

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4030**

4 (By Delegates Williams, Shaver and Hunt)

5
6 (Originating in the Committee on Finance)

7 [February 22, 2012]

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9
10 A BILL to amend and reenact §50-3-2a of the Code of West Virginia,
11 1931, as amended, relating to prioritizing the partial payment
12 of costs, fines, fees, forfeitures, restitution, penalties or
13 other costs imposed in a magistrate court in civil and
14 criminal matters.

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

16 That §50-3-2a of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

18 **ARTICLE 3. COSTS, FINES AND RECORDS.**

19 **§50-3-2a. Payment by credit card or payment plan; suspension of**
20 **licenses for failure to make payments or appear or**
21 **respond; restitution; liens.**

22 (a) A magistrate court may accept credit cards in payment of
23 all costs, fines, fees, forfeitures, restitution or penalties in
24 accordance with rules promulgated by the Supreme Court of Appeals.
25 Any charges made by the credit company shall be paid by the person

1 responsible for paying the cost, fine, forfeiture or penalty.

2 (b) Unless otherwise required by law, a magistrate court may
3 collect a portion of any costs, fines, fees, forfeitures,
4 restitution or penalties at the time the amount is imposed by the
5 court so long as the court requires the balance to be paid in
6 accordance with a payment plan which specifies: (1) The number of
7 payments to be made; (2) the dates on which the payments are due;
8 and (3) the amounts due for each payment. The written agreement
9 represents the minimum payments and the last date those payments
10 may be made. The obligor or the obligor's agent may accelerate the
11 payment schedule at any time by paying any additional portion of
12 any costs, fines, fees, forfeitures, restitution or penalties.

13 (c) (1) If any costs, fines, fees, forfeitures, restitution or
14 penalties imposed by the magistrate court in a criminal case are
15 not paid within one hundred eighty days from the date of judgment
16 and the expiration of any stay of execution, the magistrate court
17 clerk or, upon judgment rendered on appeal, the circuit clerk shall
18 notify the Commissioner of the Division of Motor Vehicles of the
19 failure to pay: *Provided*, That in a criminal case in which a
20 nonresident of this state is convicted of a motor vehicle violation
21 defined in section three-a, article three, chapter seventeen-b of
22 this code, the appropriate clerk shall notify the Division of Motor
23 Vehicles of the failure to pay within eighty days from the date of
24 judgment and expiration of any stay of execution. Upon notice, the
25 Division of Motor Vehicles shall suspend any privilege the person
26 defaulting on payment may have to operate a motor vehicle in this

1 state, including any driver's license issued to the person by the
2 Division of Motor Vehicles, until all costs, fines, fees,
3 forfeitures, restitution or penalties are paid in full. The
4 suspension shall be imposed in accordance with the provisions of
5 section six, article three, chapter seventeen-b of this code:
6 *Provided*, That any person who has had his or her license to operate
7 a motor vehicle in this state suspended pursuant to this subsection
8 and his or her failure to pay is based upon inability to pay, may,
9 if he or she is employed on a full or part-time basis, petition to
10 the circuit court for an order authorizing him or her to operate a
11 motor vehicle solely for employment purposes. Upon a showing
12 satisfactory to the court of inability to pay, employment and
13 compliance with other applicable motor vehicle laws, the court
14 shall issue an order granting relief.

15 (2) In addition to the provisions of subdivision (1) of this
16 subsection, if any costs, fines, fees, forfeitures, restitution or
17 penalties imposed or ordered by the magistrate court for a hunting
18 violation described in chapter twenty of this code are not paid
19 within one hundred eighty days from the date of judgment and the
20 expiration of any stay of execution, the magistrate court clerk or,
21 upon a judgment rendered on appeal, the circuit clerk shall notify
22 the Director of the Division of Natural Resources of the failure to
23 pay. Upon notice, the Director of the Division of Natural Resources
24 shall suspend any privilege the person failing to appear or
25 otherwise respond may have to hunt in this state, including any
26 hunting license issued to the person by the Division of Natural

1 Resources, until all the costs, fines, fees, forfeitures,
2 restitution or penalties are paid in full.

3 (3) In addition to the provisions of subdivision (1) of this
4 subsection, if any costs, fines, fees, forfeitures, restitution or
5 penalties imposed or ordered by the magistrate court for a fishing
6 violation described in chapter twenty of this code are not paid
7 within one hundred eighty days from the date of judgment and the
8 expiration of any stay of execution, the magistrate court clerk or,
9 upon a judgment rendered on appeal, the circuit clerk shall notify
10 the Director of the Division of Natural Resources of the failure to
11 pay. Upon notice, the Director of the Division of Natural Resources
12 shall suspend any privilege the person failing to appear or
13 otherwise respond may have to fish in this state, including any
14 fishing license issued to the person by the Division of Natural
15 Resources, until all the costs, fines, fees, forfeitures,
16 restitution or penalties are paid in full.

