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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

House Bill No. 4591

(By Delegates Thompson, Kominar, Seacrist,
Jenkins, H. White, Hutchins and L. White)



Passed March 13, 1998

In Effect Ninety Days from Passage

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OFFICE OF THE CLERK
LEGISLATIVE DEPARTMENT
STATE OF WEST VIRGINIA

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4591

(BY DELEGATES THOMPSON, KOMINAR, SEACRIST,
JENKINS, H. WHITE, HUTCHINS AND L. WHITE)

[Passed March 13, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact article two, chapter thirty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article three, all relating to licensing and regulating the businesses of the issuance and sale of checks and money orders, money transmitting, currency exchange, currency transportation, and check cashing; providing procedures for license application, issuance and renewal; setting fees; authorizing the banking commissioner to propose legislative rules; establishing qualifications for licenses and renewals including bonding and net worth requirements; establishing the right of the commissioner to examine licensee's records; granting the commissioner subpoena powers; establishing notification requirements; establishing an affirmative duty of licensee to keep and maintain records; establishing criminal and civil penalties for violations of this article; granting the commissioner the power to revoke or suspend licenses in certain circumstances, to enter into consent orders and issue cease and desist orders; providing for civil liability of licensees; providing for confidentiality of records; providing

hearing procedures; permitting the commissioner to limit certain advertising by legislative rule; permitting licensees to conduct business through authorized delegates; requiring a license for check cashing services not incidental to a merchant's business; limiting service fees for check cashing; prohibiting check cashing loans; establishing penalties for violations; and providing for injunctive relief.

Be it enacted by the Legislature of West Virginia:

That article two, chapter thirty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article three, all to read as follows:

ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.

§32A-2-1. Definitions.

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

3 (2) "Check" or "payment instrument" means any
4 check, traveler's check, draft, money order, or other
5 instrument for the transmission or payment of money
6 whether or not the instrument is negotiable. The term
7 does not include a credit card voucher, a letter of credit or
8 any instrument that is redeemable by the issuer in goods
9 or services.

10 (3) "Currency" means a medium of exchange
11 authorized or adopted by a domestic or foreign
12 government.

13 (4) "Currency exchange" means the conversion of the
14 currency of one government into the currency of another
15 government, but does not include the issuance and sale of
16 travelers checks denominated in a foreign currency.
17 Transactions involving the electronic transmission of
18 funds by licensed money transmitters which may permit,
19 but do not require, the recipient to obtain the funds in a
20 foreign currency outside of West Virginia are not

21 currency exchange transactions: *Provided*, That they are
22 not reportable as currency exchange transactions under
23 federal laws and regulations.

24 (5) "Currency exchange, transportation, transmission
25 business" means a person who is engaging in currency
26 exchange, currency transportation, or currency
27 transmission as a service or for profit.

28 (6) "Currency transmission" or "money transmission"
29 means engaging in the business of selling or issuing
30 checks or the business of receiving currency for the
31 purpose of transmitting the currency or its equivalent by
32 wire, facsimile, or other electronic means, or through the
33 use of a financial institution, financial intermediary, the
34 federal reserve system, or other funds transfer network. It
35 includes the transmission of funds through the issuance
36 and sale of stored value cards which are intended for
37 general acceptance and use in commercial or consumer
38 transactions.

39 (7) "Currency transportation" means knowingly
40 engaging in the business of physically transporting
41 currency from one location to another in a manner other
42 than by a licensed armored car service exempted under
43 section three of this article.

44 (8) "Licensee" means a person licensed by the
45 commissioner under this article.

46 (9) "Money order" means any instrument for the
47 transmission or payment of money in relation to which the
48 purchaser or remitter appoints or purports to appoint the
49 seller thereof as his agent for the receipt, transmission or
50 handling of money, whether the instrument is signed by
51 the seller, the purchaser or remitter, or some other person.

52 (10) "Person" means any individual, partnership,
53 association, joint stock association, limited liability
54 company, trust or corporation.

55 (11) "Principal" means a licensee's owner, president,
56 senior officer responsible for the licensee's business, chief
57 financial officer or any other person who performs similar
58 functions or who otherwise controls the conduct of the

59 affairs of a licensee. A person controlling ten percent or
60 more of the voting stock of any corporate applicant is a
61 principal under this provision.

62 (12) "Securities" means all bonds, debentures or other
63 evidences of indebtedness: (a) Issued by the United States
64 of America or any agency thereof, or guaranteed by the
65 United States of America, or for which the credit of the
66 United States of America or any agency thereof is pledged
67 for the payment of the principal and interest thereof;
68 and/or (b) which are direct general obligations of this state,
69 or any other state if unconditionally guaranteed as to the
70 principal and interest by the other state and if the other
71 state has the power to levy taxes for the payment of the
72 principal and interest thereof and is not in default in the
73 payment of any part of the principal or interest owing by
74 it upon any part of its funded indebtedness; and/or (c)
75 which are general obligations of any county, school
76 district or municipality in this state, issued pursuant to law
77 and payable from ad valorem taxes levied on all of the
78 taxable property located therein, if the county, school
79 district or municipality is not in default in the payment of
80 any part of the principal or interest on any debt evidenced
81 by its bonds, debentures or other evidences of
82 indebtedness.

§32A-2-2. License required.

1 (a) Except as provided by section three of this article,
2 a person may not engage in the business of currency
3 exchange, transportation, or transmission in this state
4 without a license issued under this article.

5 (b) Any person who was previously licensed as a
6 check seller under this chapter who holds a valid license
7 on the effective date of this article shall be issued a
8 provisional license under this article without the need of
9 an additional application and fee. This provisional license
10 shall expire upon six months of its issuance, during which
11 time the licensee may continue to conduct its check selling
12 business, provided that it maintains the net worth and
13 security required under its previous license. The
14 commissioner may require the licensee to obtain
15 expanded bond coverage consistent with this article for the

16 protection of purchasers of money transmission services
 17 and currency exchange services, as well as for covered
 18 currency transportation services, when the licensee
 19 conducts one or more of these businesses. At the
 20 expiration of a provisional license granted by this section,
 21 any person who wishes to continue to engage in any
 22 business regulated in this article shall apply for a license
 23 and meet the criteria under the provisions of this article. A
 24 provisional license granted by this section may upon
 25 hearing be suspended or revoked by the commissioner for
 26 good cause shown.

