WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1999

ENROLLED
Committee Substitute for
SENATE BILL NO. 137

(By Senators Tombly, Mr. President and
Sprouse, by request of the Executive)

PASSED March 13, 1999
In Effect NINETY DAYS FROM PASSAGE
ENROLLED

COMMITTEE SUBSTITUTE

FOR

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.
Every person claiming to receive money from the treasury of the state shall apply to the auditor for a warrant for same. The auditor shall thereupon examine the claim, and the vouchers, certificates and evidence, if any, offered in support thereof, and for so much thereof as he or she finds to be justly due from the state, if payment thereof is authorized by law, and if there is an appropriation not exhausted or expired out of which it is properly payable, the auditor shall issue his or her warrant on the treasurer, specifying to whom and on what account the money mentioned therein is to be paid, and to what appropriation it is to be charged. The auditor shall present to the treasurer daily reports on the number of warrants issued, the amounts of the warrants and the dates on the warrants for the purpose of effectuating the investment policy of the investment management board. On the presentation of the warrant to the treasurer, the treasurer shall ascertain whether there are sufficient funds in the treasury to pay that warrant, and if he or she finds it to be so, he or she shall in that case, but not otherwise, endorse his or her check upon the warrant, directed to some depository, which check shall be payable to the order of the person who is to receive the money therein specified. If the check is not presented for payment within six months after it is drawn, it shall then be the duty of the treasurer to credit it to the depository on which it was drawn, to credit the unclaimed property fund pursuant to the provisions of article eight, chapter thirty-six of this code, and immediately notify the auditor to make corresponding entries on the auditor's books. No state depository may pay a check unless it is presented within six months after it is drawn and every check shall bear upon its face the words, "Void, unless presented for payment within six months." Any information or records maintained by the treasurer concerning any check which has not been presented for payment within six months of the date of issuance may only be disclosed to the state agency specified on the check, or to the payee, his or her personal representative, next of kin or attorney-at-law and is otherwise confidential and exempt from disclosure under the provisions of article one, chapter twenty-nine-b of this code. All claims required by law to be allowed by any
court, and payable out of the state treasury, shall have the
seal of the court allowing or authorizing the payment of
the claim affixed by the clerk of the court to his or her
certificate of its allowance. No claim may be audited and
paid by the auditor unless the seal of the court is thereto
attached as aforesaid. No tax or fee may be charged by the
clerk for affixing his or her seal to the certificate, referred
to in this section. The treasurer shall propose rules in
accordance with the provisions of article three, chapter
twenty-nine-a of this code governing the procedure for
such payments from the treasury.

§12-3-la. Payment by deposit in bank account.

The auditor may issue his warrant on the treasurer to pay
any person claiming to receive money from the treasury by
deposit to the person’s account in any bank or other
financial institution by electronic funds transfer, if the
person furnishes authorization of the method of payment.
The auditor shall prescribe the form of the authorization.
If the authorization is in written form, it shall be sent to
the auditor for review and approval and then forwarded in
electronic form to the treasurer. If the authorization is in
electronic form, it shall be sent to both the auditor and the
treasurer. The auditor must review and approve the
authorization. This section shall not be construed to
require the auditor to utilize the method of payment
authorized by this section. An authorization furnished
pursuant to this section may be revoked by written notice
furnished to the auditor and then forwarded by the auditor
in electronic form to the treasurer or by electronic notice
furnished to both the auditor and the treasurer. Upon
execution of the authorization and its receipt by the office
of the auditor, the warrant shall be created in the manner
specified on the authorization and forwarded to the
treasurer for further disposition to the designated bank or
other financial institution specified on the electronic
warrant: Provided, That after the first day of July, two
thousand two, the state auditor shall cease issuing paper
warrants except for income tax refunds. After that date
all warrants, except for income tax refunds, shall be issued
by electronic funds transfer: Provided, however, That the
auditor, in his or her discretion, may issue paper warrants
on an emergency basis: *Provided further,* That the treasurer and the auditor may contract with any bank or financial institution for the processing of electronic authorizations.

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

Any officer or employee of the state of West Virginia may authorize the direct deposit of his or her net wages to his or her account in any bank or other financial institution by electronic funds transfer. Direct deposit authorizations shall comply with the requirements of section one-a of this article. Upon approval of an authorization, the auditor shall issue the warrant in the manner specified on the authorization and forward the warrant to the treasurer for further disposition to the designated bank or other financial institution on or before the day or days the officer or employee is due his or her net wages. Direct deposit authorizations may be revoked at any time thirty days prior to the date on which the direct deposit is regularly made and on a form to be provided by the auditor: *Provided,* That on and after the first day of July, two thousand two, at the option of the auditor, all wages shall be deposited directly into the employees' account at any bank or financial institution designated by the employee via electronic funds transfer or, if the employee does not have a bank account, through the West Virginia check card program in accordance with section four, article three-a of this chapter.

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

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

The Legislature finds that state government should facilitate and promote electronic commerce, particularly in the electronic receipting and disbursing of state funds. As many individuals receiving recurring state funds do not have bank accounts for the purpose of receiving direct deposits, and as the state desires that all payments be made electronically by the year two thousand two, it is the intent of the Legislature to provide a mechanism for all payees to receive payments by electronic funds transfers.
through direct deposit or through state issued debit cards. Further, as usage of electronic commerce grows, state spending units need the ability to accept payments electronically. To meet these goals, the Legislature seeks to ensure proper management oversight and accountability are maintained.


