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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007

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ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2741**

(By Delegates Webster, Ellem, Stemple,
Mahan and Proudfoot)

—●—
Passed March 7, 2007

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

FOR OFFICE WEST VIRGINIA
SECRETARY OF STATE

H. B. 2741

(BY DELEGATES WEBSTER, ELLEM, STEMPLER,
MAHAN AND PROUDFOOT)

[Passed March 7, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §61-3-39a, §61-3-39b, §61-3-39f and §61-3-39h of the Code of West Virginia, 1931, as amended, all relating to worthless checks; providing a defense for payment of worthless check within ten days; authorizing magistrate courts to accept certain criminal complaints from private citizens; preventing assessment of costs against a complainant in certain circumstances; requiring the defendant in a worthless check prosecution to pay court costs for each worthless check charge of which he or she stands convicted; and requiring the defendant to pay the additional court costs for each worthless check charge dismissed as a result of a plea agreement.

Be it enacted by the Legislature of West Virginia:

That §61-3-39a, §61-3-39b, §61-3-39f and §61-3-39h of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39a. Making, issuing, etc., worthless checks on a preexisting debt; penalty.

- 1 (a) It is unlawful for any person, firm or corporation to
- 2 make, draw, issue, utter or deliver any check, draft or order

3 for the payment of money or its equivalent on a preexisting
4 debt upon any bank or other depository, knowing or having
5 reason to know there is not sufficient funds on deposit in or
6 credit 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 or
9 order on a preexisting debt, for or on behalf of any
10 corporation, or its name, by any officer or agent of the
11 corporation, shall subject the officer or agent to the penalty
12 of this section to the same extent as though the check, draft
13 or order was his or her own personal act.

14 (b) This section shall not apply to any check, draft or
15 order when the payee or holder knows or has been expressly
16 notified prior to the acceptance of same or has reason to
17 believe that the drawer did not have on deposit or to his or
18 her credit with the drawee sufficient funds to insure payment
19 as aforesaid, nor shall this section apply to any postdated
20 check, draft or order. This section shall not apply when the
21 insufficiency of funds or credit is caused by any adjustment
22 to the drawer's account by the bank or other depository
23 without notice to the drawer or is caused by the dishonoring
24 of any check, draft or order deposited in the account unless
25 there is knowledge or reason to believe that the check, draft
26 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, shall
29 be fined not more than two hundred dollars; and upon a third
30 or subsequent conviction thereof, shall be fined not more than
31 two hundred dollars, or confined in the county or regional jail
32 not more than ten days, or both.

§61-3-39b. Payment as defense.

1 Payment of a dishonored check, draft or order, made to
2 the magistrate clerk within ten days after the notice mailed to
3 the defendant pursuant to section thirty-nine-g of this article,
4 constitutes a complete defense or ground for dismissal of
5 charges brought under section thirty-nine or section thirty-
6 nine-a of this article.

§61-3-39f. Manner of filing complaint for warrant; form.

1 (A) Notwithstanding the provisions of section one, article
2 one, chapter sixty-two of this code, a complaint for warrant
3 for violations of section thirty-nine or section thirty-nine-a of
4 this article need not be made upon oath before a magistrate

5 but may be made upon oath before any magistrate court clerk
6 or other court officer authorized to administer oaths or before
7 a notary public in any county of the state and may be
8 delivered by mail or otherwise to the magistrate court of the
9 county wherein venue lies: *Provided*, That nothing in this
10 section changes the authority and responsibility of the
11 prosecuting attorney to prosecute any person or persons for
12 violations of section thirty-nine or section thirty-nine-a of this
13 article.

14 (B) A complaint for warrant for violations of section
15 thirty-nine-a of this article shall be deemed sufficient if it is
16 in form substantially as follows:

17 "State of West Virginia County of, to
18 wit:....., upon oath complains that:

19 (a) Within one year past, on the day of,
20 20...., in the county stated above,
21 (the maker") unlawfully issued and delivered to
22 a check, draft or order with the
23 following words and figures:

24 20 No.....
25
26 (Name of Bank)

27 Pay to the Order of \$...... Dollars

28 For..... when the maker
29 did not have funds on deposit in or credit with this bank with
30 which to pay the check, draft or order upon presentation
31 against the peace and dignity of the State of West Virginia.
32 The complainant therefore prays a warrant issue and that the
33 maker be apprehended and held to answer the warrant and
34 dealt with in relation thereto according to the law.

