record for appeal
78 is deficient as to matters which might be affected by
79 evidence not considered or inadequately developed, the
80 court may proceed to take such evidence and make
81 independent findings of fact to the extent that questions
82 of fact and law may merge in determining whether the
83 evidence was such, as a matter of law, as to require a
84 particular finding. If the party appealing the judgment
85 is also a party who elected to try the action before a jury
86 in the magistrate court, and if the circuit court finds
87 that the proceedings below were subject to error to the
88 extent that the party was effectively denied a jury trial,
89 the circuit court may, upon motion of the party, empanel
90 a jury to re-examine the issues of fact, or some part or
91 portions thereof.

92 (6) The review by the court and a decision on the
93 appeal shall be completed within ninety days after the
94 appeal is regularly placed upon the docket of the circuit
95 court.

96 (d) In the case of an appeal of a criminal proceeding
97 tried without a jury, the party seeking the appeal shall

98 file with the circuit court a petition for appeal and trial
99 de novo. The exhibits, together with all papers and
100 requests filed in the proceeding, constitute the exclusive
101 record for appeal and shall be made available to the
102 parties.

103 (E) Notwithstanding any other provision of this code
104 to the contrary, there shall be no appeal from a plea of
105 guilty where the defendant was represented by counsel
106 at the time the plea was entered: *Provided*, That the
107 defendant shall have an appeal from a plea of guilty
108 where an extraordinary remedy would lie or where the
109 magistrate court lacked jurisdiction.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-13. Grand and petit larceny distinguished; penalties.

1 (a) If a person commits simple larceny of goods or
2 chattels of the value of one thousand dollars or more,
3 such person is guilty of a felony, designated grand
4 larceny, and, upon conviction thereof, shall be impris-
5 oned in the penitentiary not less than one nor more than
6 ten years, or, in the discretion of the court, be confined
7 in jail not more than one year and shall be fined not
8 more than two thousand five hundred dollars.

9 (b) If a person commits simple larceny of goods or
10 chattels of the value of less than one thousand dollars,
11 such person is guilty of a misdemeanor, designated petit
12 larceny, and, upon conviction thereof, shall be confined
13 in jail for a term not to exceed one year or fined not
14 to exceed two thousand five hundred dollars, or both, in
15 the discretion of the court.

§61-3-24. Obtaining money, property and services by false pretenses; disposing of property to defraud creditors; penalties.

1 (a) (1) If a person obtains from another by any false
2 pretense, token or representation, with intent to
3 defraud, any money, goods or other property which may
4 be the subject of larceny; or

5 (2) If a person obtains on credit from another any
6 money, goods or other property which may be the
7 subject of larceny, by representing that there is money
8 due him or her or to become due him or her, and assigns
9 the claim for such money, in writing, to the person from
10 whom he or she obtains such money, goods or other
11 property, and afterwards collects the money due or to
12 become due, without the consent of the assignee, and
13 with the intent to defraud;

14 (3) Such person is guilty of larceny. If the value of the
15 money, goods or other property is one thousand dollars
16 or more, such person is guilty of a felony, and, upon
17 conviction thereof, shall be imprisoned in the peniten-
18 tiary not less than one year nor more than ten years, or,
19 in the discretion of the court, be confined in jail not more
20 than one year and be fined not more than two thousand
21 five hundred dollars. If the value of the money, goods
22 or other property is less than one thousand dollars, such
23 person is guilty of a misdemeanor, and, upon conviction
24 thereof, shall be confined in jail not more than one year
25 or fined not more than two thousand five hundred
26 dollars, or both.

27 (b) If a person obtains by any false pretense, token or
28 representation, with intent to defraud, the signature of
29 another to a writing, the false making of which would
30 be forgery, the person is guilty of a felony, and, upon
31 conviction thereof, shall be imprisoned in the peniten-
32 tiary not less than one year nor more than five years,
33 or, in the discretion of the court, be confined in jail not
34 more than one year and fined not more than two
35 thousand five hundred dollars.

