

SB 137

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SENATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999



## ENROLLED

*COMMITTEE SUBSTITUTE FOR*  
SENATE BILL NO. 137

(By Senators *TOMBLIN, MR. PRESIDENT, AND*  
*SPROUSE, BY REQUEST OF THE EXECUTIVE*)



PASSED MARCH 13, 1999  
In Effect NINETY DAYS FROM Passage

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SECRETARY

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### Senate Bill No. 137

(SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,  
BY REQUEST OF THE EXECUTIVE, *original sponsors*)

[Passed March 13, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, one-a and one-b, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said chapter by adding thereto a new article, designated article three-a; and to amend and reenact section twelve-b, article eight, chapter thirty-one-a, all relating to receipting and disbursing of funds from the state treasury; authorizing information regarding uncashed state checks to only be disclosed to the state agency or payee; clarifying procedures for electronic warrants and direct deposits; facilitating electronic commerce involving state agencies; stating legislative purpose of financial electronic commerce for state agencies; providing definitions; requiring state

auditor and state treasurer to implement electronic commerce capabilities to facilitate performance of their duties; requiring auditor and treasurer to competitively bid necessary banking, investment and related services for their offices; ensuring records and authentications of the auditor and treasurer are not denied legal effect solely on ground they are in electronic form; requiring heads of spending units to be responsible for security procedures when using electronic commerce; authorizing auditor to establish a state debit card known as the West Virginia check card for recipients of payroll or of benefits or entitlement programs without bank accounts; authorizing treasurer to contract with banking and other institutions to establish point of sale terminals for acceptance of the "West Virginia Check Card" and electronic benefit funds cards issued by state spending units and ensuring the state does not use the equipment to compete with private sector providers or for profit; authorizing the treasurer to establish a system for acceptance of credit cards and other payment methods for electronic commerce purchases and requiring spending units to utilize the treasurer's system; establishing a special revenue account for receipt of fees related to the POS transactions; ensuring that cash withdrawals for these programs in excess of fifty dollars is not banking; and limiting fees for use of a West Virginia check card or an electronic benefits transfer card to the higher of one dollar or one percent of the amount of cash withdrawn.

*Be it enacted by the Legislature of West Virginia:*

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

**CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

**ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.**

**§12-3-1. Manner of payment from treasury; form of checks.**

1 Every person claiming to receive money from the  
2 treasury of the state shall apply to the auditor for a  
3 warrant for same. The auditor shall thereupon examine  
4 the claim, and the vouchers, certificates and evidence, if  
5 any, offered in support thereof, and for so much thereof as  
6 he or she finds to be justly due from the state, if payment  
7 thereof is authorized by law, and if there is an appropria-  
8 tion not exhausted or expired out of which it is properly  
9 payable, the auditor shall issue his or her warrant on the  
10 treasurer, specifying to whom and on what account the  
11 money mentioned therein is to be paid, and to what  
12 appropriation it is to be charged. The auditor shall  
13 present to the treasurer daily reports on the number of  
14 warrants issued, the amounts of the warrants and the  
15 dates on the warrants for the purpose of effectuating the  
16 investment policy of the investment management board.  
17 On the presentation of the warrant to the treasurer, the  
18 treasurer shall ascertain whether there are sufficient funds  
19 in the treasury to pay that warrant, and if he or she finds  
20 it to be so, he or she shall in that case, but not otherwise,  
21 endorse his or her check upon the warrant, directed to  
22 some depository, which check shall be payable to the order  
23 of the person who is to receive the money therein specified.  
24 If the check is not presented for payment within six  
25 months after it is drawn, it shall then be the duty of the  
26 treasurer to credit it to the depository on which it was  
27 drawn, to credit the unclaimed property fund pursuant to  
28 the provisions of article eight, chapter thirty-six of this  
29 code, and immediately notify the auditor to make corre-  
30 sponding entries on the auditor's books. No state deposi-  
31 tory may pay a check unless it is presented within six  
32 months after it is drawn and every check shall bear upon  
33 its face the words, "Void, unless presented for payment  
34 within six months." Any information or records main-  
35 tained by the treasurer concerning any check which has  
36 not been presented for payment within six months of the  
37 date of issuance may only be disclosed to the state agency  
38 specified on the check, or to the payee, his or her personal  
39 representative, next of kin or attorney-at-law and is  
40 otherwise confidential and exempt from disclosure under  
41 the provisions of article one, chapter twenty-nine-b of this  
42 code. All claims required by law to be allowed by any

