

SB 85

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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 2000



## ENROLLED

Committee Substitute for  
SENATE BILL NO. 85

(By Senator Hunter, et al )



PASSED March 11, 2000  
In Effect ninety days from Passage

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## ENROLLED

COMMITTEE SUBSTITUTE

FOR

### Senate Bill No. 85

(SENATORS HUNTER, BALL, DAWSON, DITTMAR, MCCABE,  
MCKENZIE, MITCHELL, REDD AND SNYDER, *original sponsors*)

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

AN ACT to amend and reenact section thirty-nine-a, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto five new sections, designated sections thirty-nine-m, thirty-nine-n, thirty-nine-o, thirty-nine-p and thirty-nine-q, all relating to worthless checks; increasing fines for making a worthless check; creating a worthless check restitution program in the office of the prosecuting attorney; allowing the prosecuting attorney to adopt standards; requiring notice to persons accepted into program; allowing the prosecuting attorney to agree to suspend prosecution for person in program; allowing certain fees; requiring the sheriff to establish a special fund

in the county treasury and requiring the county commission to appropriate funds therefrom; and making statements by participants in the program inadmissible in civil or criminal proceedings.

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

That section thirty-nine-a, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto five new sections, designated sections thirty-nine-m, thirty-nine-n, thirty-nine-o, thirty-nine-p and thirty-nine-q, all to read as follows:

**ARTICLE 3. CRIMES AGAINST PROPERTY.**

**§61-3-39a. Making, issuing, etc., worthless checks; penalty.**

1 (a) It is unlawful for any person, firm or corporation to  
2 make, draw, issue, utter or deliver any check, draft or  
3 order for the payment of money or its equivalent upon any  
4 bank or other depository, knowing or having reason to  
5 know there is not sufficient funds on deposit in or credit  
6 with the bank or other depository with which to pay the  
7 check, draft or order upon presentation. The making,  
8 drawing, issuing, uttering or delivering of any check, draft  
9 or order, for or on behalf of any corporation, or its name,  
10 by any officer or agent of the corporation, shall subject the  
11 officer or agent to the penalty of this section to the same  
12 extent as though the check, draft or order was his or her  
13 own personal act.

14 (b) This section shall not apply to any such check, draft  
15 or order when the payee or holder knows or has been  
16 expressly notified prior to the acceptance of same or has  
17 reason to believe that the drawer did not have on deposit  
18 or to his or her credit with the drawee sufficient funds to  
19 insure payment as aforesaid, nor shall this section apply to  
20 any postdated check, draft or order. This section shall not

21 apply when the insufficiency of funds or credit is caused  
22 by any adjustment to the drawer's account by the bank or  
23 other depository without notice to the drawer or is caused  
24 by the dishonoring of any check, draft or order deposited  
25 in the account unless there is knowledge or reason to  
26 believe that the check, draft or order would be dishonored.

27 (c) Any person violating the provisions of this section is  
28 guilty of a misdemeanor and, upon conviction thereof,  
29 shall be fined not more than two hundred dollars; and  
30 upon a third or subsequent conviction thereof, shall be  
31 fined not more than two hundred dollars, or confined in  
32 the county or regional jail not more than ten days, or both.

**§61-3-39m. Creation and operation of a program for worthless  
check offenders; acceptance of person in pro-  
gram.**

1 (a) A prosecuting attorney may create within his or her  
2 office a worthless check restitution program for persons  
3 who have violated sections thirty-nine or thirty-nine-a of  
4 this article. This program may be conducted by the  
5 prosecuting attorney in conjunction with a law-enforce-  
6 ment agency or by a private entity under contract with the  
7 prosecuting attorney.

8 (b) The prosecuting attorney may adopt standards to  
9 determine the appropriateness of an individual case for the  
10 program. In developing these standards, the prosecuting  
11 attorney should consider the following factors:

12 (1) The amount of the check, draft or order made, drawn,  
13 issued, uttered or delivered;

14 (2) The person's criminal record;

15 (3) The number of times the person has participated in  
16 the program; and

17 (4) The number of warrants or cases pending against the  
18 person for violations of sections thirty-nine or thirty-nine-  
19 a of this article.

20 (c) Except as provided in section thirty-nine-o of this  
21 article, nothing in this section shall preclude the prosecut-  
22 ing attorney from prosecuting violations of sections thirty-  
23 nine or thirty-nine-a of this article.