36 (c) (1) If a person removes any of his or her property
37 out of any county with the intent to prevent the same
38 from being levied upon by any execution; or

39 (2) If a person secretes, assigns or conveys, or
40 otherwise disposes of any of his or her property with the
41 intent to defraud any creditor or to prevent the property
42 from being made liable for payment of debts; or

43 (3) If a person receives the property of another with
44 the intent to defraud any creditor or to prevent the

45 property from being made liable for the payment of
46 debts;

47 (4) The person is guilty of a misdemeanor, and, upon
48 conviction thereof, shall be fined not more than two
49 thousand five hundred dollars and be confined in jail not
50 more than one year.

51 (d) If a person, firm or corporation obtains labor,
52 services or any other such thing of value from another
53 by any false pretense, token or representation, with
54 intent to defraud, the person, firm or corporation is
55 guilty of theft of services. If the value of the labor,
56 services or any other such thing of value is one thousand
57 dollars or more, the person, firm or corporation is guilty
58 of a felony, and, upon conviction thereof, shall be
59 imprisoned in the penitentiary not less than one year nor
60 more than ten years, or, in the discretion of the court,
61 be confined in jail not more than one year and be fined
62 not more than two thousand five hundred dollars. If the
63 value of the labor, services or any other such thing of
64 value is less than one thousand dollars, the person, firm
65 or corporation is guilty of a misdemeanor, and, upon
66 conviction thereof, shall be confined in jail not more
67 than one year or fined not more than two thousand five
68 hundred dollars, or both, in the discretion of the court.

69 (e) Theft of services includes the obtaining of a stop
70 payment order on a check, draft or order for payment
71 of money owed for services performed in good faith and
72 in substantial compliance with a written or oral contract
73 for services, with the fraudulent intent to permanently
74 deprive the provider of such labor, services or other such
75 thing of value of the payment represented by such
76 check, draft or order. Notwithstanding the penalties set
77 forth elsewhere in this section, any person, firm or
78 corporation violating the provisions of this subsection is
79 guilty of a misdemeanor, and, upon conviction thereof,
80 shall be fined not more than two times the face value
81 of the check, draft or order.

82 (f) Prosecution for an offense under this section does
83 not bar or otherwise affect adversely any right or
84 liability to damages, forfeiture or other civil remedy

85 arising from any or all elements of the criminal offense.

§61-3-24a. Attempted or fraudulent use, forgery, traffic of credit cards; possession and transfer of credit cards and credit card making equipment; false or fraudulent use of telephonic services; penalties.

1 (a) As used in this section:

2 (1) "Counterfeit credit card" means the following:

3 (A) Any credit card or a representation, depiction,
4 facsimile, aspect or component thereof that is counter-
5 feit, fictitious, altered, forged, lost, stolen, incomplete or
6 obtained in violation of this section, or as part of a
7 scheme to defraud; or

8 (B) Any invoice, voucher, sales draft or other reflec-
9 tion or manifestation of such a card.

10 (2) "Credit card making equipment" means any
11 equipment, machine, plate mechanism, impression or
12 any other contrivance which can be used to produce a
13 credit card, a counterfeit credit card, or any aspect or
14 component of either.

15 (3) "Traffic" means:

16 (A) To sell, transfer, distribute, dispense or otherwise
17 dispose of any property; or

18 (B) To buy, receive, possess, obtain control of or use
19 property with the intent to sell, transfer, distribute,
20 dispense or otherwise dispose of such property.

21 (4) "Notice" means either information given in person
22 or information given in writing to the person to whom
23 the number, card or device was issued. The sending of
24 a notice in writing by registered or certified mail in the
25 United States mail, duly stamped and addressed to such
26 person at his last known address, is prima facie evidence
27 that such notice was duly received. A cardholder's
28 knowledge of the revocation of his or her credit card
29 may be reasonably inferred by evidence that notice of
30 such revocation was mailed to him or her, at least four
31 days prior to his or her use or attempted use of the

32 credit card, by first class mail at his or her last known
33 address.

