

FILED

2004 APR -6 A 11:48

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004

ENROLLED

House Bill No. 4746

(By Delegates Michael, R. M. Thompson, H. White,
Hall, Campbell and Leach)

Passed March 13, 2004

In Effect Ninety Days from Passage

FILED

2004 APR -6 A 11: 48

OFFICE WEST VIRGINIA
SECRETARY OF STATE

E N R O L L E D

H. B. 4746

(BY DELEGATES MICHAEL, R. M. THOMPSON, H. WHITE,
HALL, CAMPBELL AND LEACH)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §12-1-2, §12-1-7, §12-1-12 and §12-1-13 of the code of West Virginia, 1931, as amended; to amend and reenact §12-2-1 of said code; to amend and reenact §12-3-1 and §12-3-1a of said code; to amend and reenact §12-3A-3, §12-3A-4 and §12-3A-6 of said code; to amend and reenact §12-5-1 and §12-5-5 of said code; and to amend and reenact §18-30-4 of said code, all relating generally to the state treasurer's office; designating financial institutions as depositories for state funds; adding state and federal savings and loan associations as candidates for depository banks; exceptions; defining spending unit for the purposes of chapter twelve of the code; allowing only the treasurer to enter into contracts for banking goods and services; exceptions; requiring financial institutions outside the state with state funds to meet the same collateral requirements for other depositories; clarifying that the treasurer may pay for banking goods and services by maintaining a compensating balance in an account other than only accounts that do not earn interest; adding electronic funds transfers to the methods the state uses to receive moneys; amending procedures for stale dated checks and requiring the treasurer to search for the

payee; requiring spending units which have payments in which the checks have become stale to inform the treasurer's office when the stale dated checks contain federal funds, the amount of the federal funds and which account should receive the funds; specifying legal effect of documents and electronic signatures; adding the treasurer as additional administrator of the West Virginia check card; allowing the state treasurer to authorize spending units to assess and collect fees for electronic commerce receipts; requiring the state treasurer to issue legislative rules to authorize spending units to assess and collect fees for electronic commerce receipts; adding cash to the definition of securities; creating fund in treasury to allow for the deposit of cash into safekeeping and allowing the treasurer to invest the money and to prescribe forms and procedures for processing the moneys; changing the qualifications for certain members of the West Virginia college prepaid tuition and savings program and changing the appointment process of two members of the West Virginia college prepaid tuition and savings program.

Be it enacted by the Legislature of West Virginia:

That §12-1-2, §12-1-7, §12-1-12 and §12-1-13 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §12-2-1 of said code be amended and reenacted; that §12-3-1 and §12-3-1a of said code be amended and reenacted; that §12-3A-3, §12-3A-4 and §12-3A-6 of said code be amended and reenacted; that §12-5-1 and §12-5-5 of said code be amended and reenacted; and that §18-30-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by state treasurer; definition of spending unit.

1 The state treasurer shall designate the state and national
2 banks and the state and federal savings and loan associations in
3 this state meeting the requirements of this chapter as deposito-
4 ries for all state funds placed in demand deposits.

5 Demand deposit accounts shall consist of receipt and
6 disbursement accounts. Receipt accounts are accounts in which
7 are deposited moneys belonging to or due the state of West
8 Virginia or any official, department, board, commission or
9 agency thereof.

10 Disbursement accounts are accounts from which are paid
11 moneys due from the state of West Virginia or any official,
12 department, board, commission, political subdivision or agency
13 thereof to any political subdivision, person, firm or corporation,
14 except moneys paid from investment accounts.

15 Investment accounts are accounts established by the West
16 Virginia investment management board or the state treasurer for
17 the buying and selling of securities for investment purposes.

18 The state treasurer shall promulgate rules, in accordance
19 with the provisions of article three, chapter twenty-nine-a of
20 this code, concerning depositories for receipt accounts prescrib-
21 ing the selection criteria, procedures, compensation and such
22 other contractual terms as it considers to be in the best interests
23 of the state giving due consideration to: (1) The activity of the
24 various accounts maintained therein; (2) the reasonable value
25 of the banking services rendered or to be rendered the state by
26 such depositories; and (3) the value and importance of such
27 deposits to the economy of the communities and the various
28 areas of the state affected thereby.

29 The state treasurer shall select depositories for disburse-
30 ment accounts through competitive bidding by eligible banks in
31 this state. If none of the eligible banks in this state are able to
32 provide the needed services, then the treasurer may include

33 eligible banks outside this state in the competitive bidding
34 process. The treasurer shall promulgate rules in accordance
35 with the provisions of article three, chapter twenty-nine-a of
36 this code, prescribing the procedures and criteria for the bidding
37 and selection. The treasurer shall, in the invitations for bids,
38 specify the approximate amounts of deposits, the duration of
39 contracts to be awarded and such other contractual terms as the
40 treasurer considers to be in the best interests of the state,
41 consistent with obtaining the most efficient service at the lowest
42 cost.