43 court, and payable out of the state treasury, shall have the  
44 seal of the court allowing or authorizing the payment of  
45 the claim affixed by the clerk of the court to his or her  
46 certificate of its allowance. No claim may be audited and  
47 paid by the auditor unless the seal of the court is thereto  
48 attached as aforesaid. No tax or fee may be charged by the  
49 clerk for affixing his or her seal to the certificate, referred  
50 to in this section. The treasurer shall propose rules in  
51 accordance with the provisions of article three, chapter  
52 twenty-nine-a of this code governing the procedure for  
53 such payments from the treasury.

**§12-3-1a. Payment by deposit in bank account.**

1 The auditor may issue his warrant on the treasurer to pay  
2 any person claiming to receive money from the treasury by  
3 deposit to the person's account in any bank or other  
4 financial institution by electronic funds transfer, if the  
5 person furnishes authorization of the method of payment.  
6 The auditor shall prescribe the form of the authorization.  
7 If the authorization is in written form, it shall be sent to  
8 the auditor for review and approval and then forwarded in  
9 electronic form to the treasurer. If the authorization is in  
10 electronic form, it shall be sent to both the auditor and the  
11 treasurer. The auditor must review and approve the  
12 authorization. This section shall not be construed to  
13 require the auditor to utilize the method of payment  
14 authorized by this section.. An authorization furnished  
15 pursuant to this section may be revoked by written notice  
16 furnished to the auditor and then forwarded by the auditor  
17 in electronic form to the treasurer or by electronic notice  
18 furnished to both the auditor and the treasurer. Upon  
19 execution of the authorization and its receipt by the office  
20 of the auditor, the warrant shall be created in the manner  
21 specified on the authorization and forwarded to the  
22 treasurer for further disposition to the designated bank or  
23 other financial institution specified on the electronic  
24 warrant: *Provided*, That after the first day of July, two  
25 thousand two, the state auditor shall cease issuing paper  
26 warrants except for income tax refunds. After that date  
27 all warrants, except for income tax refunds, shall be issued  
28 by electronic funds transfer: *Provided, however*, That the  
29 auditor, in his or her discretion, may issue paper warrants

30 on an emergency basis: *Provided further*, That the trea-  
31 surer and the auditor may contract with any bank or  
32 financial institution for the processing of electronic  
33 authorizations.

**§12-3-1b. Voluntary direct deposits by auditor of salaries of employees to banks or other financial institutions.**

1 Any officer or employee of the state of West Virginia  
2 may authorize the direct deposit of his or her net wages to  
3 his or her account in any bank or other financial institu-  
4 tion by electronic funds transfer. Direct deposit authori-  
5 zations shall comply with the requirements of section one-  
6 a of this article. Upon approval of an authorization, the  
7 auditor shall issue the warrant in the manner specified on  
8 the authorization and forward the warrant to the treasurer  
9 for further disposition to the designated bank or other  
10 financial institution on or before the day or days the  
11 officer or employee is due his or her net wages. Direct  
12 deposit authorizations may be revoked at any time thirty  
13 days prior to the date on which the direct deposit is  
14 regularly made and on a form to be provided by the  
15 auditor: *Provided*, That on and after the first day of July,  
16 two thousand two, at the option of the auditor, all wages  
17 shall be deposited directly into the employees' account at  
18 any bank or financial institution designated by the em-  
19 ployee via electronic funds transfer or, if the employee  
20 does not have a bank account, through the West Virginia  
21 check card program in accordance with section four,  
22 article three-a of this chapter.

**ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.**

**§12-3A-1. Legislative purpose and findings.**

1 The Legislature finds that state government should  
2 facilitate and promote electronic commerce, particularly  
3 in the electronic receipting and disbursing of state funds.  
4 As many individuals receiving recurring state funds do not  
5 have bank accounts for the purpose of receiving direct  
6 deposits, and as the state desires that all payments be  
7 made electronically by the year two thousand two, it is the  
8 intent of the Legislature to provide a mechanism for all  
9 payees to receive payments by electronic funds transfers

10 through direct deposit or through state issued debit cards.  
11 Further, as usage of electronic commerce grows, state  
12 spending units need the ability to accept payments elec-  
13 tronically. To meet these goals, the Legislature seeks to  
14 ensure proper management oversight and accountability  
15 are maintained.