§32A-2-3. Exemptions.

1 (a) The following are exempt from the provisions of
 2 this article:

3 (1) Banks, trust companies, foreign bank agencies,
 4 credit unions, savings banks, and savings and loan
 5 associations authorized to do business in the state, or
 6 which qualify as federally insured depository institutions,
 7 whether organized under the laws of this state, any other
 8 state, or the United States;

9 (2) The United States and any department or agency
 10 thereof;

11 (3) The United States post office;

12 (4) This state and any political subdivision thereof;

13 (5) The provision of electronic transfer of government
 14 benefits for any federal, state or county governmental
 15 agency as defined in Federal Reserve Board Regulation E,
 16 by a contractor for and on behalf of the United States or
 17 any department, agency or instrumentality of the United
 18 States, or any state or any political subdivisions of a state;
 19 and

20 (6) Persons engaged in the business of currency
 21 transportation who operate an armored car service in this
 22 state pursuant to licensure under article eighteen, chapter
 23 thirty of this code: *Provided*, That the net worth of the
 24 licensee exceeds five million dollars. The term "armored
 25 car service" as used in this article means a service

26 provided by a person transporting or offering to transport,
27 under armed security guard, currency or other things of
28 value in a motor vehicle specially equipped to offer a high
29 degree of security. Persons seeking to claim this
30 exemption shall notify the commissioner of their intent to
31 do so and demonstrate that they qualify for its use.

32 (b) Any person who holds and maintains a valid
33 license under this article may engage in the business of
34 money transmission or currency exchange at one or more
35 locations in this state through or by means of an
36 authorized delegate or delegates as set forth in section
37 twenty-seven of this article, as said licensee may designate
38 and appoint from time to time, and no such authorized
39 delegate shall be required to obtain a separate license
40 under this article.

41 (c) The issuance and sale of stored value cards which
42 are intended to purchase items only from the issuer or
43 seller of the stored value card is exempt from the
44 provisions of this article.

§32A-2-4. License application, issuance, and renewal.

1 (a) An applicant for a license shall submit an
2 application to the commissioner on a form prescribed by
3 the commissioner.

4 (b) Each application shall be accompanied by a
5 nonrefundable application fee and a license fee. If the
6 application is approved, the application fee is the license
7 fee for the first year of licensure.

8 (c) The commissioner shall issue a license if the
9 commissioner finds that the applicant meets the
10 requirements of this article and the rules adopted under
11 this article. The commissioner shall approve or deny
12 every application for an original license within one
13 hundred twenty days from the date a complete application
14 is submitted, unless the commissioner extends the period
15 for good cause. A license is valid for one year from the
16 date the license is issued by the commissioner.

17 (d) The licensee at each office it owns and operates in
18 West Virginia shall prominently display, or maintain

19 available for inspection, a copy of the license authorizing
20 the conduct of a currency exchange business, if the
21 location offers and provides such services. Where the
22 currency exchange business is conducted through a
23 licensee's authorized delegates in this state, each
24 authorized delegate location offering such services shall
25 maintain available for inspection, proof of their
26 appointment by the licensee to conduct such business.

27 (e) As a condition for renewal of a license, the licensee
28 must submit to the commissioner an application for
29 renewal on a form prescribed by the commissioner and an
30 annual license renewal fee.

31 (f) A license issued under this article may not be
32 transferred or assigned.

33 (g) An applicant for a license who is not located in this
34 state shall file an irrevocable consent, duly acknowledged,
35 that suits and actions may be commenced against the
36 applicant in the courts of this state by service of process
37 upon a person located within the state designated to accept
38 service, or by service upon the secretary of state, as well as
39 by service as set forth in this chapter.

§32A-2-5. Fees.

1 (a) The commissioner shall charge and collect the
2 license application fees, license fees, license renewal fees,
3 and examination fees in amounts reasonable and
4 necessary to defray the cost of administering this article as
5 follows:

6 (1) For applying for a license, an application and
7 licensing fee of five hundred dollars, plus ten dollars for
8 each location within the state at which the applicant and its
9 authorized delegates are conducting business or propose
10 to conduct business excepting the applicant's principal
11 place of business.

12 (2) For renewal of a license, a fee of two hundred
13 fifty dollars plus ten dollars for each location within the
14 state at which the licensee and its authorized delegates are
15 conducting business or propose to conduct business
16 excepting the applicant's principal place of business.

17 (3) The total of fees required by subdivisions (1) or
18 (2) of this subsection may not exceed two thousand five
19 hundred dollars for any one application.

20 (4) For a change in address by the licensee of its
21 principal place of business, a fee of one hundred dollars.

22 (5) For failure to timely submit an application of
23 renewal or file audited financial statements required for
24 renewal as set forth in this article, a penalty fee of ten
25 dollars per day for each day late, unless an extension of
26 time has been granted or the fee waived by the
27 commissioner.

28 (b) Beginning one year after the effective date of this
29 article, the commissioner may, by rules proposed for
30 legislative approval in accordance with the provisions of
31 article three, chapter twenty-nine-a of this code, amend the
32 fees set forth in this section and in subsection (b), section
33 eleven of this article.

34 (c) Fees and moneys received and collected under this
35 article shall be paid into the special revenue account in the
36 state treasury for the division of banking established in
37 section eight, article two, chapter thirty-one-a of this code.

§32A-2-6. Denial of license or renewal of license.

1 (a) The commissioner may deny the grant of a license
2 or renewal of a license for a failure to comply or otherwise
3 meet the requirements and qualifications of this article or
4 a rule adopted under this article, including failure to
5 submit a complete application.

6 (b) The denial of a license or denial of renewal by the
7 commissioner and the appeal from that action are
8 governed by the procedures for a contested case hearing
9 under the provisions of article five, chapter twenty-nine-a
10 of this code and shall conform to that provided for
11 financial institutions pursuant to sections one and two,
12 article eight, chapter thirty-one-a of this code and the rules
13 thereunder.

14 (c) Whenever the commissioner refuses to issue a
15 license, or refuses to renew a license, he or she shall make

16 and enter an order to that effect and shall cause a copy of
 17 the order to be served in person or by certified mail,
 18 return receipt requested, or in any other manner in which
 19 process in a civil action in this state may be served, on the
 20 applicant or licensee, as the case may be.

§32A-2-7. Authorization to propose rules.