34 (b) (1) It is unlawful for any person knowingly to
35 obtain or attempt to obtain credit, or to purchase or
36 attempt to purchase any goods, property or service, by
37 the use of any false, fictitious or counterfeit credit card,
38 telephone number, credit number or other credit device,
39 or by the use of any credit card, telephone number,
40 credit number or other credit device of another beyond
41 or without the authority of the person to whom such
42 card, number or device was issued, or by the use of any
43 credit card, telephone number, credit number or other
44 credit device in any case where such card, number or
45 device has been revoked and notice of such revocation
46 has been given to the person to whom issued.

47 (2) It is unlawful for any person knowingly to obtain
48 or attempt to obtain, by the use of any fraudulent
49 scheme, device, means or method, telephone or tele-
50 graph service or the transmission of a message, signal
51 or other communication by telephone or telegraph, or
52 over telephone or telegraph facilities with intent to avoid
53 payment of charges therefor.

54 (3) Any person who violates any provision of this
55 subsection, if the credit, goods, property, service or
56 transmission is of the value of one thousand dollars or
57 more, is guilty of a felony, and, upon conviction thereof,
58 shall be imprisoned in the penitentiary not less than one
59 year nor more than ten years or, in the discretion of the
60 court, be confined in jail not more than one year and
61 be fined not more than two thousand five hundred
62 dollars; and if of less value, is guilty of a misdemeanor,
63 and, upon conviction thereof, shall be confined in jail not
64 more than one year or fined not more than two thousand
65 five hundred dollars, or both.

66 (c) A person is guilty of forgery of a credit card when
67 he or she makes, manufactures, presents, embosses,
68 alters or utters a credit card with intent to defraud any
69 person, issuer of credit or organization providing money,
70 goods, services, or anything else of value in exchange for
71 payment by credit card and he or she is guilty of a

72 felony, and, upon conviction thereof, shall be imprisoned
73 in the penitentiary not less than one year nor more than
74 ten years, or, in the discretion of the court, be confined
75 in jail not more than one year and fined not less than
76 fifty nor more than two thousand five hundred dollars.

77 (d) Any person who traffics in or attempts to traffic
78 in ten or more counterfeit credit cards or credit card
79 account numbers of another in any six-month period is
80 guilty of a felony, and, upon conviction thereof, shall be
81 imprisoned in the penitentiary not less than one year nor
82 more than ten years, or, in the discretion of the court,
83 be confined in jail not more than one year and fined not
84 less than fifty nor more than two thousand five hundred
85 dollars.

86 (e) A person who receives, possesses, transfers, buys,
87 sells, controls or has custody of any credit card making
88 equipment with intent that the equipment be used in the
89 production of counterfeit credit cards is guilty of a
90 felony, and, upon conviction thereof, shall be imprisoned
91 in the penitentiary not less than one year nor more than
92 ten years, or, in the discretion of the court, be confined
93 in jail not more than one year and fined not less than
94 one thousand nor more than five thousand dollars.

95 (f) A person who knowingly receives, possesses,
96 acquires, controls or has custody of a counterfeit credit
97 card is guilty of a misdemeanor, and, upon conviction
98 thereof, shall be confined in jail not exceeding six
99 months or fined not more than five hundred dollars, or
100 both.

**§61-3-27. Malicious killing of animals by poison or
otherwise; penalty.**

1 If a person maliciously administers poison to, or
2 exposes poison with the intent that it should be taken
3 by, any horse, cow or other animal of another person,
4 or if any person maliciously maims, kills, or causes the
5 death of any horse, cow or other animal of another
6 person, of the value of one hundred dollars or more, the
7 person is guilty of a felony, and, upon conviction, shall
8 be imprisoned in the penitentiary not less than one year
9 nor more than ten years; and, if the horse, cow or other

10 animal is of less value than one hundred dollars, the
11 person is guilty of a misdemeanor, and, upon conviction,
12 shall be confined in jail not more than three months and
13 fined not more than five hundred dollars: *Provided*, That
14 this section shall not be construed to include dogs.

