

1 **H. B. 2225**

2  
3 (By Delegate Williams)

4 [Introduced January 12, 2010; referred to the  
5 Committee on the Judiciary then Finance.]  
6

7 **FISCAL**  
8 **NOTE**

9  
10 A BILL to amend and reenact §61-3-39g of the Code of West Virginia,  
11 1931, as amended, relating to providing that when a person  
12 from another state writes a worthless check in this state  
13 which results in a summons to appear in magistrate court but  
14 then fails to appear shall have his or her privilege to drive  
15 in this state revoked; and providing that the Division of  
16 Motor Vehicles provide a copy of the revocation to the state  
17 wherein the person holds a driver's license.

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

19 That §61-3-39g of the Code of West Virginia, 1931, as amended,  
20 be amended and reenacted to read as follows:

21 **ARTICLE 3. CRIMES AGAINST PROPERTY.**

22 **§61-3-39g. Complaint; notice of complaint; issuance of warrant;**  
23 **payment procedures; costs.**

24 After receipt of a complaint for warrant for a violation of

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

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

1 costs in the amount of \$25. This notice shall be mailed to the  
2 drawer by United States mail, first class and postpaid, at the  
3 address provided at the time of presenting the check, draft or  
4 order. Service of this notice is complete upon mailing. The  
5 notice shall be in form substantially as follows:

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

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

21 "You can nullify the effect of this complaint and avoid arrest  
22 by paying to the magistrate court clerk at .....  
23 the amount due on the check, draft or order; service charges  
24 imposed on the payee or holder by the payee's or holder's bank or

1 financial institution in connection with the check, draft or order  
2 in the amount of .....; and the costs of this proceeding in  
3 the amount of twenty-five dollars on or before the ..... day  
4 of ....., 20..., at which time you will be given a  
5 receipt with which you can obtain the check, draft or order from  
6 the magistrate court. The complainant is forbidden by law to  
7 accept payment after the complaint is filed.

8                                   Magistrate Court of ..... County  
9                                   .....

10 Date: ....."

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

22           Upon receipt of payment of the total amount the magistrate  
23 court clerk shall issue to the drawer a receipt sufficiently  
24 describing the check, draft or order with which receipt the drawer

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

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

20       A summons shall be issued for the drawer of a worthless check,  
21 draft or warrant, whether a resident of this or another state. The  
22 summons shall issue to the drawer's place of residence or last  
23 known address. The summons shall state a date, time and place in  
24 which the drawer shall be required to appear before a magistrate in

1 the county wherein the worthless check, draft or warrant was  
2 issued. The drawer shall also be given the option, in lieu of  
3 appearing, to make payment of the amount of the worthless check,  
4 draft or warrant plus any applicable court costs. In the event a  
5 nonresident drawer fails to appear pursuant to the summons and  
6 fails to satisfy the amount of the worthless check, draft or  
7 warrant plus applicable court costs, the clerk of the court shall  
8 forward his or her name and address to the West Virginia Division  
9 of Motor Vehicles which shall revoke his or her privilege to  
10 operate a motor vehicle in this state. A West Virginia resident  
11 shall have their driver's license revoked until the worthless  
12 check, draft, or warrant amount is paid in full. The division  
13 shall, additionally, mail a notice of the revocation to its  
14 counterpart in the state in which a nonresident drawer resides.

NOTE: The purpose of this bill is to provide that when a person from another state writes a worthless check in this state which results in a summons to appear in magistrate court but then fails to appear, the person shall have his or her privilege to drive in this state revoked. The bill also provides that the Division of Motor Vehicles mail notice of the revocation to the state wherein the person who wrote the bad check holds a driver's license.

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