

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 618

(By Senators Snyder, Beach and Browning)

[Originating in the Committee on the Judiciary;
reported February 24, 2012.]

A BILL to amend and reenact §8-10-2a and §8-10-2b of the Code of West Virginia, 1931, as amended; and to amend and reenact §50-3-2a of said code, all relating to failure to pay costs, fines, forfeitures or penalties imposed when charged with a motor vehicle or criminal violation; and requiring municipal courts and magistrate courts to wait at least ninety days from the date that all costs, fines, forfeitures or penalties are due in full, or the date of the failure to appear, before notifying the Division of Motor Vehicles of that person's failure to pay or failure to appear.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

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

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

15 payments and amounts shall be made; and (3) amounts due
16 on such dates.

17 (b) If costs, fines, forfeitures or penalties imposed by the
18 municipal court for motor vehicle violations as defined in
19 section three-a, article three, chapter seventeen-b of this
20 code are not paid within the time limits imposed pursuant to
21 subsection (a) of this section, or if a person fails to appear or
22 otherwise respond in court when charged with a motor
23 vehicle violation as defined in section three-a, article three,
24 chapter seventeen-b of this code, the municipal court must
25 notify the Commissioner of the Division of Motor Vehicles of
26 such failure to pay or failure to appear: Provided, That the
27 municipal court shall wait at least ninety days from the date
28 that all costs, fines, forfeitures or penalties are due in full or,
29 for failure to appear or otherwise respond, ninety days from
30 the date of such failure before notifying the Division of
31 Motor Vehicles thereof.

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

1 (a) If costs, fines, forfeitures or penalties imposed by the
2 municipal court upon conviction of a person for a criminal
3 offense as defined in section three-c, article three, chapter

4 seventeen-b of this code are not paid in full within one
5 hundred eighty days of the judgment, the municipal court
6 clerk or, upon a judgment rendered on appeal, the circuit
7 clerk shall notify the Division of Motor Vehicles of the
8 failure to pay: Provided, That for residents of this state, the
9 municipal court shall wait at least ninety days from the date
10 that all costs, fines, forfeitures or penalties are due in full
11 before notifying the Division of Motor Vehicles thereof:
12 *Provided, however,* That at the time the judgment is im-
13 posed, the judge shall provide the person with written notice
14 that failure to pay the same as ordered may result in the
15 withholding of any income tax refund due the licensee and
16 shall result in the suspension of the person's license or
17 privilege to operate a motor vehicle in this state and that the
18 suspension could result in the cancellation of, the failure to
19 renew or the failure to issue an automobile insurance policy
20 providing coverage for the person or the person's family:
21 *Provided ~~however~~ further,* That the failure of the judge to
22 provide notice does not affect the validity of any suspension
23 of the person's license or privilege to operate a motor vehicle
24 in this state. For purposes of this section, payment shall be
25 stayed during any period an appeal from the conviction

26 which resulted in the imposition of costs, fines, forfeitures or
27 penalties is pending.

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

32 (b) Notwithstanding the provisions of this section to the
33 contrary, the notice of the failure to pay costs, fines, forfei-
34 tures or penalties may not be given where the municipal
35 court, upon application of the person upon whom the costs,
36 fines, forfeitures or penalties were imposed filed prior to the
37 expiration of the period within which these are required to
38 be paid, enters an order finding that the person is financially
39 unable to pay all or a portion of the costs, fines, forfeitures
40 or penalties: *Provided*, That where the municipal court, upon
41 finding that the person is financially unable to pay a portion
42 of the costs, fines, forfeitures or penalties, requires the
43 person to pay the remaining portion, the municipal court
44 shall notify the Division of Motor Vehicles of the person's
45 failure to pay if not paid within the period of time ordered by
46 the court.

47 (c) If a person charged with a criminal offense fails to
48 appear or otherwise respond in court, the municipal court
49 clerk shall notify the Division of Motor Vehicles ~~within~~
50 ~~fifteen days of the scheduled date to appear unless the person~~
51 ~~sooner appears or otherwise responds in court to the satis-~~
52 ~~faction of the judge~~ of the failure to appear: *Provided, That*
53 for residents of this state, the municipal court clerk shall
54 wait at least ninety days from the date of the person's failure
55 to appear or otherwise respond before notifying the Division
56 of Motor Vehicles thereof. Upon notice, the Division of Motor
57 Vehicles shall suspend the person's driver's license or
58 privilege to operate a motor vehicle in this state until such
59 time that the person appears as required.

60 (d) On and after July 1, 2008, if the licensee fails to
61 respond to the Division of Motor Vehicles order of suspen-
62 sion within ninety days of receipt of the certified letter, the
63 municipal court of original jurisdiction shall notify the Tax
64 Commissioner that the licensee has failed to pay the costs,
65 fines, forfeitures or penalties assessed by the court or has
66 failed to respond to the citation. The notice provided by the
67 municipal court to the Tax Commissioner must include the
68 licensee's social security number. The Tax Commissioner, or

69 his or her designee, shall withhold from any personal income
70 tax refund due and owing to a licensee the costs, fines,
71 forfeitures or penalties due to the municipality, the Tax
72 Commissioner's administration fee for the withholding and
73 any and all fees that the municipal court would have col-
74 lected had the licensee appeared: *Provided*, That the Tax
75 Commissioner's administration fee may not exceed \$25:
76 *Provided, however*, That the Tax Commissioner may change
77 this maximum amount limitation for this fee for fiscal years
78 beginning on or after July 1, 2008, by legislative rule promul-
79 gated in accordance with the provisions of article three,
80 chapter twenty-nine-a of this code: *Provided further*, That
81 the administrative fees deducted shall be deposited in the
82 special revolving fund hereby created in the State Treasury,
83 which shall be designated as the "municipal fines and fees
84 collection fund", and the Tax Commissioner shall make such
85 expenditures from the fund as he or she deems appropriate
86 for the administration of this subsection. After deduction of
87 the Tax Commissioner's administration fee, the Tax Commis-
88 sioner shall remit to the municipality all remaining amounts
89 withheld pursuant to this section and the municipal court
90 shall distribute applicable costs, fines, forfeitures or penal-