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

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

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

(1) preventing access by unauthorized parties;

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

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

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


The state auditor and the treasurer shall implement electronic commerce capabilities for each of their offices to facilitate the performance of their duties under this code. The state auditor and the state treasurer shall competitively bid the selection of vendors needed to provide the necessary banking, investment and related services for their offices, and the provisions of article one-b, chapter five, and articles three and seven, chapter five-
a, of this code shall not apply, unless requested by the
state auditor or state treasurer.

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

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

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

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

(a) The state treasurer shall have authority to contract
with banking institutions and other entities to establish
point of sale terminals ("POS terminals"), as defined in section twelve-b of article eight, chapter thirty-one-a of this code, that accept the West Virginia check card and the cards issued by state spending units to recipients of state or federal funds, food or other benefits. If other entities decline to provide the POS terminals in a manner that meets the requirements of this section, the treasurer is authorized to establish, own and operate POS terminals. The treasurer may place the POS terminals and associated equipment at any location within this state where he or she or the department of health and human resources determines the equipment is needed to provide reasonable access to users of the cards. The POS terminals authorized pursuant to this section may be used to provide any amount of cash payment or allowable purchase of retail items or other benefits as determined by the state treasurer, pursuant to state law and rules and, where necessary, in cooperation with any appropriate federal agencies.

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

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

(d) There is hereby created in the state treasury a separate special revenue account, which shall be an interest bearing account, to be known as the "Point of Sale Terminals Collection Account". The account shall contain any funds received from transactions on POS terminals installed by the state treasurer and any other funds
authorized by the Legislature. Moneys in the account shall be used by the treasurer to pay the fees and costs associated with the POS terminals and related equipment, and for such other purposes as determined by the Legislature.

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

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

The treasurer may establish a system for acceptance of credit card and other payment methods for electronic commerce purchases from spending units. Each spending unit utilizing WEB commerce, electronic commerce or other method that offers products or services for sale shall 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.

(a) Any banking institution as defined in section two, or more other banking institutions or other federally insured financial institutions having their principal offices in this state, or any combination thereof, may upon ten days prior written notice filed with the commissioner, install, operate and engage in banking business by means of one or more customer bank communication terminals. Any banking institution which installs and operates a customer bank communication terminal:
(1) Shall make such customer bank communication terminal available for use by other banking institutions; and

(2) May make such customer bank communication terminal available for use by other federally insured financial institutions, all in accordance with regulations promulgated by the commissioner. Such customer bank communication terminals shall not be considered to be branch banks or branch offices, agencies or places of business or off-premises walk-in or drive-in banking facilities; nor shall the operation of such customer bank communication terminals to communicate with and permit financial transactions to be carried out through a nonexclusive access interchange system be considered to make any banking institution which is part of such a nonexclusive access interchange system to have illegal branch banks or branch offices, agencies or places of business or off-premises walk-in or drive-in banking facilities.

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

(c) For purposes of this section, "customer bank communication terminal" means any electronic device or machine owned, leased, or operated by a bank, together with all associated equipment, structures and systems, including, without limitation, point of sale terminals, through or by means of which a customer and a banking institution may engage in any banking transactions, whether transmitted to the banking institution instantaneously or otherwise, including, without limitation, the receipt of deposits of every kind, the receipt and dispensing of cash, requests to withdraw money from an account or pursuant to a previously authorized line of credit, receiving payments payable at the bank or otherwise transmitting instructions to receive, transfer or pay funds for a customer's benefit. Personal computers, telephones and associated equipment
which enable a bank customer to conduct banking transactions at their home or office through links to their bank's computer or telephone network, do not constitute a "customer bank communication terminal" under this section. All transactions initiated through a customer bank communication terminal shall be subject to verification by the banking institution.

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

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

(f) Nothing in this section prevents point of sale terminals and associated equipment from being owned, leased or operated by nonbanking entities: Provided, That such persons may not engage in the business of banking by using point of sale devices. The use of a point of sale terminal to enable a customer or other person to withdraw and obtain cash of more than fifty dollars in excess of the sales transaction purchase amount, will be presumed to constitute engaging in the business of banking: Provided, however, That cash withdrawals through a point of sale terminal in excess of fifty dollars shall not constitute engaging in the business of banking if the sales transaction
is made with the use of a West Virginia check card, as provided in article three-a, chapter twelve of this code, or with an electronic benefits transfer or other card issued by state spending units to transmit payments of food benefits, temporary assistance to needy families, or other assistance, benefit or entitlement programs mandated or offered by federal or state government: Provided further, That any retailer, agency or person providing cash withdrawals with a West Virginia check card or an electronic benefits transfer card through a POS terminal is limited to charging a fee for the services in the amount of the higher of one dollar or one percent of the amount of cash withdrawn.

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

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

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

(h) The commissioner shall prescribe by regulation the procedures and standards regarding the installation and operation of customer bank communication terminals, including, without limitation, the procedure for the sharing thereof.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the Senate.
In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor