

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003



ENROLLED

House Bill No. 2794

(By Delegates Stalnaker, Morgan, Stemple and Shelton)



Passed March 6, 2003

In Effect Ninety Days from Passage

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

E N R O L L E D

H. B. 2794

(BY DELEGATES STALNAKER, MORGAN,
STEMPLE AND SHELTON)

[Passed March 6, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact sections thirty-nine-e and thirty-nine-g, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to worthless checks; and increasing the allowable service charge for a dishonored check.

Be it enacted by the Legislature of West Virginia:

That sections thirty-nine-e and thirty-nine-g, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39e. Notice of dishonor by payee; service charge.

- 1 The payee or holder of a check, draft or order which has
- 2 been dishonored because of insufficient funds or credit may
- 3 send notice thereof to the drawer of the check, draft or order.

4 The payee or holder of any dishonored check may impose a fee
 5 of up to twenty-five dollars a worthless check. This fee may not
 6 be imposed or collected after a complaint for warrant has been
 7 delivered to magistrate court. No payee or holder of a check,
 8 draft or order which has been dishonored because of insuffi-
 9 cient funds or credit shall incur any civil or criminal liability for
 10 the sending of a notice substantially in the form provided
 11 herein, other provisions of law notwithstanding. The form of
 12 the notice shall be substantially as follows:

13 "You are hereby notified that a check, number,
 14 issued by you on (date of check), drawn upon (name of bank),
 15 and payable to, has been dishonored. Pursuant
 16 to West Virginia law, you have ten days from the date of this
 17 notice to tender payment of the full amount of the check plus a
 18 fee of \$..... (not to exceed twenty-five dollars a
 19 worthless check) to the undersigned at You
 20 are further notified that in the event the above amount is timely
 21 paid in full you will not be subject to legal proceedings, civil or
 22 criminal.

23 Dated, 20.....
 24
 25 (Signed)."

26 The provisions of this section do not authorize the making
 27 of any other written or oral threats of prosecution to enforce or
 28 enhance the collection or honoring of the dishonored check,
 29 draft or order.

30 The holder or payee of any check, draft or order shall
 31 relinquish the check, draft or order to the maker upon tender of
 32 the full amount due at any time before a complaint for warrant
 33 has been presented to magistrate court. In the event complaint
 34 for warrant has been presented to magistrate court, payment
 35 may be made only through the court and any holder or payee

36 unlawfully accepting payment after that time shall be liable for
37 all costs which may be imposed by the magistrate court in the
38 matter, including all costs which may have accrued by the time
39 the magistrate court is notified of the payment.

**§61-3-39g. Complaint; notice of complaint; issuance of warrant;
payment procedures; costs.**

1 After receipt of a complaint for warrant for a violation of
2 section thirty-nine or thirty-nine-a of this article the magistrate
3 court shall proceed with the issuance of the warrant as is
4 provided by law: *Provided*, That no warrant may issue for an
5 offense under section thirty-nine or thirty-nine-a of this article
6 which, upon conviction, would be punishable as a misde-
7 meanor, unless the payee or holder of the check, draft or order
8 which has been dishonored has sent notice thereof to the drawer
9 of the check, draft or order in accordance with the provisions of
10 section thirty-nine-e of this article, or unless notice has been
11 sent by the magistrate as hereinafter provided. Proof that the
12 notice was sent by the payee or holder may be evidenced by
13 presentation of a return receipt indicating that the notice was
14 mailed to the drawer by certified mail, or, in the event the
15 mailed notice was not received or was refused by the drawer, by
16 presentation of the mailed notice itself. The magistrate court
17 shall receive and hold the check, draft or order.

18 Upon receipt of a complaint for a misdemeanor warrant
19 unaccompanied by proof that notice was sent by the payee or
20 holder, the magistrate court shall immediately prepare and mail
21 to the drawer of the check, draft or order a notice in form
22 substantially as follows. The magistrate court shall impose any
23 service charge reflected in the complaint as having been
24 imposed on the payee or holder by the payee's or holder's bank
25 or financial institution in connection with the check, draft or
26 order and additional court costs in the amount of twenty-five
27 dollars. This notice shall be mailed to the drawer by United

93 offense charged. These costs shall be imposed in accordance
94 with the provisions of section two, article three, chapter fifty of
95 this code.

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

Cary White
Chairman Senate Committee

Sharon Spence
Chairman House Committee

Originating in the House.

In effect ninety days from passage

Darrell Eldredge
Clerk of the Senate

Gregory W. Day
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

[Signature]
Speaker of the House of Delegates

The within *is approved* this the *1th*
day of *March*, 2003.

Bob Wise
Governor

PRESENTED TO THE
GOVERNOR

Date 3/11/03

Time 11:00 am