1 The commissioner may propose rules necessary to
 2 implement this article for legislative approval in
 3 accordance with the provisions of article three, chapter
 4 twenty-nine-a of this code.

§32A-2-8. Qualifications for license or renewal of license.

1 (a) The commissioner may issue a license to an
 2 applicant only upon first determining that the financial
 3 condition, business experience, and character and general
 4 fitness of an applicant are such that the issuance of the
 5 license is in the public interest.

6 (b) An applicant for a license shall agree in writing to
 7 comply with the currency reporting and record-keeping
 8 requirements of 31 U.S.C. § 5313, as well as those set
 9 forth in 31 C.F.R. Part 103 and any other relevant federal
 10 law.

11 (c) A person is not eligible for a license or shall
 12 surrender an existing license if, during the previous ten
 13 years:

14 (1) The person or a principal of the person, if a
 15 business:

16 (A) Has been convicted of a felony or a crime
 17 involving fraud, deceit, or moral turpitude under the laws
 18 of this state, any other state, or the United States;

19 (B) Has been convicted of a crime under the laws of
 20 another country that involves fraud, deceit, or moral
 21 turpitude or would be a felony if committed in the United
 22 States; or

23 (C) Has been convicted under a state or federal law
 24 relating to currency exchange or transmission or any state
 25 or federal monetary instrument reporting requirement; or

26 (2) The person, a principal of the person, or the
27 spouse of the person or a principal of the person has been
28 convicted of an offense under a state or federal law
29 relating to drug trafficking, money laundering, or a
30 reporting requirement of the Bank Secrecy Act (Pub. L.
31 91-508).

32 (d) The commissioner will review the application to
33 determine whether the applicant:

34 (1) Has recklessly failed to file or evaded the
35 obligation to file a currency transaction report as required
36 by 31 U.S.C. Section 5313 during the previous three
37 years;

38 (2) Has recklessly accepted currency for exchange,
39 transport, or transmission during the previous three years
40 in which a portion of the currency was derived from an
41 illegal transaction or activity;

42 (3) Will conduct its authorized business within the
43 bounds of state and federal law, including, but not limited
44 to, section forty-nine, article one, chapter thirty-one of this
45 code;

46 (4) Warrants the trust of the community;

47 (5) Has and will maintain a minimum net worth of
48 fifty thousand dollars computed according to generally
49 accepted accounting principles as shown by the most
50 recent audited financial statement filed with and
51 satisfactory to the commissioner, and in addition has and
52 will maintain a minimum net worth of twenty-five
53 thousand dollars, computed according to generally
54 accepted accounting principles for each office or delegate
55 location in the state other than its principal office at which
56 its licensed business is transacted, except that an applicant
57 for a license or renewal of a license may not be required
58 by this article to maintain a net worth of more than one
59 million dollars, computed according to generally accepted
60 accounting principles; and

61 (6) Does not owe delinquent taxes, fines, or fees to any
62 local or state taxing authority or governmental agency,
63 department, or other political subdivision of this state.

64 (e) A person is not eligible for a license, and a person
65 who holds a license shall surrender the license to the
66 commissioner, if the person or a principal of the person
67 has at any time been convicted of:

68 (1) A felony involving the laundering of money that is
69 the product of or proceeds from criminal activity under
70 chapter sixty-one of this code, or a similar provision of the
71 laws of another state or the United States; or

72 (2) A felony violation of 31 U.S.C. Section 5313 or
73 5324 or a rule adopted under those sections.

74 (f) Before approving an application for a license of an
75 applicant who has less than one year's experience in the
76 proposed business governed by this article as a regulated
77 entity in another state, or whose license has been
78 suspended or revoked by another state, the commissioner
79 may, in his or her discretion, conduct an on-site
80 investigation of an applicant at the sole expense of the
81 applicant and may require the applicant to pay a
82 nonrefundable payment of the anticipated expenses for
83 conducting the investigation. Failure to make the payment
84 or cooperate with the investigation is grounds for denying
85 the application.

§32A-2-9. Access to criminal history information.

1 The commissioner may refuse to grant a license or may
2 suspend or revoke a license if the applicant or licensee
3 fails to provide information required by section four,
4 article two, chapter thirty-one-a of this code, or other
5 information sought by the commissioner relevant to
6 conducting an adequate criminal background check.

§32A-2-10. Bond.

1 (a) A person who is licensed under this article shall
2 post a bond with a qualified surety company doing
3 business in this state that is acceptable to the
4 commissioner. The bond shall be in the amount of one
5 hundred thousand dollars for a licensee which issues or
6 sells checks or money orders, or which engages in
7 currency exchange; or three hundred thousand dollars for
8 a licensee which engages in receiving money for

9 transmission by wire, facsimile or electronic transfer, or
10 which engages in currency transportation. A licensee
11 which engages in multiple types of these activities shall
12 post the higher amount. A merchant obtaining a license
13 solely to engage in the check cashing business not
14 incidental to the main business of the merchant as
15 required by article three of this chapter shall post a bond
16 of one hundred thousand dollars. The amount of the
17 surety bond will be increased by twenty-five thousand
18 dollars per licensee location or authorized delegate in the
19 state, but in no event to exceed one million dollars.

20 (b) Instead of the bond required under subsection (a) of
21 this section, a licensee, with the prior written permission of
22 the commissioner, may deposit with the commissioner or a
23 federally-insured depository institution in this state
24 designated by the licensee and approved for that purpose
25 by the commissioner, United States currency or cash
26 equivalent instruments or securities acceptable to the
27 commissioner. The amount of currency or the fair market
28 value of the instruments or securities shall be an amount
29 equal to or exceeding the amount required for the bond
30 under subsection (a) of this section. When securities are
31 deposited as aforesaid, the value of the securities shall at
32 all times be equal to the amount of bond otherwise
33 required, computed on the basis of the principal amount
34 or the market value thereof, whichever is lower.