**§12-3A-2. Definitions.**

1 (a) "Electronic" means electrical, digital, magnetic,  
2 wireless, optical, electromagnetic, biometric, or any other  
3 technology that is similar to these technologies.

4 (b) "Electronic commerce" means using electronic  
5 techniques for accomplishing business transactions,  
6 including electronic mail or messaging, electronic bulletin  
7 board, internet technology, electronic funds transfers,  
8 electronic data interchange (EDI) techniques, and any  
9 other related electronic technologies.

10 (c) "Security procedure" means a methodology or  
11 procedure for the purpose of:

12 (1) preventing access by unauthorized parties;

13 (2) verifying that an electronic record or electronic  
14 signature is that of a specific party or created by a specific  
15 electronic point of origin; or

16 (3) detecting error or alteration in the communication,  
17 content, or storage of an electronic record since a specific  
18 point in time.

19 (d) "WEB commerce" means electronic commerce on the  
20 internet.

**§12-3A-3. Financial electronic commerce.**

1 The state auditor and the treasurer shall implement  
2 electronic commerce capabilities for each of their offices  
3 to facilitate the performance of their duties under this  
4 code. The state auditor and the state treasurer shall  
5 competitively bid the selection of vendors needed to  
6 provide the necessary banking, investment and related  
7 services for their offices, and the provisions of article one-  
8 b, chapter five, and articles three and seven, chapter five-

9 a, of this code shall not apply, unless requested by the  
10 state auditor or state treasurer.

11 A record or an authentication used by the auditor or the  
12 treasurer may not be denied legal effect solely on the  
13 ground that it is in electronic form.

14 The head of each spending unit is responsible for adopt-  
15 ing and implementing security procedures to ensure  
16 adequate integrity, security, confidentiality, and  
17 auditability of the business transactions of his or her  
18 spending unit when utilizing electronic commerce.

**§12-3A-4. Payment by the West Virginia Check Card.**

1 The state auditor may establish a state debit card known  
2 as the "West Virginia Check Card" for recipients of  
3 employee payroll or of benefits or entitlement programs  
4 processed by the auditor who are considered unbanked  
5 and who do not possess a federally insured depository  
6 institution account. The state auditor shall use every  
7 reasonable effort to make a federally insured depository  
8 account available to a recipient, and to encourage all  
9 recipients to obtain a federally insured depository account.  
10 Prior to issuing the West Virginia check card, the state  
11 auditor shall first make a determination that a recipient  
12 has shown good cause that an alternative method to direct  
13 deposit is necessary. The state auditor and the state  
14 treasurer shall jointly issue a request for proposals in  
15 accordance with section three of this article to aid the  
16 auditor in the administration of the program and to aid the  
17 treasurer in the establishment of state owned bank ac-  
18 counts and accommodate accessible locations for use of  
19 the West Virginia check card. In carrying out the purposes  
20 of this article, the state auditor and state treasurer shall  
21 not compete with banks or other federally insured finan-  
22 cial institutions, or for profit.

**§12-3A-5. Limited establishment and use of point of sale termi-  
nals, etc., for special purposes and circumstances  
relating to certain public assistance payments.**

1 (a) The state treasurer shall have authority to contract  
2 with banking institutions and other entities to establish



3 point of sale terminals ("POS terminals"), as defined in  
4 section twelve-b of article eight, chapter thirty-one-a of  
5 this code, that accept the West Virginia check card and the  
6 cards issued by state spending units to recipients of state  
7 or federal funds, food or other benefits. If other entities  
8 decline to provide the POS terminals in a manner that  
9 meets the requirements of this section, the treasurer is  
10 authorized to establish, own and operate POS terminals.  
11 The treasurer may place the POS terminals and associated  
12 equipment at any location within this state where he or  
13 she or the department of health and human resources  
14 determines the equipment is needed to provide reasonable  
15 access to users of the cards. The POS terminals authorized  
16 pursuant to this section may be used to provide any  
17 amount of cash payment or allowable purchase of retail  
18 items or other benefits as determined by the state trea-  
19 surer, pursuant to state law and rules and, where neces-  
20 sary, in cooperation with any appropriate federal agencies.