43 The amount of money needed for current operation pur-
44 poses of the state government, as determined by the state
45 treasurer, shall be maintained at all times in the state treasury,
46 in cash, in short term investments not to exceed five days, or in
47 disbursement accounts with financial institutions designated as
48 depositories in accordance with the provisions of this section.
49 No state officer or employee shall make or cause to be made
50 any deposits of state funds in banks not so designated. Only
51 banks and state and federal savings and loan associations
52 designated by the treasurer as depositories may accept deposits
53 of state funds. Boards, commissions and spending units with
54 authority pursuant to this code to deposit moneys in a financial
55 institution without approval of the state treasurer shall retain
56 that authority and are not required to have the treasurer desig-
57 nate a financial institution as a depository: *Provided*, That
58 boards, commissions and spending units with moneys deposited
59 in financial institutions not approved for that purpose by the
60 state treasurer shall submit a report on those moneys annually
61 to the legislative auditor. The provisions of this section shall not
62 apply to the proceeds from the sale of general obligation bonds
63 or bonds issued by the school building authority, the parkways,
64 economic development and tourism authority, the housing
65 development fund, the economic development authority, the
66 infrastructure and jobs development council, the water develop-
67 ment authority or the hospital finance authority.

68 As used in this chapter, “spending unit” means a depart-
69 ment, agency, board, commission or institution of state govern-
70 ment for which an appropriation is requested, or to which an
71 appropriation is made by the Legislature.

**§12-1-7. Rules; banking contracts and agreements; depositors;
agreements.**

1 In addition to rules specially authorized in this article, the
2 West Virginia investment management board and the state
3 treasurer are generally authorized to promulgate any rules
4 necessary to protect the interests of the state, its depositories
5 and taxpayers. All rules promulgated are subject to the provi-
6 sions of article three, chapter twenty-nine-a of this code. Any
7 rules previously established by the board of public works, the
8 board of investments, the investment management board or the
9 state treasurer pursuant to this article shall remain in effect until
10 amended, superseded or rescinded.

11 Only the treasurer may enter into contracts or agreements
12 with financial institutions for banking goods or services
13 required by spending units. Boards, commissions and spending
14 units with authority pursuant to this code to enter into contracts
15 or agreements with financial institution for banking goods and
16 services without approval of the state treasurer shall retain that
17 authority and are not required to have the treasurer designate a
18 financial institution as a depository. The provisions of this
19 section shall not apply to trust and investment accounts and
20 activities for general obligation bonds or bonds issued by the
21 school building authority, the parkways, economic development
22 and tourism authority, the housing development fund, the
23 economic development authority, the infrastructure and jobs
24 development council, the water development authority or the
25 hospital finance authority. A state spending unit requiring
26 banking goods or services shall submit a request for the goods
27 or services to the treasurer. If the treasurer enters into a contract

28 or agreement for the required goods or services, spending units
29 using the contract or agreement shall pay either the vendor or
30 the treasurer for the goods or services used.

31 The treasurer is also authorized to enter into any depositors'
32 agreements for the purpose of reorganizing or rehabilitating any
33 depository in which state funds are deposited, and for the
34 purpose of transferring the assets, in whole or in part, of any
35 depository to any other lawful depository when, in the judgment
36 of the treasurer, the interests of the state are promoted thereby,
37 and upon condition that no right of the state to preferred
38 payment is waived.

§12-1-12. Investing funds in treasury; depositories outside the state.

1 When the funds in the treasury exceed the amount needed
2 for current operational purposes, as determined by the treasurer,
3 the treasurer shall make all of such excess available for
4 investment by the investment management board which shall
5 invest the excess for the benefit of the general revenue fund:
6 *Provided*, That the state treasurer, after reviewing the cash flow
7 needs of the state, may withhold and invest amounts not to
8 exceed one hundred twenty-five million dollars of the operating
9 funds needed to meet current operational purposes. Investments
10 made by the state treasurer under this section shall be made in
11 short term investments not to exceed five days. Operating funds
12 means the consolidated fund established in section eight, article
13 six of this chapter, including all cash and investments of the
14 fund.

15 Spending units with authority to retain interest or earnings
16 on a fund or account may submit requests to the treasurer to
17 transfer moneys to a specific investment pool of the investment
18 management board and retain any interest or earnings on the
19 money invested. The general revenue fund shall receive all

20 interest or other earnings on money invested that are not
21 designated for a specific fund or account.