35 (c) A bond posted by a licensee shall be conditioned
36 upon compliance with the provisions of this article and
37 any rules thereunder for as long as the person holds the
38 license. The deposit or bond, as the case may be, shall be
39 made to the state of West Virginia for the benefit and
40 protection of any claimant against the applicant or
41 licensee with respect to the receipt, handling, transmission,
42 and payment of money by the licensee or authorized
43 delegate in connection with the licensed operations in this
44 state. A claimant damaged by a breach of the conditions
45 of the bond or deposit shall, upon the assent of the
46 commissioner, have a right of action against the bond or
47 deposit for damages suffered thereby and may bring suit
48 directly thereon, or the commissioner may bring suit on
49 behalf of the claimant. The aggregate liability of the

50 surety in no event shall exceed the principal sum of the
51 bond. So long as the person making a deposit under this
52 section is not in violation of any of the provisions of this
53 article, that person is permitted to receive all interest and
54 dividends on the deposit, and shall have the right, with the
55 approval of the commissioner, to substitute other
56 securities. If the deposit is made at a bank, any custodial
57 fees therefor shall be paid by the person making the
58 deposit.

59 (d) A penalty fee under subdivision (5), subsection (a),
60 section five of this article, expenses under section eleven
61 of this article, or a civil penalty under section nineteen of
62 this article may be paid out of and collected from the
63 proceeds of a bond or deposit under this section.

64 (e) After receiving a license, the licensee shall
65 maintain the required bond or securities until five years
66 after it ceases to do business in this state unless all
67 outstanding checks/payment instruments are cleared or
68 covered by the provisions of article eight, chapter thirty-
69 six of this code pertaining to the distribution of unclaimed
70 property which have become operative and are adhered to
71 by the licensee. Notwithstanding this provision, however,
72 the commissioner may permit the security to be reduced
73 following cessation of business in the state to the extent
74 the amount of the licensee's checks/payment instruments
75 outstanding in this state are reduced.

1 (f) If the commissioner at any time reasonably
2 determines that the required bond or deposit is insecure,
3 deficient in amount, or exhausted, in whole or in part, he
4 or she may in writing require the filing of a new or
5 supplemental bond or other security in order to secure
6 compliance with this article and may demand compliance
7 with the requirement within thirty days following service
8 on the licensee. The total amount of the bonds or security
9 required of the licensee may not, however, exceed the one
10 million dollars set forth in subsection (a) of this section.

**§32A-2-11. Examination and fraudulently structured transac-
tions.**

1 (a) Each licensee is subject to a periodic examination
2 of the licensee's business records by the commissioner at
3 the expense of the licensee. For the purpose of carrying
4 out this article, the commissioner may examine all books,
5 records, papers, or other objects that the commissioner
6 determines are necessary for conducting a complete
7 examination and may also examine under oath any person
8 associated with the license holder, including an officer,
9 director, or employee of the licensee or authorized
10 delegate. Unless it will interfere with the commissioner's
11 duties under this article, reasonable notice shall be given to
12 the licensee and any authorized delegate before any on-
13 site examination visit. If a person required by the
14 commissioner to submit to an examination refuses to
15 permit the examination or to answer any question
16 authorized by this article, the commissioner may suspend
17 the person's license until the examination is completed.

18 (b) The licensee shall bear the cost of any on-site
19 examination made pursuant to this section, at a rate of
20 fifty dollars for each examiner hour expended, together
21 with all reasonable and necessary travel expenses incurred
22 in connection with the examination.

23 (c) A person, for the purpose of evading a reporting
24 or record-keeping requirement of 31 U.S.C. Section 5313,
25 or 31 C.F.R. Part 103, or by this article, or a rule adopted
26 under this article, may not with respect to a transaction
27 with a licensee:

28 (1) Cause or attempt to cause the licensee to:

29 (A) Not maintain a record or file a report required by
30 a law listed by this subsection; or

31 (B) Maintain a record or file a report required by a
32 law listed by this subsection that contains a material
33 omission or misstatement of fact; or

34 (2) Fraudulently structure the transaction.

35 (d) For the purposes of this article, a person
36 fraudulently structures a transaction if the person conducts
37 or attempts to conduct a transaction in any amount of
38 currency with a licensee in a manner having the purpose

39 of evading a record-keeping or reporting requirement of
 40 this article, or of a law listed by subsection (c) of this
 41 section, including the division of a single amount of
 42 currency into smaller amounts or the conduct of a
 43 transaction or series of transactions in amounts equal to or
 44 less than the reporting or record-keeping threshold of a
 45 law listed by subsection (c) of this section.

46 (e) A transaction is not required to exceed a record-
 47 keeping or reporting threshold of a single licensee on a
 48 single day to be a fraudulently structured transaction.

§32A-2-12. Investigations and subpoenas.

1 (a) In addition to the examinations required by section
 2 eleven of this article, the commissioner is authorized to
 3 inspect, examine and audit the books, records, accounts
 4 and papers of all licensees and their authorized delegates
 5 at times that the circumstances in his or her opinion may
 6 warrant. Unless it will interfere with the commissioner's
 7 duties under this article, reasonable notice shall be given to
 8 an authorized delegate or licensee before any on-site
 9 examination visit. However, an authorized delegate is
 10 deemed to consent to the commissioner's inspection, with
 11 or without prior notice to the licensee or authorized
 12 delegate, of the books and records of the authorized
 13 delegate when the commissioner has a reasonable basis to
 14 believe that the licensee or authorized delegate is in
 15 noncompliance with this article. The commissioner may
 16 call for and require any data, reports or information from
 17 any licensees under his or her jurisdiction at any time,
 18 and in the form, content and detail the commissioner
 19 determines to be necessary in the faithful discharge of his
 20 or her duty.

21 (b) In connection with the investigations undertaken
 22 pursuant to this article, the commissioner is authorized to
 23 issue subpoenas and subpoenas duces tecum, administer
 24 oaths, examine persons under oath, and hold and conduct
 25 hearings, with any subpoenas or subpoenas duces tecum to
 26 be issued, served and enforced in the manner provided in
 27 section one, article five, chapter twenty-nine-a of this code.
 28 Any person appearing and testifying at the hearing may
 29 be accompanied by an attorney.

§32A-2-13. Notification requirements.

1 (a) A licensee shall notify the commissioner of any
2 change in its principal place of business, or its
3 headquarters office if different from its principal place of
4 business, within fifteen days after the date of the change.

5 (b) A licensee shall notify the commissioner of any of
6 the following significant developments within fifteen days
7 after gaining actual notice of its occurrence:

8 (1) The filing of bankruptcy or for reorganization
9 under the bankruptcy laws;

10 (2) The institution of license revocation or suspension
11 procedures against the licensee in any other state;

12 (3) A felony indictment related to money
13 transmission, currency exchange, fraud, failure to fulfill a
14 fiduciary duty, or other activities of the type regulated
15 under this article of the licensee or its authorized delegates
16 in this state, or of the licensee's or authorized delegate's
17 officers, directors, or principals; and

18 (4) A felony conviction or plea related to the money
19 transmission, currency exchange, fraud, failure to fulfill a
20 fiduciary duty, or other activities of the type regulated
21 under this article of the licensee or its authorized delegates
22 in this state, or of the licensee's or authorized delegate's
23 officers, directors, or principals.

