

**Senate Bill No. 618**

(By Senators Snyder, Beach and Browning)

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[Introduced February 16, 2012; referred to the Committee on the  
Judiciary.]  
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10 A BILL to amend and reenact §8-10-2a and §8-10-2b of the Code of  
11 West Virginia, 1931, as amended; and to amend and reenact §50-  
12 3-2a of said code, all relating to failure to pay costs,  
13 fines, forfeitures or penalties imposed when charged with a  
14 motor vehicle or criminal violation; and requiring municipal  
15 courts and magistrate courts to wait at least eighty days from  
16 the date the person is charged with a motor vehicle violation  
17 before notifying the Division of Motor Vehicles of that  
18 person's failure to pay or failure to appear.

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

20 That §8-10-2a and §8-10-2b of the Code of West Virginia, 1931,  
21 as amended, be amended and reenacted; and that §50-3-2a of said  
22 code be amended and reenacted, all to read as follows:

**CHAPTER 8. MUNICIPAL CORPORATIONS.**

**ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.**

1 **§8-10-2a. Payment of fines by credit cards or payment plan;**  
2 **suspension of driver's license for failure to pay**  
3 **motor vehicle violation fines or to appear in court.**

4 (a) A municipal court may accept credit cards in payment of  
5 all costs, fines, forfeitures or penalties. A municipal court may  
6 collect a substantial portion of all costs, fines, forfeitures or  
7 penalties at the time such amount is imposed by the court so long  
8 as the court requires the balance to be paid within one hundred  
9 eighty days from the date of judgment and in accordance with a  
10 payment plan: *Provided*, That all costs, fines, forfeitures or  
11 penalties imposed by the municipal court upon a nonresident of this  
12 state by judgment entered upon a conviction for a motor vehicle  
13 violation defined in section three-a, article three, chapter  
14 seventeen-b of this code must be paid within eighty days from the  
15 date of judgment. The payment plan shall specify: (1) The number  
16 of additional payments to be made; (2) the dates on which such  
17 payments and amounts shall be made; and (3) amounts due on such  
18 dates.

19 (b) If costs, fines, forfeitures or penalties imposed by the  
20 municipal court for motor vehicle violations as defined in section  
21 three-a, article three, chapter seventeen-b of this code are not  
22 paid within the time limits imposed pursuant to subsection (a) of  
23 this section, or if a person fails to appear or otherwise respond  
24 in court when charged with a motor vehicle violation as defined in

1 section three-a, article three, chapter seventeen-b of this code,  
2 the municipal court must notify the Commissioner of the Division of  
3 Motor Vehicles of such failure to pay or failure to appear: \_

4 Provided, That the municipal court shall wait at least eighty  
5 days from the date the person is charged with a motor vehicle  
6 violation before notifying the Division of Motor Vehicles of a  
7 person's failure to pay or failure to appear.

8 **§8-10-2b. Suspension of licenses for failure to pay fines and**  
9 **costs or failure to appear in court.**

10 (a) If costs, fines, forfeitures or penalties imposed by the  
11 municipal court upon conviction of a person for a criminal offense  
12 as defined in section three-c, article three, chapter seventeen-b  
13 of this code are not paid in full within one hundred eighty days of  
14 the judgment, the municipal court clerk or, upon a judgment  
15 rendered on appeal, the circuit clerk shall notify the Division of  
16 Motor Vehicles of the failure to pay: *Provided, That at the time*  
17 *the judgment is imposed, the judge shall provide the person with*  
18 *written notice that failure to pay the same as ordered may result*  
19 *in the withholding of any income tax refund due the licensee and*  
20 *shall result in the suspension of the person's license or privilege*  
21 *to operate a motor vehicle in this state and that the suspension*  
22 *could result in the cancellation of, the failure to renew or the*  
23 *failure to issue an automobile insurance policy providing coverage*  
24 *for the person or the person's family: Provided, however, That the*

1 failure of the judge to provide notice does not affect the validity  
2 of any suspension of the person's license or privilege to operate  
3 a motor vehicle in this state. For purposes of this section,  
4 payment shall be stayed during any period an appeal from the  
5 conviction which resulted in the imposition of costs, fines,  
6 forfeitures or penalties is pending.

7       Upon notice, the Division of Motor Vehicles shall suspend the  
8 person's driver's license or privilege to operate a motor vehicle  
9 in this state until such time that the costs, fines, forfeitures or  
10 penalties are paid.

11       (b) Notwithstanding the provisions of this section to the  
12 contrary, the notice of the failure to pay costs, fines,  
13 forfeitures or penalties may not be given where the municipal  
14 court, upon application of the person upon whom the costs, fines,  
15 forfeitures or penalties were imposed filed prior to the expiration  
16 of the period within which these are required to be paid, enters an  
17 order finding that the person is financially unable to pay all or  
18 a portion of the costs, fines, forfeitures or penalties: *Provided,*  
19 That where the municipal court, upon finding that the person is  
20 financially unable to pay a portion of the costs, fines,  
21 forfeitures or penalties, requires the person to pay the remaining  
22 portion, the municipal court shall notify the Division of Motor  
23 Vehicles of the person's failure to pay if not paid within the  
24 period of time ordered by the court.