22 Whenever the funds in the treasury exceed the amount for
23 which depositories within the state have qualified, or the
24 depositories within the state which have qualified are unwilling
25 to receive larger deposits, the treasurer may designate deposito-
26 ries outside the state, disbursement accounts being bid for in the
27 same manner as required by depositories within the state, and
28 when depositories outside the state have qualified by giving the
29 bond prescribed in section four of this article, the state treasurer
30 shall deposit funds in the same manner as funds are deposited
31 in depositories within the state under this article.

32 The state treasurer may transfer funds to financial institu-
33 tions outside the state to meet obligations to paying agents
34 outside the state if the financial institution meets the same
35 collateral requirements as set forth in this article.

**§12-1-13. Payment of banking services and litigation costs for
prior investment losses.**

1 (a) The treasurer is authorized to pay for banking services,
2 and goods and services ancillary thereto, by either a compensat-
3 ing balance in an account maintained at the financial institution
4 providing the services or with a state warrant as described in
5 section one, article three of this chapter.

6 (b) The investment management board is authorized to pay
7 for the investigation and pursuit of claims against third parties
8 for the investment losses incurred during the period beginning
9 on the first day of August, one thousand nine hundred
10 eighty-four, and ending on the thirty-first day of August, one
11 thousand nine hundred eighty-nine. The payment may be in the
12 form of a state warrant.

13 (c) If payment is made by a state warrant, the investment
14 management board, at the request of the treasurer, is authorized
15 to establish within the consolidated fund an investment pool
16 which will generate sufficient income to pay for all banking
17 services provided to the state and to pay for the investigation
18 and pursuit of the prior investment loss claims. All income
19 earned by the investment pool shall be paid into a special
20 account of the treasurer known as the banking services account
21 to pay for all banking services and goods and services ancillary
22 to the banking services provided to the state, for the investiga-
23 tion and pursuit of the prior investment loss claims, and for
24 amortization of the balance in the investment imbalance fund.

**ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER
AMOUNTS DUE THE STATE OR ANY POLITICAL
SUBDIVISION.**

**§12-2-1. How and to whom taxes and other amounts due the state
or any political subdivision, official, department,
board, commission or other collecting agency
thereof may be paid.**

1 All persons, firms and corporations shall promptly pay all
2 taxes and other amounts due from them to the state, or to any
3 political subdivision, official, department, board, commission
4 or other collecting agency thereof authorized by law to collect
5 the taxes and other amounts due by any authorized commer-
6 cially acceptable means, in money, United States currency or by
7 check, bank draft, certified check, cashier's check, post office
8 money order, express money order or electronic funds transfer
9 payable and delivered to the official, department, board,
10 commission or collecting agency thereof authorized by law to
11 collect the taxes and other amounts due and having the account
12 upon which the taxes or amounts due are chargeable against the
13 payer of the taxes or amounts due. The duly elected or ap-
14 pointed officers of the state and of its political subdivisions,
15 departments, boards, commissions and collecting agencies

16 having the account on which the taxes or other amounts due are
17 chargeable against the payer of the taxes or other amounts due
18 and authorized by law to collect the taxes or other amounts due,
19 and their respective agents, deputies, assistants and employees
20 shall in no case be the agent of the payer in and about the
21 collection of the taxes or other amounts, but shall at all times
22 and under all circumstances be the agent of the state, its
23 political subdivision, official, department, board, commission
24 or collecting agency having the account on which the taxes or
25 amounts are chargeable against the payer of the taxes or other
26 amounts due and authorized by law to collect the same.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-1. Manner of payment from treasury; form of checks.

1 (a) Every person claiming to receive money from the
2 treasury of the state shall apply to the auditor for a warrant for
3 same. The auditor shall thereupon examine the claim, and the
4 vouchers, certificates and evidence, if any, offered in support
5 thereof, and for so much thereof as he or she finds to be justly
6 due from the state, if payment thereof is authorized by law, and
7 if there is an appropriation not exhausted or expired out of
8 which it is properly payable, the auditor shall issue his or her
9 warrant on the treasurer, specifying to whom and on what
10 account the money mentioned therein is to be paid, and to what
11 appropriation it is to be charged. The auditor shall present to the
12 treasurer daily reports on the number of warrants issued, the
13 amounts of the warrants and the dates on the warrants for the
14 purpose of effectuating the investment policies of the state
15 treasurer and the investment management board. On the
16 presentation of the warrant to the treasurer, the treasurer shall
17 ascertain whether there are sufficient funds in the treasury to
18 pay that warrant, and if he or she finds it to be so, he or she
19 shall in that case, but not otherwise, endorse his or her check
20 upon the warrant, directed to some depository, which check