24 (d) Nothing in this section may be construed or inter-  
25 preted to mandate funding for any worthless check  
26 restitution program created in a prosecuting attorney's  
27 office or to require any appropriation by the Legislature.

28 (e) Notwithstanding any other provision of law to the  
29 contrary, no case is appropriate for referral to the program  
30 unless notice has been provided pursuant to section thirty-  
31 nine-e or thirty-nine-g of this article.

**§61-3-39n. Notice to persons accepted to the worthless check  
restitution program.**

1 (a) Upon approval of an individual case for referral to  
2 the worthless check restitution program, a representative  
3 of the program shall send a notice by registered or certi-  
4 fied mail to the person named in the complaint or warrant.

5 (b) This notice must contain:

6 (1) The date and amount of the check, draft or order;

7 (2) The name of the payee or holder;

8 (3) The date by which the individual must contact the  
9 designated representative of the worthless check restitu-  
10 tion program;

11 (4) A demand for full restitution of the face amount of  
12 the check, draft or order and any fees reflected in the  
13 complaint or warrant as having been imposed on the payee

14 or holder by the payee's or holder's bank or financial  
15 institution; and

16 (5) A statement that failure to pay restitution and fees  
17 may result in criminal prosecution.

**§61-3-39o. Agreement to suspend prosecution of a person  
accepted into the restitution program.**

1 (a) The prosecuting attorney may enter into an agree-  
2 ment with a participant of the worthless check restitution  
3 program to suspend prosecution for a period to be deter-  
4 mined by the prosecuting attorney.

5 (b) To remain eligible for the worthless check restitution  
6 program, the participant shall:

7 (1) Contact a representative of the program before the  
8 date required by the notice sent pursuant to section thirty-  
9 nine-n of this article;

10 (2) Agree to comply with all the program terms;

11 (3) Complete a class conducted by the prosecuting  
12 attorney, his or her designee, or a private entity under  
13 contract with the prosecuting attorney, which offers  
14 offender education and instruction;

15 (4) Pay a fee in the amount of ten dollars to be deposited  
16 in the "worthless check fund" established pursuant to the  
17 provisions of section thirty-nine-h of this article;

18 (5) Pay the fee required to participate in the class;

19 (6) Pay full victim restitution; and

20 (7) Pay all fees for participation in the program, unless  
21 those fees are waived.

22 (c) The prosecuting attorney shall agree not to file  
23 criminal charges if the participant in the program com-  
24 pletes the conditions of the agreement.

**§61-3-39p. Fees for participation in the worthless check restitution program.**

1 (a) The prosecuting attorney, his or her designee, or a  
2 private entity under contract with the prosecuting attorney  
3 may collect a fee not to exceed one hundred dollars  
4 from any person participating in the worthless check  
5 restitution program: *Provided*, That the prosecuting  
6 attorney shall waive the fee if he or she determines that  
7 the person is indigent and unable to pay the fee.

8 (b) All fees collected pursuant to subsection (a) of this  
9 section by the prosecutor shall be remitted to the sheriff.  
10 The sheriff shall establish a special fund in the county  
11 treasury, designated the worthless check restitution  
12 program fund, in which the sheriff shall deposit all fees  
13 remitted by the prosecutor. The county commission shall  
14 appropriate money from the fund for the administration of  
15 the worthless check restitution program. The county  
16 commission shall also appropriate any excess money from  
17 the fund to supplement the annual operation expense  
18 appropriation of the office of the prosecuting attorney, if  
19 the prosecuting attorney certifies in writing to the county  
20 commission that a surplus exists in the fund at the end of  
21 the fiscal year.

**§61-3-39q. Statements by individuals referred to or participating in the worthless check restitution program.**

1 Any statement made by a person referred to the worthless  
2 check restitution program in connection with the  
3 determination of his or her eligibility for participation in  
4 the program and any statement made or information given  
5 by that person while participating in the program is  
6 inadmissible in any civil or criminal action or proceeding.

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

*[Handwritten Signature]*  
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Chairman Senate Committee

*[Handwritten Signature]*  
.....

Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

*[Handwritten Signature]*  
.....

Clerk of the Senate

*[Handwritten Signature]*  
.....

Clerk of the House of Delegates

*[Handwritten Signature]*  
.....

President of the Senate

*[Handwritten Signature]*  
.....

Speaker House of Delegates

The within..... *approved* ..... this the *3rd* .....

Day of..... *April* ....., 2000

*[Handwritten Signature]*  
.....

Governor



PRESENTED TO THE

GOVERNOR

Date 3/3/17

Time 2:40pm