1 (c) If a person charged with a criminal offense fails to  
2 appear or otherwise respond in court, the municipal court clerk  
3 shall notify the Division of Motor Vehicles ~~within fifteen days of~~  
4 ~~the scheduled date to appear unless the person sooner appears or~~  
5 ~~otherwise responds in court to the satisfaction of the judge of the~~  
6 failure to appear: Provided, That the municipal court shall wait at  
7 least eighty days from the date the person is charged with a motor  
8 vehicle violation before notifying the Division of Motor Vehicles  
9 of a person's failure to pay or failure to appear. Upon notice,  
10 the Division of Motor Vehicles shall suspend the person's driver's  
11 license or privilege to operate a motor vehicle in this state until  
12 such time that the person appears as required.

13 (d) On and after July 1, 2008, if the licensee fails to  
14 respond to the Division of Motor Vehicles order of suspension  
15 within ninety days of receipt of the certified letter, the  
16 municipal court of original jurisdiction shall notify the Tax  
17 Commissioner that the licensee has failed to pay the costs, fines,  
18 forfeitures or penalties assessed by the court or has failed to  
19 respond to the citation. The notice provided by the municipal  
20 court to the Tax Commissioner must include the licensee's social  
21 security number. The Tax Commissioner, or his or her designee,  
22 shall withhold from any personal income tax refund due and owing to  
23 a licensee the costs, fines, forfeitures or penalties due to the  
24 municipality, the Tax Commissioner's administration fee for the

1 withholding and any and all fees that the municipal court would  
2 have collected had the licensee appeared: *Provided*, That the Tax  
3 Commissioner's administration fee may not exceed \$25: *Provided*,  
4 *however*, That the Tax Commissioner may change this maximum amount  
5 limitation for this fee for fiscal years beginning on or after July  
6 1, 2008, by legislative rule promulgated in accordance with the  
7 provisions of article three, chapter twenty-nine-a of this code:  
8 *Provided further*, That the administrative fees deducted shall be  
9 deposited in the special revolving fund hereby created in the State  
10 Treasury, which shall be designated as the "municipal fines and  
11 fees collection fund", and the Tax Commissioner shall make such  
12 expenditures from the fund as he or she deems appropriate for the  
13 administration of this subsection. After deduction of the Tax  
14 Commissioner's administration fee, the Tax Commissioner shall remit  
15 to the municipality all remaining amounts withheld pursuant to this  
16 section and the municipal court shall distribute applicable costs,  
17 fines, forfeitures or penalties owed to the municipality, the  
18 Regional Jail Authority Fund, the Crime Victims Compensation Fund,  
19 the Community Corrections Fund, the Governor's subcommittee on law-  
20 enforcement training or any other fund or payee that may be  
21 applicable. After the costs, fines, forfeitures or penalties are  
22 withheld, the Tax Commissioner shall refund any remaining balance  
23 due the licensee. If the refund is not sufficient to cover all the  
24 costs, fines, forfeitures or penalties being withheld pursuant to

1 this section, the Tax Commissioner's administration fee shall be  
2 retained by the Tax Commissioner and the remaining money withheld  
3 shall be remitted by the Tax Commissioner to the municipality. The  
4 municipality shall then allocate the money so remitted to the  
5 municipality in the following manner: (1) Any costs, fines,  
6 forfeitures or penalties due to the municipality; (2) seventy-five  
7 percent of the remaining balance shall be paid to the appropriate  
8 Regional Jail Authority Fund; (3) fifteen percent of the remaining  
9 balance shall be paid to the Crime Victims Compensation Fund; (4)  
10 six percent of the remaining balance shall be paid into the  
11 Community Corrections Fund; and (5) the final four percent shall be  
12 paid to the Governor's subcommittee on law-enforcement training.  
13 When the costs, fines, forfeitures or penalties exceed the  
14 licensee's income tax refund, the Tax Commissioner shall withhold  
15 the remaining balance in subsequent years until such time as the  
16 costs, fines, forfeitures or penalties owed are paid in full. The  
17 Tax Commissioner shall remit the moneys that he or she collects to  
18 the appropriate municipality no later than July 1, of each year.  
19 If the municipal court or the municipality subsequently determines  
20 that any such costs, fines, forfeitures or penalties were  
21 erroneously imposed, the municipality shall promptly notify the Tax  
22 Commissioner. If the refunds have not been withheld and remitted,  
23 the Tax Commissioner may not withhold and remit payment to the  
24 municipality and shall so inform the municipality. If the refunds

1 have already been withheld and remitted to the municipality, the  
2 Tax Commissioner shall so inform the municipality. In either  
3 event, all refunds for erroneously imposed costs, fines,  
4 forfeitures or penalties shall be made by the municipality and not  
5 by the Tax Commissioner.