**§61-3-34. Taking or injuring garden or field crops;
penalties.**

1 If a person enters the orchard, field, garden or market
2 garden of another person, without the consent of the
3 owner or occupier thereof, and does any damage to the
4 fruit, vegetables, grain or grass growing or being
5 thereon, or takes, carries away, injures or destroys any
6 of the grain, fruit, grass or vegetables growing or being
7 thereon, the person is guilty of a misdemeanor, and,
8 upon conviction, shall be fined not more than five
9 hundred dollars, or confined in jail not exceeding six
10 months, or both. If a person commits any of the acts
11 mentioned herein, and if it is charged in the indictment
12 or information and proved that the property injured or
13 destroyed, or taken or carried away, is of a greater value
14 than one thousand dollars, the person is guilty of a
15 felony, and, upon conviction, shall be imprisoned in the
16 penitentiary not less than one year nor more than ten
17 years, or, in the discretion of the court, be confined in
18 jail not more than one year and fined not less than fifty
19 nor more than two thousand five hundred dollars.

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

1 It is unlawful for any person, firm or corporation to
2 obtain any money, services, goods or other property or
3 thing of value by means of a check, draft or order for
4 the payment of money or its equivalent upon any bank
5 or other depository, knowing at the time of the making,
6 drawing, issuing, uttering or delivering of the check,
7 draft or order that there is not sufficient funds on
8 deposit in or credit with such bank or other depository
9 with which to pay the same upon presentation. The
10 making, drawing, issuing, uttering or delivery of any
11 such check, draft or order, for or on behalf of any
12 corporation, or its name, by any officer or agent of such

13 corporation, shall subject such officer or agent to the
14 penalties of this section to the same extent as though
15 such check, draft or order was his own personal act,
16 when such agent or officer knows that such corporation
17 does not have sufficient funds on deposit in or credit
18 with such bank or depository from which such check,
19 draft or order can legally be paid upon presentment.

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

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

31 A person who violates the provisions of this section,
32 if the amount of the check, draft or order is less than
33 five hundred dollars, is guilty of a misdemeanor, and,
34 upon conviction thereof, the person shall be fined not
35 more than two hundred dollars, or confined in jail not
36 more than six months, or both. A person who violates
37 the provisions of this section, if the amount of the check,
38 draft or order is five hundred dollars or more, is guilty
39 of a felony, and, upon conviction thereof, the person shall
40 be fined not more than five hundred dollars, or
41 imprisoned in the penitentiary not less than one year nor
42 more than ten years, or both.

ARTICLE 3A. SHOPLIFTING.

§61-3A-3. Penalties.

1 A person convicted of shoplifting shall be punished as
2 follows:

3 (a) *First offense conviction.* — Upon a first shoplifting
4 conviction:

5 (1) When the value of the merchandise is less than or
6 equal to five hundred dollars, the person is guilty of a

7 misdemeanor and shall be fined not more than two
8 hundred fifty dollars.

9 (2) When the value of the merchandise exceeds five
10 hundred dollars, the person is guilty of a misdemeanor
11 and shall be fined not less than one hundred dollars nor
12 more than five hundred dollars, and such fine shall not
13 be suspended, or the person shall be confined in jail not
14 more than sixty days, or both.

15 (b) *Second offense conviction.* — Upon a second
16 shoplifting conviction:

17 (1) When the value of the merchandise is less than or
18 equal to five hundred dollars, the person is guilty of a
19 misdemeanor and shall be fined not less than one
20 hundred dollars nor more than five hundred dollars, and
21 such fine shall not be suspended, or the person shall be
22 confined in jail not more than six months or both.

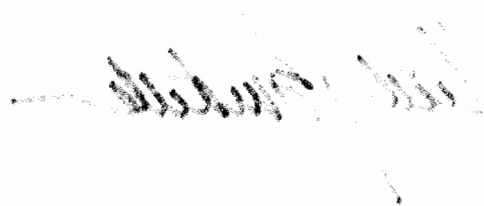
23 (2) When the value of the merchandise exceeds five
24 hundred dollars, the person is guilty of a misdemeanor
25 and shall be fined not less than five hundred dollars and
26 shall be confined in jail for not less than six months nor
27 more than one year.