24 (c) A licensee shall notify the commissioner of any
25 merger or acquisition which may result in a change of
26 control or a change in principals of a licensee within
27 fifteen days of announcement or publication of the
28 proposal, or its occurrence, whichever is earlier. Upon
29 notice of these circumstances by a corporate licensee, the
30 commissioner may require all information necessary to
31 determine whether it results in a transfer or assignment of
32 the license and thus if a new application is required in
33 order for the company to continue doing business under
34 this article. A licensee that is an entity other than a
35 corporation shall in these circumstances submit a new
36 application for licensure at the time of notice.

§32A-2-14. Records maintenance.

1 (a) A licensee shall keep its business books, accounts,
2 and records in accordance with generally accepted
3 accounting principals. A licensee shall retain all of its
4 records of final entry for the period of time as required in
5 section thirty-five, article four, chapter thirty-one-a of this
6 code for banking institutions. The licensee shall also
7 preserve its general ledger, settlement sheets from its
8 authorized delegates, bank statements, and bank
9 reconciliation records for this said same established period
10 of time.

11 (b) Unless the documents or data therefrom has been
12 transmitted to the licensee for recordation, the licensee
13 shall require its authorized delegates to preserve records
14 relating to its licensed activities for the period set forth in
15 subsection (a) of this section.

16 (c) Records may be kept using retention technologies,
17 including nonerasable optical disk, as is provided for
18 banking institutions and with the same effect as set forth in
19 section thirty-five, article four, chapter thirty-one-a of this
20 code.

21 (d) A licensee shall maintain records relating to its
22 business under this article at its principal place of business,
23 or with notice to the commissioner, at another location
24 designated by the licensee. If the records are located
25 outside the state, the licensee at its option shall make them
26 available to the commissioner at a convenient location
27 within this state within seven days, or shall pay the
28 reasonable and necessary expenses for the commissioner
29 or his or her representatives to examine them at the place
30 where they are maintained.

§32A-2-15. Transaction records.

1 (a) Every check sold by the licensee or its authorized
2 delegates shall bear the name of the licensee and a unique
3 number clearly stamped or imprinted thereon. When an
4 order for the transmission of money results in the issuance
5 of a check, both the order and the check may bear the
6 same number.

7 (b) The licensee or its authorized delegates shall
8 record the face amount and unique number of its checks
9 upon their sale.

10 (c) The licensee or its authorized delegates shall
11 record the date on which money was received for
12 transmission, the amount transmitted, the name of the
13 customer and the intended recipient, and the location to
14 which the money was transmitted if specified by the
15 customer. Unless otherwise directed by the customer, the
16 transmission of money or availability of funds shall be
17 made by the licensee or authorized delegate within three
18 business days after the receipt of payment. The customer
19 shall be provided a written receipt sufficient to identify the
20 transaction, the licensee, and the amount.

21 (d) If the transaction involves the exchange of foreign
22 currency, or the sale of travelers checks denominated in a
23 foreign currency, the licensee or authorized delegate shall
24 record the date of the transaction, the amount of the
25 transaction, and the rate of exchange at the time of
26 transaction. The customer shall be provided a written
27 receipt sufficient to identify the transaction, the licensee,
28 and the amount.

29 (e) Records required by this section shall be
30 maintained by the licensee or authorized delegate as set
31 forth in section fourteen of this article, and shall be
32 available for examination by the commissioner.

§32A-2-16. Enforcement.

1 The commissioner, with the assistance of the West
2 Virginia state police, may investigate violations of this
3 article or rules adopted under this article. Based on the
4 investigation, the commissioner or any law-enforcement
5 agency may file a criminal referral with the prosecuting
6 attorney of Kanawha County or with the prosecuting
7 attorney of the county in which a violation is alleged to
8 have occurred. In addition, the commissioner may bring
9 civil actions to enforce the provisions of this article or the
10 rules adopted under this article.

§32A-2-17. Cooperative agreements.

1 (a) The commissioner shall cooperate with federal and
2 state agencies in discharging the commissioner's
3 responsibilities under this article. The commissioner may:

4 (1) Arrange for the exchange of information among
5 government officials concerning the regulation of a
6 currency exchange, transportation or transmission
7 business;

8 (2) Cooperate in and coordinate training programs
9 concerning the regulation of currency exchange,
10 transportation or transmission businesses; and

11 (3) Assist state and federal agencies in their
12 enforcement and investigatory activities and supply those
13 agencies with documentation and information.

14 (b) The commissioner may request the assistance of
15 the West Virginia state police in enforcing this article.

§32A-2-18. Criminal penalty.

1 (a) A person commits a criminal offense if the person
2 knowingly:

3 (1) Violates a requirement of this article;

4 (2) Makes a false, fictitious, or fraudulent statement,
5 representation, or entry in a record or report required
6 under 31 U.S.C. Section 5313 or 31 C.F.R. Part 103, or
7 by this article, or a rule adopted under this article; or

8 (3) Fraudulently structures or attempts to fraudulently
9 structure a transaction in violation of section eleven of this
10 article.

11 (b) An offense under this section is a felony.

12 (c) Any officer, director, employee or agent of any
13 licensee or any other person guilty of any felony offense
14 as provided in this section shall, upon conviction thereof,
15 be imprisoned in the penitentiary not less than one nor
16 more than five years and also, in the discretion of the
17 court, may be fined up to ten thousand dollars for each
18 violation. Each transaction in violation of this article and
19 each day that a violation continues is a separate offense.

§32A-2-19. Civil penalty.

1 The commissioner may bring civil actions to enforce
2 this article in the circuit court of Kanawha County or the
3 county in which the violation occurred and seek civil
4 penalties. If, after notice and a hearing, the court finds
5 that a person has violated this article, a rule adopted under
6 this article, or an order of the commissioner issued under
7 this article, the court may order the person to pay to the
8 state a civil penalty. The amount of a civil penalty under
9 this section may not exceed five thousand dollars for each
10 violation or, in the case of a continuing violation, up to
11 five thousand dollars for each day that the violation
12 continues. A civil penalty assessed may be collected from
13 the bond or deposit required under section ten of this
14 article.