6 (e) *Rules and effective date.* -- The Tax Commissioner may  
7 promulgate such rules as may be useful or necessary to carry out  
8 the purpose of this section and to implement the intent of the  
9 Legislature, to be effective on July 1, 2008. Rules shall be  
10 promulgated in accordance with the provisions of article three,  
11 chapter twenty-nine-a of this code.

12 (f) On or before July 1, 2005, the municipal court may elect  
13 to reissue notice as provided in subsections (a) and (c) of this  
14 section to the Division of Motor Vehicles for persons who remain  
15 noncompliant: *Provided,* That the person was convicted or failed to  
16 appear on or after January 1, 1993. If the original notification  
17 cannot be located, the Division of Motor Vehicles shall accept an  
18 additional or duplicate notice from the municipal court clerk.

19 **CHAPTER 50. MAGISTRATE COURTS.**

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

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

1 (a) A magistrate court may accept credit cards in payment of  
2 all costs, fines, fees, forfeitures, restitution or penalties in  
3 accordance with rules promulgated by the Supreme Court of Appeals.  
4 Any charges made by the credit company shall be paid by the person  
5 responsible for paying the cost, fine, forfeiture or penalty.

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

17 (c) (1) If any costs, fines, fees, forfeitures, restitution or  
18 penalties imposed by the magistrate court in a criminal case are  
19 not paid within one hundred eighty days from the date of judgment  
20 and the expiration of any stay of execution, the magistrate court  
21 clerk or, upon judgment rendered on appeal, the circuit clerk shall  
22 notify the Commissioner of the Division of Motor Vehicles of the  
23 failure to pay: *Provided*, That in a criminal case in which a  
24 nonresident of this state is convicted of a motor vehicle violation

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

21 (2) In addition to the provisions of subdivision (1) of this  
22 subsection, if any costs, fines, fees, forfeitures, restitution or  
23 penalties imposed or ordered by the magistrate court for a hunting  
24 violation described in chapter twenty of this code are not paid

1 within one hundred eighty days from the date of judgment and the  
2 expiration of any stay of execution, the magistrate court clerk or,  
3 upon a judgment rendered on appeal, the circuit clerk shall notify  
4 the Director of the Division of Natural Resources of the failure to  
5 pay. Upon notice, the Director of the Division of Natural  
6 Resources shall suspend any privilege the person failing to appear  
7 or otherwise respond may have to hunt in this state, including any  
8 hunting license issued to the person by the Division of Natural  
9 Resources, until all the costs, fines, fees, forfeitures,  
10 restitution or penalties are paid in full.

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

1           (d) (1) If a person charged with any criminal violation of  
2 this code fails to appear or otherwise respond in court, the  
3 magistrate court shall notify the Commissioner of the Division of  
4 Motor Vehicles: ~~thereof within fifteen days of the scheduled date~~  
5 ~~to appear unless the person sooner appears or otherwise responds in~~  
6 ~~court to the satisfaction of the magistrate~~ Provided, That the  
7 magistrate court shall wait at least eighty days from the date the  
8 person is charged with a criminal violation before notifying the  
9 Division of Motor Vehicles of a person's failure to pay or failure  
10 to appear. Upon notice, the Division of Motor Vehicles shall  
11 suspend any privilege the person failing to appear or otherwise  
12 respond may have to operate a motor vehicle in this state,  
13 including any driver's license issued to the person by the Division  
14 of Motor Vehicles, until final judgment in the case and, if a  
15 judgment of guilty, until all costs, fines, fees, forfeitures,  
16 restitution or penalties imposed are paid in full. The suspension  
17 shall be imposed in accordance with the provisions of section six,  
18 article three, chapter seventeen-b of this code.

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

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

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

23       (e) In every criminal case which involves a misdemeanor  
24 violation, a magistrate may order restitution where appropriate

1 when rendering judgment.

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

17       (2) When all the costs, fines, fees, forfeitures, restitution  
18 or penalties described in subdivision (1) of this subsection for  
19 which an abstract of judgment has been recorded are paid in full,  
20 the clerk of the magistrate court shall notify the prosecuting  
21 attorney of the county of payment and provide the prosecuting  
22 attorney with a release of judgment, prepared in accordance with  
23 the provisions of section one, article twelve, chapter thirty-eight  
24 of this code, for filing and recordation pursuant to the provisions

1 of this subdivision. Upon receipt from the clerk, the prosecuting  
2 attorney shall file the release of judgment in the office of the  
3 clerk of the county commission in each county where an abstract of  
4 the judgment was recorded. The clerks of the county commissions  
5 shall record and index the release of judgment without charge or  
6 fee to the prosecuting attorney.

NOTE: The purpose of this bill is to require municipal courts and magistrate courts to wait at least eighty days from the date the person is charged with a motor vehicle violation before notifying the Division of Motor Vehicles of that person's failure to pay or failure to appear.

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