21 (b) POS terminals established pursuant to this section  
22 may be jointly owned and operated with private sector  
23 financial institutions and may be established for the sole  
24 purpose of providing access to electronically transmitted  
25 government benefits or payments. However, if the state  
26 treasurer establishes POS terminals, they shall be made  
27 available for use by the general public and the retailer  
28 shall reimburse the state for each transaction as per an  
29 agreement entered into at the time the POS terminals are  
30 established.

31 (c) Any retailer, agency or other person providing cash  
32 withdrawal services for state administered electronic cards  
33 from its own funds through POS terminals established  
34 pursuant to this section are limited to charging a fee for  
35 the service in the amount of the higher of one dollar or one  
36 percent of the amount of cash withdrawn.

37 (d) There is hereby created in the state treasury a  
38 separate special revenue account, which shall be an  
39 interest bearing account, to be known as the "Point of Sale  
40 Terminals Collection Account". The account shall contain  
41 any funds received from transactions on POS terminals  
42 installed by the state treasurer and any other funds

43 authorized by the Legislature. Moneys in the account shall  
44 be used by the treasurer to pay the fees and costs associ-  
45 ated with the POS terminals and related equipment, and  
46 for such other purposes as determined by the Legislature.

47 (e) In carrying out the purposes of this article, the  
48 treasurer shall not compete with private sector providers  
49 of POS terminals, banks or other financial institutions, or  
50 for profit. If a private sector provider, bank or other  
51 financial institution certifies to the treasurer that it can  
52 provide POS terminals to meet the requirements contained  
53 within this article, the treasurer shall not establish or  
54 maintain equipment in the locations identified in the  
55 certification. Nothing in this article shall authorize the  
56 treasurer to establish or operate automatic teller machines.

**§12-3A-6. Receipting of electronic commerce purchases.**

1 The treasurer may establish a system for acceptance of  
2 credit card and other payment methods for electronic  
3 commerce purchases from spending units. Each spending  
4 unit utilizing WEB commerce, electronic commerce or  
5 other method that offers products or services for sale shall  
6 utilize the treasurer's system for acceptance of payments.

**CHAPTER 31A. BANKS AND BANKING.**

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL  
REVIEW; UNLAWFUL ACTS; PENALTIES.**

**§31A-8-12b. Installation and operation of customer bank.  
communication terminals permitted.**

1 (a) Any banking institution as defined in section two,  
2 article one of this chapter, individually or jointly with one  
3 or more other banking institutions or other federally  
4 insured financial institutions having their principal offices  
5 in this state, or any combination thereof, may upon ten  
6 days prior written notice filed with the commissioner,  
7 install, operate and engage in banking business by means  
8 of one or more customer bank communication terminals.  
9 Any banking institution which installs and operates a  
10 customer bank communication terminal:

11 (1) Shall make such customer bank communication  
12 terminal available for use by other banking institutions;  
13 and

14 (2) May make such customer bank communication  
15 terminal available for use by other federally insured  
16 financial institutions, all in accordance with regulations  
17 promulgated by the commissioner. Such customer bank  
18 communication terminals shall not be considered to be  
19 branch banks or branch offices, agencies or places of  
20 business or off-premises walk-in or drive-in banking  
21 facilities; nor shall the operation of such customer bank  
22 communication terminals to communicate with and permit  
23 financial transactions to be carried out through a nonex-  
24 clusive access interchange system be considered to make  
25 any banking institution which is part of such a nonexclu-  
26 sive access interchange system to have illegal branch  
27 banks or branch offices, agencies or places of business or  
28 off-premises walk-in or drive-in banking facilities.

29 (b) Notwithstanding the provisions of subdivision (1),  
30 subsection (a) of this section, a customer bank communica-  
31 tion terminal located on the premises of the principal  
32 office or branch bank of a banking institution or on the  
33 premises of an authorized off-premises facility need not be  
34 made available for use by any other banking institution or  
35 its customers.

