

1 **H. B. 4272**

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3 (By Delegates Moore, Reynolds and Azinger)  
4 [Introduced January 24, 2012; referred to the  
5 Committee on Banking and Insurance then the Judiciary.]  
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10 A BILL to amend and reenact §61-3-39e of the Code of West Virginia,  
11 1931, as amended, relating to permitting payees or holders of  
12 electronic transfers that have been dishonored because of  
13 insufficient funds or credit may send notice to the drawer of  
14 the transfer and impose a fee up to \$25.

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

16 That §61-3-39e of the Code of West Virginia, 1931, as amended,  
17 be amended and reenacted to read as follows:

18 **ARTICLE 3. CRIMES AGAINST PROPERTY.**

19 **§61-3-39e. Notice of dishonor by payee; service charge.**

20 The payee or holder of a check, draft ~~or~~ order, or electronic  
21 payment which has been dishonored because of insufficient funds or  
22 credit may send notice thereof to the drawer of the check, draft ~~or~~  
23 order or electronic payment. The payee or holder of any dishonored

1 check or electronic payment may impose a fee of up to \$25 a  
2 worthless check or for each returned electronic payment. This fee  
3 may not be imposed or collected after a complaint for warrant has  
4 been delivered to magistrate court. No payee or holder of a check,  
5 draft or order which has been dishonored because of insufficient  
6 funds or credit shall incur any civil or criminal liability for the  
7 sending of a notice substantially in the form provided herein,  
8 other provisions of law notwithstanding. The form of the notice  
9 shall be substantially as follows:

10 "You are hereby notified that a check/electronic transfer,  
11 number ....., issued by you on (date of  
12 check/electronic transfer), drawn upon (name of bank), and payable  
13 to ....., has been dishonored. Pursuant  
14 to West Virginia law, you have ten days from the date of this  
15 notice to tender payment of the full amount of the check/electronic  
16 transfer plus a fee of \$..... (not to exceed \$25 a  
17 worthless check/electronic transfer) to the undersigned at  
18 ..... You are further notified that in the  
19 event the above amount is timely paid in full you will not be  
20 subject to legal proceedings, civil or criminal.

21 Dated ....., 20.....  
22 .....  
23 (Signed)."

24 The provisions of this section do not authorize the making of

1 any other written or oral threats of prosecution to enforce or  
2 enhance the collection or honoring of the dishonored check, draft  
3 ~~or~~ order or any form of electronic payment.

4       The holder or payee of any check, draft or order shall  
5 relinquish the check, draft or order to the maker upon tender of  
6 the full amount due at any time before a complaint for warrant has  
7 been presented to magistrate court. In the event complaint for  
8 warrant has been presented to magistrate court, payment may be made  
9 only through the court and any holder or payee unlawfully accepting  
10 payment after that time shall be liable for all costs which may be  
11 imposed by the magistrate court in the matter, including all costs  
12 which may have accrued by the time the magistrate court is notified  
13 of the payment.

NOTE: The purpose of this bill is to permit the payee or holder of an electronic payment that has been dishonored because of insufficient funds or credit may send notice to the drawer and impose a fee up to \$25. The bill makes electronic payments subject to the same fees as are currently permitted for returned checks.

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