17 (d) (1) If a person charged with any criminal violation of this
18 code fails to appear or otherwise respond in court, the magistrate
19 court shall notify the Commissioner of the Division of Motor
20 Vehicles thereof within fifteen days of the scheduled date to
21 appear unless the person sooner appears or otherwise responds in
22 court to the satisfaction of the magistrate. Upon notice, the
23 Division of Motor Vehicles shall suspend any privilege the person
24 failing to appear or otherwise respond may have to operate a motor
25 vehicle in this state, including any driver's license issued to the
26 person by the Division of Motor Vehicles, until final judgment in

1 the case and, if a judgment of guilty, until all costs, fines,
2 fees, forfeitures, restitution or penalties imposed are paid in
3 full. The suspension shall be imposed in accordance with the
4 provisions of section six, article three, chapter seventeen-b of
5 this code.

6 (2) In addition to the provisions of subdivision (1) of this
7 subsection, if a person charged with any hunting violation
8 described in chapter twenty of this code fails to appear or
9 otherwise respond in court, the magistrate court shall notify the
10 Director of the Division of Natural Resources of the failure
11 thereof within fifteen days of the scheduled date to appear unless
12 the person sooner appears or otherwise responds in court to the
13 satisfaction of the magistrate. Upon notice, the Director of the
14 Division of Natural Resources shall suspend any privilege the
15 person failing to appear or otherwise respond may have to hunt in
16 this state, including any hunting license issued to the person by
17 the Division of Natural Resources, until final judgment in the case
18 and, if a judgment of guilty, until all costs, fines, fees,
19 forfeitures, restitution or penalties imposed are paid in full.

20 (3) In addition to the provisions of subdivision (1) of this
21 subsection, if a person charged with any fishing violation
22 described in chapter twenty of this code fails to appear or
23 otherwise respond in court, the magistrate court shall notify the
24 Director of the Division of Natural Resources of the failure
25 thereof within fifteen days of the scheduled date to appear unless
26 the person sooner appears or otherwise responds in court to the

1 satisfaction of the magistrate. Upon notice, the Director of the
2 Division of Natural Resources shall suspend any privilege the
3 person failing to appear or otherwise respond may have to fish in
4 this state, including any fishing license issued to the person by
5 the Division of Natural Resources, until final judgment in the case
6 and, if a judgment of guilty, until all costs, fines, fees,
7 forfeitures, restitution or penalties imposed are paid in full.

8 (e) In every criminal case which involves a misdemeanor
9 violation, a magistrate may order restitution where appropriate
10 when rendering judgment.

11 (f) (1) If all costs, fines, fees, forfeitures, restitution or
12 penalties imposed by a magistrate court and ordered to be paid are
13 not paid within one hundred eighty days from the date of judgment
14 and the expiration of any stay of execution, the clerk of the
15 magistrate court shall notify the prosecuting attorney of the
16 county of nonpayment and provide the prosecuting attorney with an
17 abstract of judgment. The prosecuting attorney shall file the
18 abstract of judgment in the office of the clerk of the county
19 commission in the county where the defendant was convicted and in
20 any county wherein the defendant resides or owns property. The
21 clerks of the county commissions shall record and index the
22 abstracts of judgment without charge or fee to the prosecuting
23 attorney and when so recorded, the amount stated to be owing in the
24 abstract shall constitute a lien against all property of the
25 defendant.

26 (2) When all the costs, fines, fees, forfeitures, restitution

1 or penalties described in subdivision (1) of this subsection for
2 which an abstract of judgment has been recorded are paid in full,
3 the clerk of the magistrate court shall notify the prosecuting
4 attorney of the county of payment and provide the prosecuting
5 attorney with a release of judgment, prepared in accordance with
6 the provisions of section one, article twelve, chapter thirty-eight
7 of this code, for filing and recordation pursuant to the provisions
8 of this subdivision. Upon receipt from the clerk, the prosecuting
9 attorney shall file the release of judgment in the office of the
10 clerk of the county commission in each county where an abstract of
11 the judgment was recorded. The clerks of the county commissions
12 shall record and index the release of judgment without charge or
13 fee to the prosecuting attorney.

14 (g) Notwithstanding any provision of this code to the
15 contrary, except as authorized by this section, payments of all
16 costs, fines, fees, forfeitures, restitution or penalties imposed
17 by the magistrate court in civil or criminal matters shall be made
18 in full. Partial payments of costs, fines, fees, forfeitures,
19 restitution or penalties made pursuant to this section shall be
20 credited to amounts due in the following order:

- 21 (1) Regional Jail Fund;
- 22 (2) Worthless Check Payee;
- 23 (3) Restitution;
- 24 (4) Magistrate Court Fund;
- 25 (5) Worthless Check Fund;
- 26 (6) Per Diem Regional Jail Fee;

- 1 (7) Community Corrections Fund;
- 2 (8) Regional Jail Operational Fund;
- 3 (9) Law Enforcement Training Fund;
- 4 (10) Crime Victims Compensation Fund;
- 5 (11) Court Security Fund;
- 6 (12) Courthouse Improvement Fund;
- 7 (13) Litter Control Fund;
- 8 (14) Sheriff arrest fee;
- 9 (15) Teen Court Fund;
- 10 (16) Other costs, if any;
- 11 (17) Fine.