

**H. B. 2775**

(By Delegates Williams, Hartman, Butcher and Michael)  
[Introduced January 24, 2011; referred to the  
Committee on the Judiciary then Finance.]

**FISCAL  
NOTE**

A BILL to amend and reenact §61-3-39a, §61-3-39g and §61-3-39m of  
the Code of West Virginia, 1931, as amended, all relating to  
writing worthless checks; changing the criminal penalty;  
providing a procedure for issuing a summons when the drawer is  
an out-of-state resident; and allowing the prosecuting  
attorney to drop charges under certain circumstances.

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

That §61-3-39a, §61-3-39g and §61-3-39m 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.**

(a) It is unlawful for any person, firm or corporation to

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

12 (b) This section ~~shall~~ does not apply to any check, draft or  
13 order when the payee or holder knows or has been expressly notified  
14 prior to the acceptance of same or has reason to believe that the  
15 drawer did not have on deposit or to his or her credit with the  
16 drawee sufficient funds to insure payment as aforesaid, nor ~~shall~~  
17 does this section apply to any postdated check, draft or order.  
18 This section ~~shall~~ does not apply when the insufficiency of funds  
19 or credit is caused by any adjustment to the drawer's account by  
20 the bank or other depository without notice to the drawer or is  
21 caused by the dishonoring of any check, draft or order deposited in  
22 the account unless there is knowledge or reason to believe that the  
23 check, draft or order would be dishonored.

24 (c) Any person violating the provisions of this section is

1 guilty of a misdemeanor and, upon conviction thereof, shall be: (1)  
2 Fined not more than \$200; ~~upon a third or subsequent conviction~~  
3 ~~thereof, shall be fined not more than two hundred dollars, or~~  
4 ~~confined in the county or regional jail not more than ten days, or~~  
5 ~~both~~ (2) sentenced to between one and ten days in jail, with at  
6 least twenty-four hours of the sentence being actual incarceration  
7 in jail; (3) required to perform fourteen days of community  
8 service; or (4) any combination of these penalties.

9 **§61-3-39g. Complaint; notice of complaint; issuance of warrant or**  
10 **summons; payment procedures; costs.**

11 After receipt of a complaint for warrant for a violation of  
12 section thirty-nine or thirty-nine-a of this article the magistrate  
13 court shall proceed with the issuance of the warrant as is provided  
14 by law: *Provided*, That no warrant may issue for an offense under  
15 section thirty-nine or thirty-nine-a of this article which, upon  
16 conviction, would be punishable as a misdemeanor, unless the payee  
17 or holder of the check, draft or order which has been dishonored  
18 has sent notice thereof to the drawer of the check, draft or order  
19 in accordance with the provisions of section thirty-nine-e of this  
20 article, or unless notice has been sent by the magistrate as  
21 hereinafter provided. Proof that the notice was sent by the payee  
22 or holder may be evidenced by presentation of a return receipt  
23 indicating that the notice was mailed to the drawer by certified  
24 mail, or, in the event the mailed notice was not received or was

1 refused by the drawer, by presentation of the mailed notice itself.  
2 The magistrate court shall receive and hold the check, draft or  
3 order.

4       Upon receipt of a complaint for a misdemeanor warrant or  
5 summons unaccompanied by proof that notice was sent by the payee or  
6 holder, the magistrate court shall immediately prepare and mail to  
7 the drawer of the check, draft or order a notice in form  
8 substantially as follows. The magistrate court shall impose any  
9 service charge reflected in the complaint as having been imposed on  
10 the payee or holder by the payee's or holder's bank or financial  
11 institution in connection with the check, draft or order and  
12 additional court costs in the amount of \$25. This notice shall be  
13 mailed to the drawer by United States mail, first class and  
14 postpaid, at the address provided at the time of presenting the  
15 check, draft or order. Service of this notice is complete upon  
16 mailing.

17       Where the drawer is an in-state resident, the notice shall be  
18 in form substantially as follows:

19       "You are hereby notified that a complaint for a warrant for  
20 your arrest has been filed with this office to the following effect  
21 and purpose by ..... who upon oath complains that on the  
22 ..... day of ....., 20....., you did unlawfully issue  
23 and deliver unto him or her a certain check, draft or order in the  
24 amount of ..... drawn on .....