§32A-2-20. Injunction.

1 If it appears to the commissioner that a person has
2 committed or is about to commit a violation of this article,
3 a rule promulgated thereunder, or an order of the
4 commissioner, the commissioner may apply to the circuit
5 court of Kanawha County or the county in which the
6 violation occurred for an order enjoining the person from
7 violating or continuing to violate the article, rule, or order
8 and for injunctive or other relief that the nature of the case
9 may require and may, in addition, request the court to
10 assess civil penalties as provided under this article.

§32A-2-21. Consent orders.

1 (a) The commissioner may enter into consent orders
2 at any time with a person to resolve a matter arising under
3 this article. A consent order shall be signed by the person
4 to whom it is issued and shall indicate agreement to the
5 terms contained in it. A consent order need not constitute
6 an admission by a person that this article or a rule or order
7 issued or promulgated under this article has been violated,
8 nor need it constitute a finding by the commissioner that
9 the person has committed a violation.

10 (b) Notwithstanding the issuance of a consent order,
11 the commissioner may seek civil or criminal penalties or

12 compromise civil penalties concerning matters
13 encompassed by the consent order unless by its terms the
14 consent order expressly precludes the commissioner from
15 doing so.

§32A-2-22. Cease and desist orders.

1 (a) If the commissioner, upon information, has cause
2 to believe that a licensee or other person is engaged in
3 practices contrary to this article or the rules adopted under
4 this article, the commissioner may issue an order directing
5 the licensee or person to cease and desist the violation. A
6 cease and desist order is appropriate in any case where the
7 commissioner, upon information, reasonably believes that
8 a principal or the licensee acting through any authorized
9 person has:

10 (1) Violated or refused to comply with a provision of
11 this article, a rule adopted under this article, or any other
12 law or regulation applicable to a currency exchange,
13 transportation or transmission business, or to the business
14 of check cashing;

15 (2) Committed a fraudulent practice in the conduct of
16 the licensee's business;

17 (3) Refused to submit to an examination;

18 (4) Conducted business in an unsafe or unauthorized
19 manner; or

20 (5) Violated any condition of its license or of any
21 agreement entered into with the commissioner.

22 (b) The commissioner shall serve notice and a copy of
23 the cease and desist order on the affected party either
24 personally or by certified mail, return receipt requested.
25 Service by mail shall be deemed completed if the notice is
26 deposited in the post office, postage prepaid, addressed to
27 the last known address for a licensee or the person
28 designated by the licensee to accept service in this state.

29 (c) The order shall include a statement of the alleged
30 conduct of the licensee or principal which gave rise to the
31 order, and set forth the facts and law on which it is based.

32 (d) A person is entitled to a hearing on the cease and
33 desist order before the commissioner, or a hearing
34 examiner appointed by him or her, if the person files with
35 the commissioner a written demand for hearing within ten
36 days after receiving written notice of the order, or within
37 thirty days after the date of service, whichever occurs first.
38 A person's right to a hearing as provided by this
39 subsection shall be disclosed in the notice of service.

40 (e) Hearings and judicial review of any order shall be
41 under procedures provided in sections one and two, article
42 eight, chapter thirty-one-a of this code and procedural
43 rules thereunder.

44 (f) The issuance of a cease and desist order under this
45 section shall not be a prerequisite to the taking of any
46 action by the commissioner or others under any other
47 section of this article.

§32A-2-23. Liability of licensees.

1 Except in cases of gross negligence or intentional acts
2 that result in harm to a person, a licensee's responsibility
3 to a person for a money transmission conducted on that
4 person's behalf by the licensee or the licensee's
5 authorized delegate is limited to the amount of money
6 transmitted or the face amount of the payment instrument
7 purchased.

§32A-2-24. Confidential information.

1 (a) Reports of investigation and examination, together
2 with related documents and financial information not
3 normally available to the public that is submitted in
4 confidence by a person regulated under this article, are
5 confidential and may not be disclosed to the public by the
6 commissioner or employees of the division of banking,
7 and are not subject to the state's freedom of information
8 act. The commissioner may release information if:

9 (1) The commissioner finds that immediate and
10 irreparable harm is threatened to the licensee's customers
11 or potential customers or the general public;

12 (2) The licensee consents before the release;

13 (3) The commissioner finds that release of the
14 information is required in connection with a hearing
15 under this article, in which event information may be
16 related to the parties of that hearing; or

17 (4) The commissioner finds that the release is
18 reasonably necessary for the protection of the public and
19 in the interest of justice, in which event information may
20 be distributed to representatives of an agency, department,
21 or instrumentality of this state, any other state, or the
22 federal government.

23 (b) Nothing herein prevents release to the public of
24 any list of licensees or aggregated financial data for the
25 licensees, prevents disclosure of information the presiding
26 officer deems relevant to the proper adjudication or
27 administration of justice at public administrative or
28 judicial hearings, or prevents disclosure of information
29 relevant to supporting the issuance of any administrative
30 or judicial order.

§32A-2-25. Hearing on suspension or revocation of license.

1 (a) A license may not be revoked or suspended except
2 after notice and opportunity for hearing on that action.
3 The commissioner may issue to a person licensed under
4 this article an order to show cause why the license should
5 not be revoked, or should not be suspended for a period
6 not in excess of six months. The order shall state the place
7 for a hearing and set a time for the hearing that is no less
8 than ten days from the date of the order. After the hearing
9 the commissioner shall revoke or suspend the license if he
10 or she finds that:

11 (1) The licensee has knowingly or repeatedly violated
12 this chapter or any rule or order lawfully made or issued
13 pursuant to this article;

14 (2) The licensee has failed to remit its required
15 renewal fees;

16 (3) Facts or conditions exist which would clearly have
17 justified the commissioner in refusing to grant a license
18 had these facts or conditions been known to exist at the
19 time the application for the license was made;

20 (4) The licensee does not have available the net worth
21 required by the provisions of section eight of this article,
22 and after ten days' written notice from the commissioner,
23 fails to take steps that the commissioner determines are
24 necessary to remedy the deficiency; or

25 (5) The licensee has failed or refused to keep the bond
26 or other security required by section ten of this article in
27 full force and effect.