36 (c) For purposes of this section, "customer bank commu-  
37 nication terminal" means any electronic device or machine  
38 owned, leased, or operated by a bank, together with all  
39 associated equipment, structures and systems, including,  
40 without limitation, point of sale terminals, through or by  
41 means of which a customer and a banking institution may  
42 engage in any banking transactions, whether transmitted  
43 to the banking institution instantaneously or otherwise,  
44 including, without limitation, the receipt of deposits of  
45 every kind, the receipt and dispensing of cash, requests to  
46 withdraw money from an account or pursuant to a previ-  
47 ously authorized line of credit, receiving payments payable  
48 at the bank or otherwise transmitting instructions to  
49 receive, transfer or pay funds for a customer's benefit.  
50 Personal computers, telephones and associated equipment

51 which enable a bank customer to conduct banking trans-  
52 actions at their home or office through links to their  
53 bank's computer or telephone network, do not constitute  
54 a "customer bank communication terminal" under this  
55 section. All transactions initiated through a customer  
56 bank communication terminal shall be subject to verifica-  
57 tion by the banking institution.

58 (d) No person, other than: (1) A banking institution  
59 authorized to engage in the banking business in this state;  
60 or (2) a credit union authorized to conduct business in this  
61 state, may operate any automatic teller machine ("ATM")  
62 or automatic loan machine ("ALM") located in this state:  
63 *Provided*, That ATM terminals of out-of-state banks not  
64 having branches in this state shall be allowed to operate to  
65 the same extent as a West Virginia bank if a national bank  
66 from that state not having branches in West Virginia could  
67 do so through a federal preemption of state law.

68 (e) For the purposes of this section, "point of sale  
69 terminal" means a customer bank communication terminal  
70 used for the primary purpose of either transferring funds  
71 to or from one or more deposit accounts in a banking  
72 institution or segregating funds in one or more deposit  
73 accounts in a banking institution for future transfer, or  
74 both, in order to execute transactions between a person  
75 and his or her customers incident to sales, including,  
76 without limitation, devices and machines which may be  
77 used to implement and facilitate check guaranty and check  
78 authorization programs.

79 (f) Nothing in this section prevents point of sale termi-  
80 nals and associated equipment from being owned, leased  
81 or operated by nonbanking entities: *Provided*, That such  
82 persons may not engage in the business of banking by  
83 using point of sale devices. The use of a point of sale  
84 terminal to enable a customer or other person to withdraw  
85 and obtain cash of more than fifty dollars in excess of the  
86 sales transaction purchase amount, will be presumed to  
87 constitute engaging in the business of banking: *Provided*,  
88 *however*, That cash withdrawals through a point of sale  
89 terminal in excess of fifty dollars shall not constitute  
90 engaging in the business of banking if the sales transaction

91 is made with the use of a West Virginia check card, as  
92 provided in article three-a, chapter twelve of this code, or  
93 with an electronic benefits transfer or other card issued by  
94 state spending units to transmit payments of food benefits,  
95 temporary assistance to needy families, or other assistance,  
96 benefit or entitlement programs mandated or offered by  
97 federal or state government: *Provided further*, That any  
98 retailer, agency or person providing cash withdrawals with  
99 a West Virginia check card or an electronic benefits  
100 transfer card through a POS terminal is limited to charg-  
101 ing a fee for the services in the amount of the higher of one  
102 dollar or one percent of the amount of cash withdrawn.

103 (g) Except for customer bank communication terminals  
104 located on the premises of the principal office or a branch  
105 bank of the banking institution or on the premises of an  
106 authorized off-premises walk-in or drive-in banking  
107 facility, a customer bank communication terminal shall be  
108 unattended or attended by persons not employed by any  
109 banking institution utilizing the terminal: *Provided*, That:

110 (1) Employees of the banking institution may be present  
111 at such terminal not located on the premises of an autho-  
112 rized off-premises facility solely for the purposes of  
113 installing, maintaining, repairing and servicing same; and

114 (2) A banking institution may provide an employee to  
115 instruct and assist customers in the operation thereof:  
116 *Provided*, That such employee shall not engage in any  
117 other banking activity.

118 (h) The commissioner shall prescribe by regulation the  
119 procedures and standards regarding the installation and  
120 operation of customer bank communication terminals,  
121 including, without limitation, the procedure for the  
122 sharing thereof.

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

*Reidy Hoover*  
.....  
Chairman Senate Committee

*Joe F. Little*  
.....  
Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

*David P. Shue*  
.....  
Clerk of the Senate

*Gregory W. Paul*  
.....  
Clerk of the House of Delegates

*Earl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *approved* this the *6th*  
Day of *April*, 1999

*[Signature]*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 2/30/99

Time 10:45 AM