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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

HOUSE BILL No. 2285

(By Delegates Stalnaker, Everson, Riggs,
Williams, Willison and Ashley)



Passed February 13, 1998

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 2285

(BY DELEGATES STALNAKER, EVERSON, RIGGS,
WILLIAMS, WILLISON AND ASHLEY)

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

AN ACT to amend and reenact sections thirty-nine-e, thirty-nine-f and thirty-nine-g, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to procedures for recovering on dishonored checks, drafts and orders in magistrate court; authorizing payees or holders of such checks, drafts or orders to provide notice to the drawer; permitting the filing of a complaint in magistrate court for the issuance of a warrant for the drawer's arrest; providing the form of the complaint, including information on the bank service charges imposed on the payee as a result of the dishonored check, draft or order; requiring the magistrate court to issue a notice to the drawer of his opportunity to avoid arrest by making payment to the court; and including bank service charges incurred by the payee or holder and magistrate court cost in the amount recoverable after the complaint is delivered to the magistrate court.

Be it enacted by the Legislature of West Virginia:

That sections thirty-nine-e, thirty-nine-f and thirty-nine-g, article three, chapter sixty-one of the code of West Virginia, one

thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

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

1 The payee or holder of a check, draft or order which
2 has been dishonored because of insufficient funds or
3 credit may send notice thereof to the drawer of the check,
4 draft or order. The payee or holder of any dishonored
5 check may impose a fee of up to fifteen dollars. This fee
6 may not be imposed or collected after a complaint for
7 warrant has been delivered to magistrate court. No payee
8 or holder of a check, draft or order which has been
9 dishonored because of insufficient funds or credit shall
10 incur any civil or criminal liability for the sending of a
11 notice substantially in the form provided herein, other
12 provisions of law notwithstanding. The form of the notice
13 shall be substantially as follows:

14 "You are hereby notified that a check, number
15, issued by you on (date of check), drawn upon
16 (name of bank), and payable to, has
17 been dishonored. Pursuant to West Virginia law, you have
18 ten days from the date of this notice to tender payment of
19 the full amount of the check plus a fee of \$.....
20 (not to exceed fifteen dollars) to the undersigned at
21 You are further notified that in the
22 event the above amount is timely paid in full you will not
23 be subject to legal proceedings, civil or criminal.

24 Dated, 19....

25

26 (Signed)."

27 The provisions of this section do not authorize the
28 making of any other written or oral threats of prosecution
29 to enforce or enhance the collection or honoring of the
30 dishonored check, draft or order.

31 The holder or payee of any check, draft or order shall
32 relinquish the check, draft or order to the maker upon
33 tender of the full amount due at any time before a
34 complaint for warrant has been presented to magistrate
35 court. In the event complaint for warrant has been

36 presented to magistrate court, payment may be made only
37 through the court and any holder or payee unlawfully
38 accepting payment after that time shall be liable for all
39 costs which may be imposed by the magistrate court in the
40 matter, including all costs which may have accrued by the
41 time the magistrate court is notified of the payment.

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

1 Notwithstanding the provisions of section one, article
2 one, chapter sixty-two of this code, a complaint for
3 warrant for violations of section thirty-nine-a of this article
4 need not be made upon oath before a magistrate but may
5 be made upon oath before any magistrate court clerk or
6 other court officer authorized to administer oaths or
7 before a notary public in any county of the state and may
8 be delivered by mail or otherwise to the magistrate court
9 of the county wherein venue lies.

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

13 "State of West Virginia

14 County of, to wit:

15, upon oath complains that:

16 (a) Within one year past, on the day of,
17 19...., in the county stated above, ("the
18 maker") unlawfully issued and delivered to
19 a check, draft or order with the
20 following words and figures:

21 19..... No.....

22
23 (Name of Bank)

24 Pay to the Order of \$..... Dollars

25 For..... when the
26 maker did not have funds on deposit in or credit with this
27 bank with which to pay the check, draft or order upon
28 presentation against the peace and dignity of the State of
29 West Virginia. The complainant therefore prays a warrant
30 issue and that the maker be apprehended and held to

31 answer the warrant and dealt with in relation thereto
32 according to the law.

33 (b) At the time the check, draft or order was delivered
34 and before it was accepted there was either on the check or
35 on a record in the possession of the complainant the
36 following information regarding the identity of the maker:

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

45 That since the time the check, draft or order was
46 delivered the complainant has ascertained to the best of his
47 or her knowledge and belief the following facts
48 concerning the maker:

49 Full name

50 Home address

51 Home phone no..... Business phone no.

52 Place of employment

53 Race Sex Height

54 Date of birth

55 Day Month Year

56, Complainant

57

58 Address Phone No.

59 (c) The complainant's bank or financial institution has
60 imposed on or collected from the complainant a service
61 charge in the amount of \$..... in connection
62 with the check, draft or order described above.

63 Taken, subscribed and sworn to before me, this
64 day of, 19....

65

66

67 (Title)

68 My commission expires the day of,
69 19...."

70 The failure to supply information indicated in parts
71 (b) or (c) of the foregoing complaint for warrant shall not
72 affect the sufficiency thereof.

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

1 After receipt of a complaint for warrant for a violation
2 of section thirty-nine or thirty-nine-a of this article the
3 magistrate court shall proceed with the issuance of the
4 warrant as is provided by law: *Provided*, That no warrant
5 may issue for an offense under section thirty-nine or
6 thirty-nine-a of this article which, upon conviction, would
7 be punishable as a misdemeanor, unless the payee or
8 holder of the check, draft or order which has been
9 dishonored has sent notice thereof to the drawer of the
10 check, draft or order in accordance with the provisions of
11 section thirty-nine-e of this article, or unless notice has
12 been sent by the magistrate as hereinafter provided. Proof
13 that the notice was sent by the payee or holder may be
14 evidenced by presentation of a return receipt indicating
15 that the notice was mailed to the drawer by certified mail,
16 or, in the event the mailed notice was not received or was
17 refused by the drawer, by presentation of the mailed
18 notice itself. The magistrate court shall receive and hold
19 the check, draft or order.