28 (b) No revocation or suspension of a license under
29 this article is lawful unless prior to institution of
30 proceedings by the commissioner notice is given to the
31 licensee of the facts or conduct which warrant the intended
32 action, and the licensee is given an opportunity to show
33 compliance with all lawful requirements for retention of
34 the license.

35 (c) If the commissioner finds that probable cause for
36 revocation of a license exists and that enforcement of this
37 article to prevent imminent harm to public welfare
38 requires immediate suspension of the license pending
39 investigation, the commissioner may, after a hearing upon
40 five days' written notice, enter an order suspending the
41 license for not more than thirty days.

42 (d) Nothing in this section limits the authority of the
43 commissioner to take action against a licensee or person
44 under other sections of this article.

45 (e) Whenever the commissioner revokes or suspends a
46 license, an order to that effect shall be entered and the
47 commissioner shall forthwith notify the licensee of the
48 revocation or suspension. Within five days after the entry
49 of the order the commissioner shall mail by registered or
50 certified mail, or shall provide for personal delivery to the
51 licensee, of a copy of the order and the findings
52 supporting the order.

53 (f) Any person holding a license under this article
54 may relinquish the license by notifying the commissioner
55 in writing of its relinquishment, but any relinquishment
56 does not affect a person's liability for acts previously
57 committed.

58 (g) No revocation, suspension, or relinquishment of a
59 license shall impair or affect the obligation of any
60 preexisting lawful contract between the licensee and any
61 person.

62 (h) The commissioner may reinstate a license,
63 terminate a suspension or grant a new license to a person
64 whose license has been revoked or suspended if no fact or
65 condition then exists which clearly would have justified
66 the commissioner in refusing to grant a license.

§32A-2-26. Deceptive name or advertising.

1 (a) A licensee who advertises the prices to be charged
2 by the currency exchange or currency transmission
3 business for services that are governed by this article shall
4 specifically state in the advertisement all fees or
5 commissions to be charged to the consumer.

6 (b) The commissioner may propose for legislative
7 approval rules establishing requirements for the size and
8 type of lettering a licensee is permitted to use in an
9 advertisement for prices or rates.

10 (c) A person who violates this section or a rule
11 adopted under this section commits an unfair and
12 deceptive act or practice within the meaning of section one
13 hundred four, article six, chapter forty-six-a of this code.

14 (d) A corporate licensee may not use the same name
15 as, or a name deceptively similar to, the name of any
16 domestic corporation existing under the laws of this state,
17 or the name of any foreign corporation authorized to
18 transact business in this state, except as otherwise provided
19 by the commissioner or secretary of state pursuant to law.

§32A-2-27. Authorized delegates.

1 (a) A licensee may conduct the business of money
2 transmission and currency exchange regulated by this
3 article at one or more locations in this state through
4 authorized delegates designated by the licensee.

5 (b) A licensee may not knowingly authorize a person
6 to act as its delegate who has, within the previous ten years,

7 a disqualifying criminal conviction of the type set forth in
8 subdivision (2), subsection (c), section eight of this article.

9 (c) A licensee shall enter into a contract with its
10 authorized delegate detailing the nature and scope of the
11 relationship between the licensee and the authorized
12 delegate. The contract shall require that the authorized
13 delegate operate in full compliance with the laws of this
14 state and of the United States. The licensee shall, upon
15 request, provide the commissioner with the sample written
16 contract.

17 (d) The financial responsibility of a licensee for the
18 actions of its authorized delegate shall not exceed the
19 amount of funds received by the authorized delegate on
20 behalf of its licensee for the business regulated under this
21 article.

22 (e) An authorized delegate has an affirmative duty
23 not to: (i) Commit fraud or misrepresentation; or (ii)
24 submit fraudulent statements to the licensee. A licensee
25 shall promptly report to the commissioner and to any
26 other appropriate state or federal official when it has
27 probable cause to believe that an authorized delegate has
28 violated the affirmative duty set forth in this subsection.

29 (f) The licensee shall require the authorized delegate
30 to hold in trust for the licensee from the moment of
31 receipt of the proceeds of any business transacted under
32 this article in an amount equal to the amount of proceeds
33 due the licensee less the amount due the authorized
34 delegate. The funds shall remain the property of the
35 licensee whether or not commingled by the authorized
36 delegate with its own funds. In the event that the license is
37 revoked by the commissioner, all proceeds held in trust by
38 the authorized delegate of that licensee are considered to
39 be assigned to the commissioner. If an authorized
40 delegate fails to remit funds to the licensee in accordance
41 with the time specified in the contract with the licensee, the
42 licensee may bring a civil action against the authorized
43 delegate for three times the actual damages. The
44 commissioner may by rule set a maximum remittance time
45 for authorized delegates.

46 (g) An authorized delegate shall report to the licensee
47 the theft or loss of payment instruments within twenty-
48 four hours from the time the authorized delegate knew or
49 should have known of the theft or loss.

50 (h) Upon any suspension or revocation of a license,
51 the failure of a licensee to renew a license, or the denial of
52 the renewal of a license, the licensee shall notify its
53 authorized delegates of the event and demand that they
54 immediately cease operations as authorized delegates.

55 (i) A licensee shall report the removal of an
56 authorized delegate location, or the termination of
57 operations of an authorized delegate location, to the
58 commissioner on a quarterly basis, and shall in the report
59 list any new authorized delegate locations in this state.

60 (j) No authorized delegate shall act outside its scope
61 of authority as defined under this article and by its
62 contract with the licensee with regard to any transaction
63 regulated by this article.

§32A-2-28. Revocation or suspension of authorized delegates.

1 (a) The commissioner may issue an order suspending
2 an authorized delegate, or barring a person from
3 becoming an authorized delegate of any licensee, during
4 the period for which the order is in effect. Upon issuance
5 of the order, the licensee shall terminate its relationship
6 with the authorized delegate according to the terms of the
7 order. Orders may be issued if, after notice and a hearing,
8 the commissioner finds that any authorized delegate of a
9 licensee or any administrator, officer, employee or
10 principal of the authorized delegate:

11 (1) Has violated a provision of this article or of any
12 rule or order issued under this article;

13 (2) Has engaged in or participated in an unsafe or
14 unsound act with respect to the business of selling or
15 issuing payment instruments of the licensee or the
16 business of money transmission; or

17 (3) Has made or caused to be made in any application
18 or report filed with the commissioner or in any

19 proceeding before the commissioner a statement that was,
20 at the time and in the circumstances under which it was
21 made, false or misleading with respect to any material fact,
22 or has omitted to state in the application or report a
23 material fact required to be stated.