28 (c) *Third offense convictions.* — Upon a third or
29 subsequent shoplifting conviction, regardless of the
30 value of the merchandise, the person is guilty of a felony
31 and shall be fined not less than five hundred dollars nor
32 more than five thousand dollars, and shall be impri-
33 soned in the penitentiary for not less than one year nor
34 more than ten years. At least one year shall actually be
35 spent in confinement and not subject to probation:
36 *Provided,* That an order for home detention by the court
37 pursuant to the provisions of article eleven-b, chapter
38 sixty-two of this code may be used as an alternative
39 sentence to the incarceration required by this
40 subsection.

41 (d) *Mandatory penalty.* — In addition to the fines and
42 imprisonment imposed by this section, in all cases of
43 conviction for the offense of shoplifting, the court shall
44 order the defendant to pay a penalty to the mercantile
45 establishment involved in the amount of fifty dollars, or

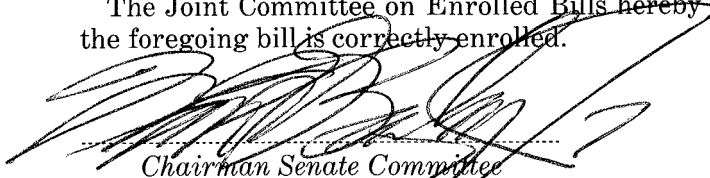
46 double the value of the merchandise involved, whichever
47 is higher. The mercantile establishment shall be entitled
48 to collect such mandatory penalty as in the case of a civil
49 judgment. This penalty shall be in addition to the
50 mercantile establishment's rights to recover the stolen
51 merchandise.

52 (e) In determining the number of prior shoplifting
53 convictions for purposes of imposing punishment under
54 this section, the court shall disregard all such convic-
55 tions occurring more than seven years prior to the
56 shoplifting offense in question.

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Enr. Com. Sub. for H. B. 4295] 24

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



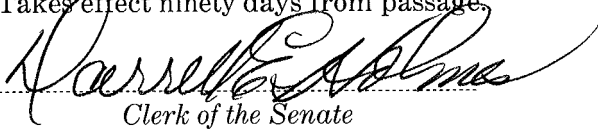
Chairman Senate Committee



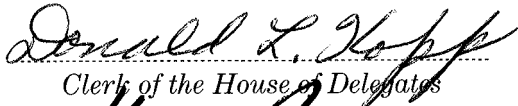
Chairman House Committee

Originating in the House.

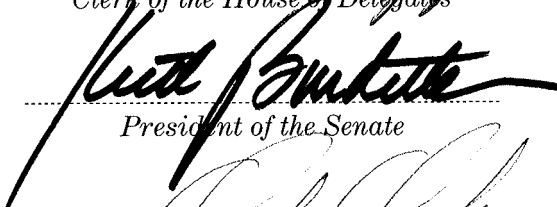
Takes effect ninety days from passage.



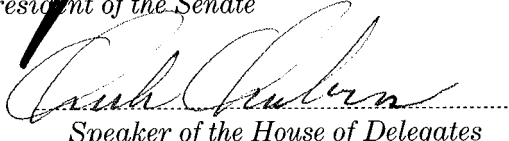
Clerk of the Senate



Clerk of the House of Delegates

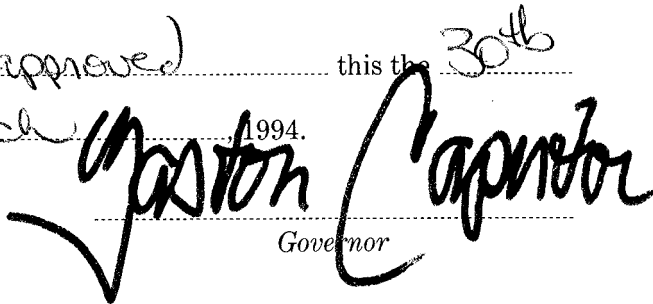


President of the Senate



Speaker of the House of Delegates

The within is approved this the 30th
day of March 1994.



Governor

PRESENTED TO THE

GOVERNOR

Date 3/29/94

Time 11:45 AM