20 Upon receipt of a complaint for a misdemeanor
21 warrant unaccompanied by proof that notice was sent by
22 the payee or holder, the magistrate court shall immediately
23 prepare and mail to the drawer of the check, draft or order
24 a notice in form substantially as follows. The magistrate
25 court shall impose any service charge reflected in the
26 complaint as having been imposed on the payee or holder
27 by the payee's or holder's bank or financial institution in
28 connection with the check, draft or order and additional

29 court costs in the amount of ten dollars. This notice shall
30 be mailed to the drawer by United States mail, first class
31 and postpaid, at the address provided at the time of
32 presenting the check, draft or order. Service of this notice
33 is complete upon mailing. The notice shall be in form
34 substantially as follows:

35 "You are hereby notified that a complaint for a
36 warrant for your arrest has been filed with this office to
37 the following effect and purpose by who upon
38 oath complains that on the day of, 19....,
39 you did unlawfully issue and deliver unto him a certain
40 check, draft or order in the amount of
41 drawn on (name of
42 bank or financial institution) where you did
43 not have funds on deposit in or credit with the bank or
44 financial institution with which to pay the check, draft or
45 order upon presentation and pray that a warrant issue and
46 that you be apprehended wherever you may be found by
47 an officer authorized to make an arrest and dealt with in
48 accordance with the laws of the state of West Virginia.

49 "A warrant for arrest will be issued on or after the
50 day of, 19.....

51 "You can nullify the effect of this complaint and
52 avoid arrest by paying to the magistrate court clerk at
53 the amount due on the check, draft or
54 order; service charges imposed on the payee or holder by
55 the payee's or holder's bank or financial institution in
56 connection with the check, draft or order in the amount of
57; and the costs of this proceeding in the amount of
58 ten dollars on or before the day of,
59 19....., at which time you will be given a receipt with
60 which you can obtain the check, draft or order from the
61 magistrate court. The complainant is forbidden by law to
62 accept payment after the complaint is filed.

63 Magistrate Court of County

64

65 Date:"

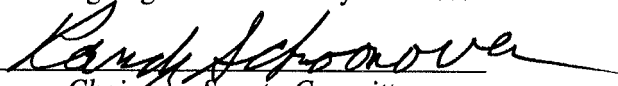
66 This notice shall give the drawer of any such check,
67 draft or order ten days within which to make payment to
68 magistrate court. In the event the drawer pays the total

69 amount set forth in the notice to the magistrate court
70 within the ten day period, no warrant may issue. The
71 payment may be made to the magistrate court in person or
72 by mail by cash, certified check, bank draft or money
73 order and, in the event the payment is made by mail, the
74 magistrate court clerk shall immediately mail to the maker
75 of the check, draft or order the receipt required by this
76 section. In the event the total amount is not so paid the
77 court shall proceed with the issuance of the warrant as is
78 provided by law.

79 Upon receipt of payment of the total amount the
80 magistrate court clerk shall issue to the drawer a receipt
81 sufficiently describing the check, draft or order with which
82 receipt the drawer is entitled to receive the dishonored
83 check, draft or order from the magistrate court holding it.
84 The magistrate court clerk shall forward the amount of the
85 check, draft or order, together with any service charge
86 reflected on the complaint as having been imposed on the
87 payee or holder by the payee's or holder's bank or
88 financial institution in connection with the check, draft or
89 order, to the payee or holder thereof, along with a
90 description of the check, draft or order sufficient to enable
91 the person filing the complaint to identify it and the
92 transaction involved. Costs collected shall be dealt with as
93 is provided by law for other criminal proceedings.

94 The drawer of a check, draft or order against whom a
95 warrant has been issued may at any time prior to trial pay
96 to the court the amount of the check, draft or order; any
97 service charge reflected in the complaint as having been
98 imposed on the payee or holder by the payee's or
99 holder's bank or financial institution in connection with
100 the check, draft or order; and the court costs which would
101 be assessed if the person were found guilty of the offense
102 charged. These costs shall be imposed in accordance with
103 the provisions of section two, article three, chapter fifty of
104 this code.

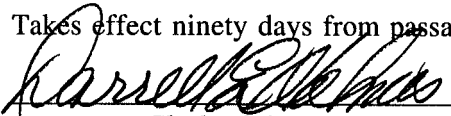
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

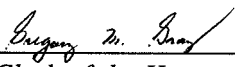

Chairman Senate Committee

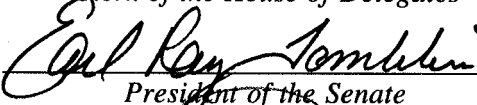

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

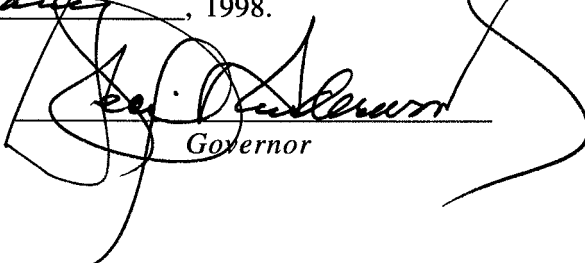

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 27th
day of January, 1998.


Governor

PRESENTED TO

Date: 2/24/98
Time: 4:45 pm