



1                   **payment procedures; costs.**

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

19           (b) Upon receipt of a complaint for a misdemeanor warrant  
20 unaccompanied by proof that notice was sent by the payee or holder,  
21 the magistrate court shall immediately prepare and mail to the  
22 drawer of the check, draft or order a notice in form substantially  
23 as follows. The magistrate court shall impose any service charge  
24 reflected in the complaint as having been imposed on the payee or

1 holder by the payee's or holder's bank or financial institution in  
2 connection with the check, draft or order and additional court  
3 costs in the amount of \$25. This notice shall be mailed to the  
4 drawer by United States mail, first class and postpaid, at the  
5 address provided at the time of presenting the check, draft or  
6 order. Service of this notice is complete upon mailing. The  
7 notice shall be in form substantially as follows:

8 "You are hereby notified that a complaint for a warrant for  
9 your arrest has been filed with this office to the following effect  
10 and purpose by ..... who upon oath complains that on the  
11 ..... day of ....., 20.., you did unlawfully issue and  
12 deliver unto him or her a certain check, draft or order in the  
13 amount of ..... drawn on  
14 ..... (name of bank or financial  
15 institution) ..... where you did not have funds on  
16 deposit in or credit with the bank or financial institution with  
17 which to pay the check, draft or order upon presentation and pray  
18 that a warrant issue and that you be apprehended wherever you may  
19 be found by an officer authorized to make an arrest and dealt with  
20 in accordance with the laws of the State of West Virginia."

21 "A warrant for arrest will be issued on or after the .....  
22 day of ....., 20....."

23 "You can nullify the effect of this complaint and avoid arrest  
24 by paying to the magistrate court clerk at ....."

1 the amount due on the check, draft or order; service charges  
2 imposed on the payee or holder by the payee's or holder's bank or  
3 financial institution in connection with the check, draft or order  
4 in the amount of .....; and the costs of this proceeding in  
5 the amount of \$25. on or before the ..... day of  
6 ....., 20..., at which time you will be given a  
7 receipt with which you can obtain the check, draft or order from  
8 the magistrate court. The complainant is forbidden by law to  
9 accept payment after the complaint is filed.

10                   Magistrate Court of ..... County  
11                   .....  
12 Date: ....."

13           This notice shall give the drawer of any ~~such~~ the check, draft  
14 or order ten days within which to make payment to magistrate court.  
15 In the event the drawer pays the total amount set forth in the  
16 notice to the magistrate court within the ten-day period, no  
17 warrant may issue. The payment may be made to the magistrate court  
18 in person or by mail by cash, certified check, bank draft or money  
19 order and, in the event the payment is made by mail, the magistrate  
20 court clerk shall immediately mail to the maker of the check, draft  
21 or order the receipt required by this section. ~~In the event~~ If the  
22 total amount is not so paid the court shall proceed with the  
23 issuance of the warrant as is provided by law.

24           (c) Upon receipt of payment of the total amount the magistrate

1 court clerk shall issue to the drawer a receipt sufficiently  
2 describing the check, draft or order with which receipt the drawer  
3 is entitled to receive the dishonored check, draft or order from  
4 the magistrate court holding it. The magistrate court clerk shall  
5 forward the amount of the check, draft or order, together with any  
6 service charge reflected on the complaint as having been imposed on  
7 the payee or holder by the payee's or holder's bank or financial  
8 institution in connection with the check, draft or order, to the  
9 payee or holder thereof, along with a description of the check,  
10 draft or order sufficient to enable the person filing the complaint  
11 to identify it and the transaction involved. Costs collected shall  
12 be dealt with as is provided by law for other criminal proceedings.

13 (d) The drawer of a check, draft or order against whom a  
14 warrant has been issued may at any time prior to trial pay to the  
15 court the amount of the check, draft or order; any service charge  
16 reflected in the complaint as having been imposed on the payee or  
17 holder by the payee's or holder's bank or financial institution in  
18 connection with the check, draft or order; and the court costs  
19 which would be assessed if the person were found guilty of the  
20 offense charged. These costs shall be imposed in accordance with  
21 the provisions of section two, article three, chapter fifty of this  
22 code.

23 (e) When a misdemeanor complaint issues against a person  
24 residing out-of-state accused of issuing a worthless check, draft

1 or warrant, a summons shall issue. The summons shall apprise the  
2 person of a time and date certain for him or her to appear before  
3 a magistrate in the county where the complaint issued, or  
4 alternatively, that he or she may, in lieu of the required  
5 appearance, make payment of the check and the applicable fine and  
6 applicable fees by cash or money order. The summons shall also  
7 apprise the person that if he or she fails to appear or make  
8 payment, as required, notice of the failure will be forwarded to  
9 the West Virginia Division of Motor Vehicles in accordance with the  
10 provisions of subsection (d), section two-a, article three, chapter  
11 fifty of this code.

NOTE: The purpose of this bill is to provide a process for notifying persons residing out-of-state who write worthless checks in this state, and who after being served with a summons upon a worthless check complaint fail to pay the check and applicable fine or fail to make an appearance in magistrate court, that the Division of Motor Vehicles will be notified of their failure, to be dealt with in accordance with existing law.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.