35 (b) At the time the check, draft or order was delivered
36 and before it was accepted there was either on the check or
37 on a record in the possession of the complainant the
38 following information regarding the identity of the maker:

39 (1) Name.....

40 (2) Residence address.....

41 (3) Business address.....

42 (4) Mailing address.....

43 (5) Motor vehicle operator's number.....

44 (6) Home phone.....

45

46 (7) Work phone.....

47 (8) Place of employment.....

48 That since the time the check, draft or order was
49 delivered the complainant has ascertained to the best of his or
50 her knowledge and belief the following facts concerning the
51 maker:

52 Full name

53 Home address

54 Home phone no..... Business phone no.....

55 Place of employment

56 Race Sex Height

57 Date of birth

58

Day

Month

Year

59, Complainant

60

61

Address

Phone No.

62 (c) The complainant's bank or financial institution has
63 imposed on or collected from the complainant a service
64 charge in the amount of \$..... in connection with
65 the check, draft or order described above.

66 Taken, subscribed and sworn to before me,

67 thisday of, 20....

68

69

(Title)

70 My commission expires the day of, 20...."

71 (C) The failure to supply information indicated in parts
72 (b) or (c) of the foregoing complaint for warrant shall not
73 affect the sufficiency of the complaint.

**§61-3-39h. Payment of costs in worthless check cases;
disposition of certain costs.**

1 (a) In any prosecution under section thirty-nine or thirty-
2 nine-a of this article, the costs that may otherwise be imposed
3 against the drawer of any check, draft or order shall be
4 imposed on the person initiating the prosecution if:

5 (1) Payment of the check, draft or order is accepted by
6 the payee or holder thereof after the filing of a complaint for
7 warrant and the charge is subsequently withdrawn or
8 dismissed at the request of the complainant: *Provided*, That
9 the provisions of this subdivision do not apply where a
10 charge is dismissed and restitution is paid as a condition of a
11 plea agreement. The defendant shall be assessed costs for the
12 prosecution of each charge of which he or she stands
13 convicted and the fee for court costs assessed pursuant to
14 section thirty-nine-g of this article for each charge dismissed
15 as a result of the plea agreement;

16 (2) The payee or holder had reason to believe that the
17 check, draft or order would be dishonored;

18 (3) The check, draft or order was postdated; or

19 (4) The matter is dismissed for failure to prosecute.

20 (b) Costs collected by magistrate court for issuance of
21 notice as authorized by section thirty-nine-g of this article
22 may not be paid into the special county fund created by the
23 provisions of section four, article three, chapter fifty of this
24 code but shall be accounted for separately and retained by the
25 county in a fund designated the Worthless Check Fund until
26 the sheriff issues warrants in furtherance of the allowable
27 expenses specifically provided for by this section. Such costs
28 may not be included in any calculation of the amount of
29 funds to be retained by the county under the provisions of
30 section four, article three, chapter fifty of this code.

31 (c) A county may, after agreement with the court
32 administrator's office of the Supreme Court of Appeals,
33 appropriate and spend from the Worthless Check Fund herein
34 established such sums as are necessary to pay or defray the
35 expenses of providing a deputy sheriff to serve warrants for

36 worthless check offenses and to pay or defray the expenses
37 of providing additional deputy clerks in the office of the
38 magistrate court clerk. After payment of these expenses, or
39 after a determination that these services are not necessary, a
40 county may appropriate and spend from the fund the sums
41 necessary to defray:

42 (1) The expenses of providing bailiff and service of
43 process services by the sheriff;

44 (2) The cost of acquiring or renting magistrate court
45 offices and providing utilities and telephones and telephone
46 service to such offices;

47 (3) The cost of complying with section thirty-nine-i of
48 this article; and

49 (4) The expenses of other services are provided to
50 magistrate courts by the county.

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



Chairman Senate Committee



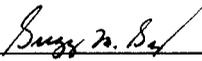
Chairman House Committee

Originating in the House.

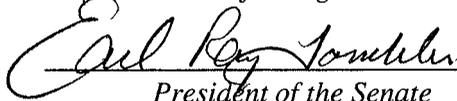
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Clerk of the Senate



Clerk of the House of Delegates

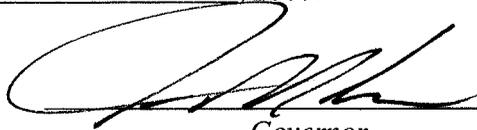


President of the Senate



Speaker of the House of Delegates

The within is approved this the 20th
day of March, 2007.



Governor

PRESENTED TO THE
GOVERNOR

MAR 15 2007

Time 4:15 pm