1 (name of bank or financial institution) .....  
2 where you did not have funds on deposit in or credit with the bank  
3 or financial institution with which to pay the check, draft or  
4 order upon presentation and pray that a warrant issue and that you  
5 be apprehended wherever you may be found by an officer authorized  
6 to make an arrest and dealt with in accordance with the laws of the  
7 State of West Virginia.

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

10 "You can nullify the effect of this complaint and avoid arrest  
11 by paying to the magistrate court clerk at .....  
12 the amount due on the check, draft or order; service charges  
13 imposed on the payee or holder by the payee's or holder's bank or  
14 financial institution in connection with the check, draft or order  
15 in the amount of .....; and the costs of this proceeding in  
16 the amount of \$25 on or before the ..... day of .....,  
17 20....., at which time you will be given a receipt with which you  
18 can obtain the check, draft or order from the magistrate court.  
19 The complainant is forbidden by law to accept payment after the  
20 complaint is filed.

21 Magistrate Court of ..... County  
22 .....

23 Date: ....."

24 Where the drawer is an out-of-state resident the notice shall

1 be in form substantially as follows:

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

15 "A summons for arrest will be issued on or after the .....  
16 day of ....., 20.....

17 "You can nullify the effect of this complaint and avoid arrest  
18 by paying to the magistrate court clerk at .....  
19 the amount due on the check, draft or order; service charges  
20 imposed on the payee or holder by the payee's or holder's bank or  
21 financial institution in connection with the check, draft or order  
22 in the amount of .....; and the costs of this proceeding in  
23 the amount of \$25 on or before the ..... day of .....,  
24 20....., at which time you will be given a receipt with which you

1 can obtain the check, draft or order from the magistrate court.  
2 The complainant is forbidden by law to accept payment after the  
3 complaint is filed.

4 Magistrate Court of ..... County  
5 .....

6 Date: ....."

7 This notice shall give the drawer of any such check, draft or  
8 order ten days within which to make payment to magistrate court.

9 In the event the drawer pays the total amount set forth in the  
10 notice to the magistrate court within the ten-day period, no  
11 warrant may issue. The payment may be made to the magistrate court  
12 in person or by mail by cash, certified check, bank draft or money  
13 order and, in the event the payment is made by mail, the magistrate  
14 court clerk shall immediately mail to the maker of the check, draft  
15 or order the receipt required by this section. In the event the  
16 total amount is not so paid the court shall, for in-state  
17 residents, proceed with the issuance of the warrant, or for out-of-  
18 state residents proceed with the issuance of a summons, as is  
19 provided by law.

20 If the drawer of the check, draft or order fails to respond or  
21 appear to summons or warrant issued by the court within sixty days,  
22 the clerk of the magistrate court shall forward the drawer's name  
23 and address, as presented in the check, draft or warrant, to the  
24 Commissioner of the Division of Motor Vehicles. The commissioner

1 shall suspend the drawers driving privilege in West Virginia. The  
2 suspension shall remain in effect until the drawer appears and  
3 satisfies the court assessed penalties and restitution.

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

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



1 section two, article three, chapter fifty of this code.

2 **§61-3-39m. Creation and operation of a program for worthless**  
3 **check offenders; acceptance of person in program.**

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

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

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

16 (2) The person's criminal record;

17 (3) The number of times the person has participated in the  
18 program; and

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

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

1 thirty-nine-a of this article.

2 (d) Nothing in this section may be construed or interpreted to  
3 mandate funding for any worthless check restitution program created  
4 in a prosecuting attorney's office or to require any appropriation  
5 by the Legislature.

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

10 (f) The prosecuting attorney, after full and complete payment  
11 of all restitution amounts due by a drawer of multiple worthless  
12 checks may dismiss all but one charge against the drawer and allow  
13 him or her to plead to a single charge of issuing a worthless  
14 check, draft or warrant. In such an instance, the drawer is  
15 subject to court costs and fees in that case only. The drawer  
16 shall also be sentenced to ten days in jail. That sentence shall  
17 be suspended and the drawer shall be placed upon twelve months of  
18 unsupervised probation with the condition that he or she make full  
19 payment of all costs and fees within a specified time and that he  
20 or she write no additional worthless checks.

NOTE: The purpose of this bill is to provide improvements to the statutory provisions relating to the writing of worthless checks. The bill would alter the criminal penalty for writing a worthless check; provide a procedure for issuing a summons when the

drawer is an out-of-state resident; and allow the prosecuting attorney to drop some charges when restitution has been made.

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