24 (b) An authorized delegate to whom an order is
25 issued under this section may apply to the commissioner
26 to modify or rescind the order. The commissioner may
27 not grant the application unless the commissioner finds
28 that it is in the public interest to do so and that it is
29 reasonable to believe that the person will comply with all
30 applicable provisions of this chapter and of any rule and
31 order issued under this chapter if the order is modified or
32 rescinded.

33 (c) The right of a person to whom an order is issued
34 under this section to petition for judicial review of an
35 order is not affected by the failure of the person to apply
36 to the commissioner to modify or rescind the order.

ARTICLE 3. CHECK CASHING.

§32A-3-1. Check cashing permitted.

1 (a) A merchant primarily in the business of making
2 retail consumer sales may offer check cashing services at
3 its stores to accommodate its customers in the course of
4 said business, and may collect a fee for the service, if the
5 check cashing service and any fees charged are incidental
6 to the main business of the merchant. Except as set forth
7 in subsection (b) of this section, the term "check cashing
8 services" does not include a transaction where a customer
9 presents a check for the exact amount of a purchase. Fees
10 charged in connection with check cashing services may
11 not exceed the greater of one dollar, or one percent of the
12 face value of the check cashed.

13 (b) Merchants may not, in connection with providing
14 check cashing services, agree to hold checks submitted to
15 them for deposit at a later date for the purpose of
16 providing a loan of money and deriving profit therefrom.

17 (c) No license is required as a condition for a
18 merchant providing check cashing services in conformity
19 with subsections (a) and (b) of this section.

20 (d) Where a merchant derives more than five percent
21 of his or her gross revenues from cashing checks, the
22 check cashing services are not considered incidental to the
23 main business of the merchant, and the merchant is
24 required to be licensed under article two of this chapter.

25 (e) Persons holding a license pursuant to article two
26 of this chapter may in conjunction with their licensed
27 business, or other lawful business, engage in the business
28 of check cashing in West Virginia. Fees charged for
29 check cashing services by a licensee under article two of
30 this chapter shall be posted and conform to those
31 permitted merchants under this section. No licensee may
32 in connection with providing check cashing services agree
33 to hold checks submitted to it for deposit at a later date for
34 the purpose of providing a loan of money and deriving
35 profit therefrom.

36 (f) Federally-insured depository institutions, foreign
37 bank agencies, and governmental entities exempt from
38 licensure as money transmitters under this chapter are
39 exempt from the provisions of this article. Other financial
40 institutions licensed by and under the jurisdiction of the
41 commissioner of banking may upon written approval
42 engage in the check cashing business permitted merchants
43 under this article.

44 (g) Except as provided or allowed by this article, no
45 person may engage in the check cashing business. As
46 used in this article the term "check cashing business"
47 means any person who engages in the business of cashing
48 checks, including drafts, money orders, or other
49 instruments for the transmission or payment of money for
50 a fee. However, the term "check" as used in this article
51 does not include a travelers check or a foreign
52 denomination check.

§32A-3-2. Obstruction of investigations.

1 No merchant or person subject to this article may
2 obstruct or refuse to permit any lawful investigation into
3 their check cashing activities by the commissioner of
4 banking, a person acting on behalf of an agency of the
5 state or political subdivision thereof, or a law-enforcement
6 officer.

§32A-3-3. Violations and penalties.

1 (a) The charging of fees for check cashing services in
2 excess of those permitted under this article gives rise to a
3 cause of action by the injured party to recover twice the
4 actual damages suffered by reason of the violation.

5 (b) The charging of fees for check cashing services in
6 violation of the provisions of subsections (b) or (e),
7 section one of this article, prohibiting lending through a
8 check cashing transaction, constitutes prohibited finance
9 charges, and gives rise to a cause of action by the party
10 upon whom the charge was imposed to recover all fees
11 paid and all actual damages suffered by reason of the
12 violation. Where the transaction is of an amount and for
13 purposes that would constitute a consumer loan, the
14 conduct of impermissible check cashing services is
15 considered an unfair and deceptive act and may be subject
16 to provisions and penalties set forth in chapter forty-six-a
17 of this code.

18 (c) Engaging in the check cashing business without
19 the license required by this article gives rise to a cause of
20 action by the injured party to recover all fees paid and all
21 actual damages suffered by reason of the violation.

22 (d) Actions brought under this article by customers
23 for recovery of actual damages shall be brought within
24 one year of the occurrence of the transaction.

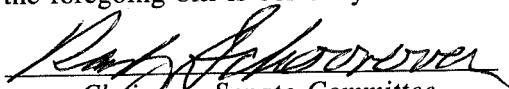
§32A-3-4. Injunctions.

1 If any merchant or person is in violation of this article,
2 the commissioner of banking or other appropriate law
3 enforcement officer may apply to the circuit court of
4 Kanawha County or the county in which the violation
5 occurred for an order enjoining the merchant or person
6 from violating or continuing to violate the article, rule, or

7 order and for injunctive or other relief that the nature of
8 the case may require. The authority to seek injunctions
9 under this section is cumulative with any other
10 enforcement right accruing under other provisions of law
11 and this code.

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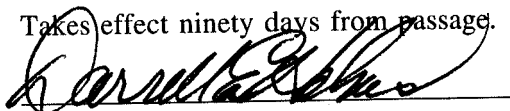
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee


Chairman House Committee

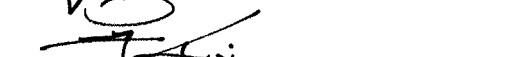
Originating in the House.

Takes effect ninety days from passage.

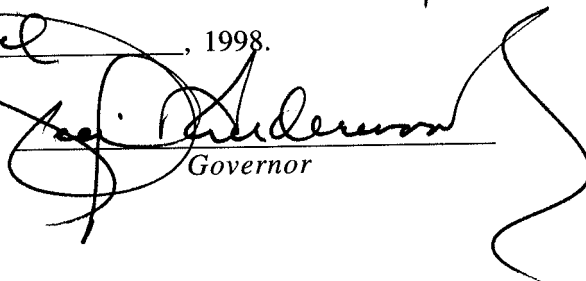

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 6th
day of April, 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/26/98

Time 12:25 pm