17 auditor and the treasurer. Upon execution of the authorization
18 and its receipt by the office of the auditor, the warrant shall be
19 created in the manner specified on the authorization and
20 forwarded to the treasurer for further disposition to the desig-
21 nated bank or other financial institution specified on the
22 electronic warrant: *Provided*, That after the first day of July,
23 two thousand two, the state auditor shall cease issuing paper
24 warrants except for income tax refunds. After that date all
25 warrants except for income tax refunds, shall be issued by
26 electronic funds transfer: *Provided, however*, That the auditor,
27 in his or her discretion, may issue paper warrants on an emer-
28 gency basis.

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

§12-3A-3. Financial electronic commerce.

1 The state auditor and the state treasurer shall implement
2 electronic commerce capabilities for each of their offices to
3 facilitate the performance of their duties under this code. The
4 state treasurer shall competitively bid the selection of vendors
5 needed to provide the necessary banking, investment and
6 related goods and services, and the provisions of article one-b,
7 chapter five, and articles three and seven, chapter five-a of this
8 code shall not apply, unless requested by the state auditor or
9 state treasurer.

10 A record, an authentication, a document or a signature
11 issued or used by the auditor, the treasurer shall be considered
12 an original and may not be denied legal effect on the ground
13 that it is in electronic form.

14 The head of each spending unit is responsible for adopting
15 and implementing security procedures to ensure adequate
16 integrity, security, confidentiality, and auditability of the
17 business transactions of his or her spending unit when utilizing
18 electronic commerce.

§12-3A-4. Payment by the West Virginia check card.

1 The state auditor and the state treasurer may establish a
2 state debit card known as the “West Virginia Check Card” for
3 recipients of employee payroll or of retirement, benefits or
4 entitlement programs who are considered unbanked and who do
5 not possess a federally insured depository institution account.
6 The state auditor and the state treasurer shall use every reason-
7 able effort to make a federally insured depository account
8 available to a recipient, and to encourage all recipients to obtain
9 a federally insured depository account. Prior to issuing the West
10 Virginia check card, the state auditor and the state treasurer
11 shall first make a determination that a recipient has shown good
12 cause that an alternative method to direct deposit is necessary.
13 The state auditor and the state treasurer shall jointly issue a
14 request for proposals in accordance with section three of this
15 article to aid in the administration of the program and in the
16 establishment of state owned bank accounts and accommodate
17 accessible locations for use of the West Virginia check card. In
18 carrying out the purposes of this article, the state auditor and
19 state treasurer shall not compete with banks or other federally
20 insured financial institutions, or for profit.

§12-3A-6. Receipting of electronic commerce purchases.

1 (a) The state treasurer may establish a system for accep-
2 tance of credit card and other payment methods for electronic
3 commerce purchases from spending units. Notwithstanding any
4 other provision of this code to the contrary, each spending unit
5 utilizing WEB commerce, electronic commerce or other method
6 that offers products or services for sale shall utilize the state
7 treasurer’s system for acceptance of payments.

8 (b) To facilitate electronic commerce, the state treasurer
9 may charge a spending unit for the banking and other expenses
10 incurred by the treasurer on behalf of the spending unit and for

11 any work performed, including, without limitation, assisting in
12 the development of a website and utilization of the treasurer's
13 payment gateway. A special revenue account, entitled the
14 "Treasurer's Financial Electronic Commerce Fund," is created
15 in the state treasury to receive the amounts charged by the
16 treasurer. The treasurer may expend the funds received in the
17 Treasurer's Financial Electronic Commerce Fund only for the
18 purposes of this article and for other purposes as determined by
19 the Legislature.

20 (c) The state treasurer may authorize a spending unit to
21 assess and collect a fee to recover or pay the cost of accepting
22 bank, charge, check, credit or debit cards from amounts
23 collected. The state treasurer shall propose legislative rules for
24 promulgation in accordance with the provisions of article three
25 of chapter twenty-nine-a of this code to establish the criteria
26 and procedures involved in granting the authorization and may
27 promulgate emergency rules in accordance with the provisions
28 of article three of chapter twenty-nine-a of the code to imple-
29 ment the provisions of this section prior to authorization of the
30 legislative rules.

ARTICLE 5. PUBLIC SECURITIES.

§12-5-1. Securities defined.

1 The term "securities" when used in this article shall include
2 all bonds, securities, debentures, notes or other evidences of
3 indebtedness, and for purposes of this chapter all cash received
4 by any state spending unit intended to serve as security for a
5 legal obligation, whether pursuant to court order or otherwise.

