WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999

ENROLLED

SENATE BILL NO. 369

(BY SENATORS HAZELK, MINARD, ALTIERI, AND KASS)

PASSED ________ February 22, 1999
In Effect 90 days from Passage
AN ACT to amend and reenact sections three, twenty-four and twenty-five, article two, chapter thirty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the licensing of currency transporters; adding exemptions to licensing requirements; clarifying confidentiality provisions; and allowing the commissioner to appoint a hearing examiner in contested cases suspending or revoking a license.

Be it enacted by the Legislature of West Virginia:

That sections three, twenty-four and twenty-five, article two, chapter thirty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:
ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.


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

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

(2) The United States and any department or agency of the United States;

(3) The United States post office;

(4) This state and any political subdivision of this state;

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

(6) Persons engaged solely in the business of currency transportation who operate an armored car service in this state pursuant to licensure under article eighteen, chapter thirty of this code: Provided, That the net worth of the licensee exceeds five million dollars. The term “armored car service” as used in this article means a service provided by a person transporting or offering to transport, under armed security guard, currency or other things of value in a motor vehicle specially equipped to offer a high degree of security. Persons seeking to claim this exemption shall notify the commissioner of their intent to do so and demonstrate that they qualify for its use. Persons seeking an exemption under this subdivision are not exempt from the provisions of this article if they also engage in currency exchange or currency transmission;
(7) Persons engaged in the business of currency transportation whose activities are limited exclusively to providing services to federally insured depository institutions, or to any federal, state or local governmental entities; and

(8) Persons engaged solely in the business of removing currency from vending machines providing goods or services, if the machines are not used for gambling purposes or to convey any gambling ticket, token or other device used in a game of chance.

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

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

(d) Any person who is required and properly obtains a license under this article to transport currency is exempt from the requirements of article eighteen, chapter thirty of this code.


(a) Reports of investigation and examination, together with related documents and financial information not normally available to the public that is submitted in confidence by a person regulated under this article, including, but not limited to, that person's evaluation of the expected outcome of pending litigation, are confidential and may not be disclosed to the public by the commissioner or employees of the division of banking, and are not subject to the state's freedom of information act. The commissioner may release information if:
11 (1) The commissioner finds that immediate and irrepara-
12 ble harm is threatened to the licensee's customers or
13 potential customers or the general public;
14 (2) The licensee consents before the release;
15 (3) The commissioner finds that release of the informa-
16 tion is required in connection with a hearing under this
17 article, in which event information may be related to the
18 parties of that hearing; or
19 (4) The commissioner finds that the release is reasonably
20 necessary for the protection of the public and in the
21 interest of justice, in which event information may be
22 distributed to representatives of an agency, department or
23 instrumentality of this state, any other state or the federal
24 government.
25 (b) Nothing in this section prevents release to the public
26 of any list of licensees or aggregated financial data for the
27 licensees, prevents disclosure of information the presiding
28 officer considers relevant to the proper adjudication or
29 administration of justice at public administrative or
30 judicial hearings, or prevents disclosure of information
31 relevant to supporting the issuance of any administrative
32 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. The hearing shall
9 be conducted in accordance with the provisions of article
10 five, chapter twenty-nine-a of this code. The commissioner
11 may appoint a hearing examiner to preside at the hearing
12 and make a recommended decision. After the hearing the
13 commissioner shall revoke or suspend the license if he or
14 she finds that:
(1) The licensee has knowingly or repeatedly violated this chapter or any rule or order lawfully made or issued pursuant to this article;

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

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

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

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

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

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

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

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

(f) Any person holding a license under this article may
relinquish the license by notifying the commissioner in
writing of its relinquishment, but any relinquishment does
not affect a person's liability for acts previously commit-
ted.

(g) No revocation, suspension or relinquishment of a
license impairs or affects the obligation of any preexisting
lawful contract between the licensee and any person.

(h) The commissioner may reinstate a license, terminate
a suspension or grant a new license to a person whose
license has been revoked or suspended if no fact or condi-
tion then exists which clearly would have justified the
commissioner in refusing to grant a license.
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 Day of......, 1969

Governor