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LEGISLATIVE SERVICES

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2000



ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2377

(By Delegates Ashley and Purdue)



Passed March 11, 2000

In Effect Ninety Days from Passage

FILED
00 MAR 21 11 2 42
CLERK OF COURSE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2377

(BY DELEGATES ASHLEY AND PERDUE)

[Passed March 11, 2000; in effect ninety days from passage.]

AN ACT to amend chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen, relating to establishing a civil remedy for drawing, making, uttering, issuing or delivery of worthless checks, drafts, or other written orders; providing for the recovery of damages; requiring a written demand; establishing affirmative defenses; and limiting criminal prosecutions.

Be it enacted by the Legislature of West Virginia:

That chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article sixteen, to read as follows:

ARTICLE 16. CIVIL REMEDY FOR WORTHLESS CHECK.

§55-16-1. Civil remedy for making, drawing, issuing, uttering or delivery of worthless check, draft or order.

1 (a) As used in this section, “check” means a draft or other
2 written order payable on demand and drawn on a bank or
3 depository.

4 (b) If the maker or drawer of a check (1) draws, makes,
5 utters, or issues and delivers to another a check drawn on a bank
6 or depository that refuses to honor it because the maker or
7 drawer does not have sufficient funds with which to pay the
8 check on deposit in or credit with the bank or depository upon
9 presentation and (2) knowingly fails to pay the amount of the
10 check in cash to the payee, within thirty days following written
11 demand, the payee has a cause of action against the drawer or
12 maker.

13 (c) In an action under this section, the payee may be
14 awarded:

15 (1) The face amount of the check, less any money received
16 by the payee in partial payment of the debt of the check;

17 (2) Damages of five hundred dollars or the face amount of
18 the check, whichever is less; and

19 (3) Reasonable costs incurred in filing the action.

20 (d) In an action under this section, the court or jury may
21 waive all or part of the damages or fees allowed by subdivision
22 (2), subsection (c) of this section upon a finding that the
23 defendant’s failure to satisfy the dishonored check was due to
24 the defendant’s recent discharge from his or her employment,
25 personal or family illness, or personal or family catastrophic
26 loss.

27 (e) The written demand required in subsection (a) of this
28 section shall:

29 (1) Describe the check and the circumstances of its dis-
30 honor;

31 (2) Contain a demand for payment and a notice of intent to
32 file suit for damages under this section if payment is not
33 received within thirty days; and

34 (3) Be delivered by personal service or by certified mail to
35 the defendant at his or her last known address.

36 (f) It is an affirmative defense to any claim under this
37 section that:

38 (1) Full satisfaction of the amount of the check was made
39 before the beginning of the action; or

40 (2) The bank or depository erred in dishonoring the check.

41 (g) No action may be brought pursuant to both this section
42 and sections thirty-nine-a through thirty-nine-h of article three,
43 chapter sixty-one of this code on the same check.

Enr. Com. Sub. for H. B. 2377] 4

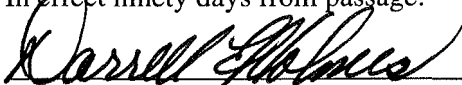
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

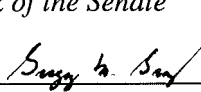

Chairman Senate Committee
MEMBER

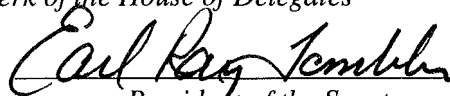

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

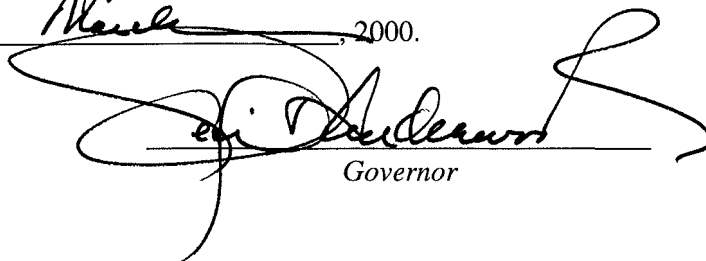

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 20th
day of March, 2000.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/16/00

Time 12:00pm