

H. B. 2036

(By Delegate Williams)

[Introduced January 14, 2014; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §61-3-39g of the Code of West Virginia, 1931, as amended, relating to requiring a summons be issued for the drawer of a worthless check whether a resident of this or another state; requiring the summons include the date, time and place where the drawer is required to appear; requiring the drawer be given the option, in lieu of appearing, to make payment of the amount of the worthless check plus any applicable court costs; providing that a nonresident drawer who fails to appear and fails to satisfy the amount owed shall have his or her privilege to operate a motor vehicle in this state revoked and the Division of Motor Vehicles is to mail a notice of the revocation to its counterpart in the state where the nonresident drawer resides; and providing that a West Virginia resident who fails to appear and fails to satisfy the amount owed shall have his or her driver's license revoked until the owed amount is paid.

Be it enacted by the Legislature of West Virginia:

That §61-3-39g of the Code of West Virginia, 1931, as amended, be amended and reenacted

1 to read as follows:

2 **ARTICLE 3. CRIMES AGAINST PROPERTY.**

3 **§61-3-39g. Complaint; notice of complaint; issuance of warrant; payment procedures; costs;**
4 **summons; suspension of driving privileges.**

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

16 Upon receipt of a complaint for a misdemeanor warrant unaccompanied by proof that notice
17 was sent by the payee or holder, the magistrate court shall immediately prepare and mail to the
18 drawer of the check, draft or order a notice in form substantially as follows. The magistrate court
19 shall impose any service charge reflected in the complaint as having been imposed on the payee or
20 holder by the payee's or holder's bank or financial institution in connection with the check, draft or
21 order and additional court costs in the amount of \$25. This notice shall be mailed to the drawer by
22 United States mail, first class and postpaid, at the address provided at the time of presenting the

1 check, draft or order. Service of this notice is complete upon mailing. The notice shall be in form
2 substantially as follows:

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

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

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

19 Magistrate Court of County

20

21 Date:"

22 This notice shall give the drawer of any such check, draft or order ten days within which to

1 make payment to magistrate court. ~~In the event~~ If the drawer pays the total amount set forth in the
2 notice to the magistrate court within the ten-day period, no warrant may issue. The payment may
3 be made to the magistrate court in person or by mail by cash, certified check, bank draft or money
4 order and, in the event the payment is made by mail, the magistrate court clerk shall immediately
5 mail to the maker of the check, draft or order the receipt required by this section. In the event the
6 total amount is not so paid the court shall proceed with the issuance of the warrant as is provided by
7 law.

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

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

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

NOTE: The purpose of this bill is to require a summons be issued for the drawer of a worthless check whether a resident of this or another state. The bill requires the summons include the date, time and place where the drawer is required to appear. The bill requires the drawer be given the option, in lieu of appearing, to make payment of the amount of the worthless check plus any applicable court costs. The bill provides that a nonresident drawer who fails to appear and fails to satisfy the amount owed shall have his or her privilege to operate a motor vehicle in this state revoked and the Division of Motor Vehicles is to mail a notice of the revocation to its counterpart in the state where the nonresident drawer resides. The bill provides that a West Virginia resident who fails to appear and fails to satisfy the amount owed shall have his or her driver's license revoked until the owed amount is paid.

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