§12-5-5. Protection and handling of securities.

1 (a) The noncash securities retained in the treasury shall be
2 kept in a vault. The treasurer shall use due diligence in protect-
3 ing the securities against loss from any cause. The treasurer

4 shall designate certain employees to take special care of the
5 securities. Only the treasurer and the designated employees may
6 have access to the securities, and at least two of these persons
7 shall be present whenever the securities are handled in any
8 manner. The treasurer may contract with one or more banking
9 institutions in or outside the state for the custody, safekeeping
10 and management of securities. The contract shall prescribe the
11 rules for the handling and protection of the securities.

12 (b) The “Treasurer’s Safekeeping Fund” is established in
13 the state treasury. The treasurer shall deposit moneys received
14 pursuant to this article in the Treasurer’s Safekeeping Fund.
15 The treasurer is authorized to invest the money in accordance
16 with this code and the restrictions placed on the money, with
17 earnings accruing to the moneys in the fund. The treasurer shall
18 prescribe the forms and procedures for processing the moneys.

CHAPTER 18. EDUCATION.

ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.

§18-30-4. Creation of program; board; members; terms; compensation; proceedings generally.

1 (a) The West Virginia college prepaid tuition and savings
2 program is continued. The program consists of a prepaid tuition
3 plan and a savings plan.

4 (b) The board of the college prepaid tuition and savings
5 program is continued and all powers, rights and responsibilities
6 of the board of trustees of the prepaid tuition trust fund are
7 vested in the board of the college prepaid tuition and savings
8 program.

9 (c) The board consists of nine members and includes the
10 following:

11 (1) The secretary of education and the arts, or his or her
12 designee;

13 (2) The state treasurer, or his or her designee;

14 (3) Two representatives of the higher education policy
15 commission, who may or may not be members of the higher
16 education policy commission, appointed by the commission
17 who serve as voting members of the board, one of whom shall
18 represent the interests of the universities of West Virginia and
19 the state colleges and one of whom shall represent the interests
20 of community and technical colleges of West Virginia;

21 (4) Five other members, appointed by the governor, with
22 knowledge, skill and experience in an academic, business or
23 financial field, to be appointed as follows:

24 (A) Two private citizens not employed by, or an officer of,
25 the state or any political subdivision of the state;

26 (B) One member representing the interests of private
27 institutions of higher education located in this state appointed
28 from one or more nominees of the West Virginia association of
29 private colleges; and

30 (C) Two members representing the public.

31 (d) The public members and the member representing the
32 interests of private institutions of higher education are ap-
33 pointed by the governor with the advice and consent of the
34 Senate.

35 (e) Only state residents are eligible for appointment to the
36 board.

37 (f) Members appointed by the governor serve a term of five
38 years and are eligible for reappointment at the expiration of

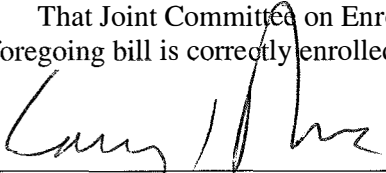
39 their terms. In the event of a vacancy among appointed mem-
40 bers, the governor shall appoint a person representing the same
41 interests to fill the unexpired term.

42 (g) Members of the board serve until the later of the
43 expiration of the term for which the member was appointed or
44 the appointment of a successor. Members of the board serve
45 without compensation. The treasurer may pay all expenses,
46 including travel expenses, actually incurred by board members
47 in the conduct of their official duties. Expense payments are
48 made from the college prepaid tuition and savings program
49 administrative account, and are made at the same rate paid to
50 state employees.

51 (h) The treasurer may provide support staff and office space
52 for the board.

53 (i) The treasurer is the chairman and presiding officer of the
54 board, and may appoint the employees the board considers
55 advisable or necessary. A majority of the members of the board
56 constitute a quorum for the transaction of the business of the
57 board.

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




Chairman Senate Committee



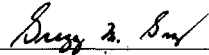
Chairman House Committee

Originating in the House.

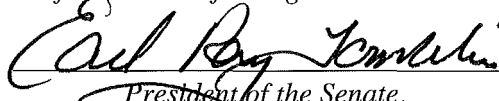
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

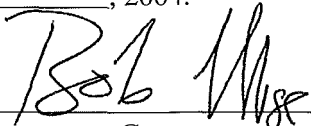


President of the Senate



Speaker of the House of Delegates

The within is approved this the 6th
day of April, 2004.



Governor

PRESENTED TO THE
GOVERNOR

DATE 4.1.04
TIME 4:35 pm