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OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002



# ENROLLED

## House Bill No. 4152

(By Delegates R. M. Thompson, Boggs, Paxton,  
Perdue, J. Smith and R. Thompson)



Passed February 27, 2002

In Effect Ninety Days from Passage

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### H. B. 4152

(BY DELEGATES R. M. THOMPSON, BOGGS, PAXTON,  
PERDUE, J. SMITH AND R. THOMPSON)

[Passed February 27, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact section one, article sixteen, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to adding regular mail with a supporting notarized affidavit or postmarked certificate of mailing as options for serving a written demand of a worthless check.

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

That section one, article sixteen, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

#### **ARTICLE 16. CIVIL REMEDY FOR WORTHLESS CHECK.**

##### **§55-16-1. Civil remedy for making, drawing, issuing, uttering or delivery of worthless check, draft or order.**

- 1 (a) As used in this section, "check" means a draft or other
- 2 written order payable on demand and drawn on a bank or
- 3 depository.

4 (b) If the maker or drawer of a check: (1) Draws, makes,  
5 utters, or issues and delivers to another a check drawn on a bank  
6 or depository that refuses to honor it because the maker or  
7 drawer does not have sufficient funds with which to pay the  
8 check on deposit in or credit with the bank or depository upon  
9 presentation; and (2) knowingly fails to pay the amount of the  
10 check in cash to the payee, within thirty days following written  
11 demand, the payee has a cause of action against the drawer or  
12 maker.

13 (c) In an action under this section, the payee may be  
14 awarded:

15 (1) The face amount of the check, less any money received  
16 by the payee in partial payment of the debt of the check;

17 (2) Damages of five hundred dollars or the face amount of  
18 the check, whichever is less; and

19 (3) Reasonable costs incurred in filing the action.

20 (d) In an action under this section, the court or jury may  
21 waive all or part of the damages or fees authorized by subdivi-  
22 sion (2), subsection (c) of this section upon a finding that the  
23 defendant's failure to satisfy the dishonored check was due to  
24 the defendant's recent discharge from his or her employment,  
25 personal or family illness, or personal or family catastrophic  
26 loss.

27 (e) The written demand required in subsection (a) of this  
28 section shall:

29 (1) Describe the check and the circumstances of its dis-  
30 honor;

31 (2) Contain a demand for payment and a notice of intent to  
32 file suit for damages under this section if payment is not  
33 received within thirty days; and

34       (3) Be delivered by personal service, certified mail or  
35 regular mail to the defendant at his or her last known address:  
36 *Provided*, That service by regular mail shall be supported by  
37 either a post-marked certificate of mailing or a notarized  
38 affidavit of service.

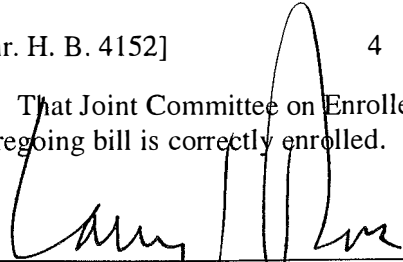
39       (f) It is an affirmative defense to any claim under this  
40 section that:

41       (1) Full satisfaction of the amount of the check was made  
42 before the beginning of the action; or

43       (2) The bank or depository erred in dishonoring the check.

44       (g) No action may be brought pursuant to both this section  
45 and sections thirty-nine-a through thirty-nine-h, article three,  
46 chapter sixty-one of this code on the same check.

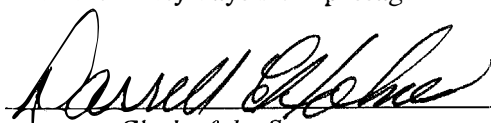
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
\_\_\_\_\_  
Chairman Senate Committee

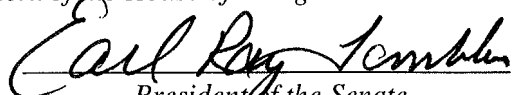
  
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Chairman House Committee

Originating in the House.

In effect ninety days from passage.

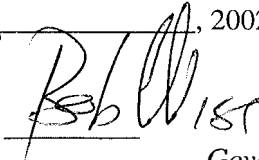
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker of the House of Delegates

The within is approved this the 14<sup>th</sup>  
day of March, 2002.

  
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Governor