

SB 369

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999

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SENATE BILL NO. 369

(By Senators HELUICK, MUMFORD, BOUTWELL & KASS)



PASSED FEBRUARY 22, 1999

In Effect 90 days from Passage

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STATE OF WEST VIRGINIA  
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**Senate Bill No. 369**

(BY SENATORS HELMICK, MINARD, DITTMAR AND ROSS)

[Passed February 22, 1999; in effect ninety 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.**

**§32A-2-3. Exemptions.**

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

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

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

11 (3) The United States post office;

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

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 (6) Persons engaged solely in the business of currency  
20 transportation who operate an armored car service in this  
21 state pursuant to licensure under article eighteen, chapter  
22 thirty of this code: *Provided*, That the net worth of the  
23 licensee exceeds five million dollars. The term "armored  
24 car service" as used in this article means a service pro-  
25 vided by a person transporting or offering to transport,  
26 under armed security guard, currency or other things of  
27 value in a motor vehicle specially equipped to offer a high  
28 degree of security. Persons seeking to claim this exemp-  
29 tion shall notify the commissioner of their intent to do so  
30 and demonstrate that they qualify for its use. Persons  
31 seeking an exemption under this subdivision are not  
32 exempt from the provisions of this article if they also  
33 engage in currency exchange or currency transmission;

34 (7) Persons engaged in the business of currency transpor-  
35 tation whose activities are limited exclusively to providing  
36 services to federally insured depository institutions, or to  
37 any federal, state or local governmental entities; and

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

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

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

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

**§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,  
5 including, but not limited to, that person's evaluation of  
6 the expected outcome of pending litigation, are confiden-  
7 tial and may not be disclosed to the public by the commis-  
8 sioner or employees of the division of banking, and are not  
9 subject to the state's freedom of information act. The  
10 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:

15 (1) The licensee has knowingly or repeatedly violated  
16 this chapter or any rule or order lawfully made or issued  
17 pursuant to this article;

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

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

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

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

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

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

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

48 (e) Whenever the commissioner revokes or suspends a  
49 license, an order to that effect shall be entered and the  
50 commissioner shall forthwith notify the licensee of the  
51 revocation or suspension. Within five days after the entry

52 of the order the commissioner shall mail by registered or  
53 certified mail, or shall provide for personal delivery to the  
54 licensee, of a copy of the order and the findings supporting  
55 the order.

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

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

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

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

*Randy Schanover*  
.....  
Chairman Senate Committee

*Joe F. Smith*  
.....  
Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

*Kenneth Williams*  
.....  
Clerk of the Senate

*Gregg M. Gray*  
.....  
Clerk of the House of Delegates

*Carl Ray Smith*  
.....  
President of the Senate

*John H. ...*  
.....  
Speaker House of Delegates

The within *approved* this the *30*  
Day of *March*, 1989

*Rif D. Stevenson*  
.....  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/2/99

Time 3:46 pm