91 ties owed to the municipality, the Regional Jail Authority
92 Fund, the Crime Victims Compensation Fund, the Commu-
93 nity Corrections Fund, the Governor's subcommittee on law-
94 enforcement training or any other fund or payee that may be
95 applicable. After the costs, fines, forfeitures or penalties are
96 withheld, the Tax Commissioner shall refund any remaining
97 balance due the licensee. If the refund is not sufficient to
98 cover all the costs, fines, forfeitures or penalties being
99 withheld pursuant to this section, the Tax Commissioner's
100 administration fee shall be retained by the Tax Commis-
101 sioner and the remaining money withheld shall be remitted
102 by the Tax Commissioner to the municipality. The munici-
103 pality shall then allocate the money so remitted to the
104 municipality in the following manner: (1) Any costs, fines,
105 forfeitures or penalties due to the municipality; (2) seventy-
106 five percent of the remaining balance shall be paid to the
107 appropriate Regional Jail Authority Fund; (3) fifteen percent
108 of the remaining balance shall be paid to the Crime Victims
109 Compensation Fund; (4) six percent of the remaining balance
110 shall be paid into the Community Corrections Fund; and (5)
111 the final four percent shall be paid to the Governor's sub-
112 committee on law-enforcement training. When the costs,

113 fines, forfeitures or penalties exceed the licensee's income
114 tax refund, the Tax Commissioner shall withhold the
115 remaining balance in subsequent years until such time as the
116 costs, fines, forfeitures or penalties owed are paid in full. The
117 Tax Commissioner shall remit the moneys that he or she
118 collects to the appropriate municipality no later than July 1,
119 of each year. If the municipal court or the municipality
120 subsequently determines that any such costs, fines, forfei-
121 tures or penalties were erroneously imposed, the municipal-
122 ity shall promptly notify the Tax Commissioner. If the
123 refunds have not been withheld and remitted, the Tax
124 Commissioner may not withhold and remit payment to the
125 municipality and shall so inform the municipality. If the
126 refunds have already been withheld and remitted to the
127 municipality, the Tax Commissioner shall so inform the
128 municipality. In either event, all refunds for erroneously
129 imposed costs, fines, forfeitures or penalties shall be made by
130 the municipality and not by the Tax Commissioner.

131 (e) *Rules and effective date.* — The Tax Commissioner
132 may promulgate such rules as may be useful or necessary to
133 carry out the purpose of this section and to implement the
134 intent of the Legislature, to be effective on July 1, 2008.

135 Rules shall be promulgated in accordance with the provi-
136 sions of article three, chapter twenty-nine-a of this code.

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

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

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

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

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

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

29 appropriate clerk shall notify the Division of Motor Vehicles
30 of the failure to pay within eighty days from the date of
31 judgment and expiration of any stay of execution. Upon
32 notice, the Division of Motor Vehicles shall suspend any
33 privilege the person defaulting on payment may have to
34 operate a motor vehicle in this state, including any driver's
35 license issued to the person by the Division of Motor Vehi-
36 cles, until all costs, fines, fees, forfeitures, restitution or
37 penalties are paid in full. The suspension shall be imposed in
38 accordance with the provisions of section six, article three,
39 chapter seventeen-b of this code: *Provided*, That any person
40 who has had his or her license to operate a motor vehicle in
41 this state suspended pursuant to this subsection and his or
42 her failure to pay is based upon inability to pay, may, if he or
43 she is employed on a full or part-time basis, petition to the
44 circuit court for an order authorizing him or her to operate
45 a motor vehicle solely for employment purposes. Upon a
46 showing satisfactory to the court of inability to pay, employ-
47 ment and compliance with other applicable motor vehicle
48 laws, the court shall issue an order granting relief.

49 (2) In addition to the provisions of subdivision (1) of this
50 subsection, if any costs, fines, fees, forfeitures, restitution or

51 penalties imposed or ordered by the magistrate court for a
52 hunting violation described in chapter twenty of this code
53 are not paid within one hundred eighty days from the date of
54 judgment and the expiration of any stay of execution, the
55 magistrate court clerk or, upon a judgment rendered on
56 appeal, the circuit clerk shall notify the Director of the
57 Division of Natural Resources of the failure to pay. Upon
58 notice, the Director of the Division of Natural Resources
59 shall suspend any privilege the person failing to appear or
60 otherwise respond may have to hunt in this state, including
61 any hunting license issued to the person by the Division of
62 Natural Resources, until all the costs, fines, fees, forfeitures,
63 restitution or penalties are paid in full.

64 (3) In addition to the provisions of subdivision (1) of this
65 subsection, if any costs, fines, fees, forfeitures, restitution or
66 penalties imposed or ordered by the magistrate court for a
67 fishing violation described in chapter twenty of this code are
68 not paid within one hundred eighty days from the date of
69 judgment and the expiration of any stay of execution, the
70 magistrate court clerk or, upon a judgment rendered on
71 appeal, the circuit clerk shall notify the Director of the
72 Division of Natural Resources of the failure to pay. Upon

73 notice, the Director of the Division of Natural Resources
74 shall suspend any privilege the person failing to appear or
75 otherwise respond may have to fish in this state, including
76 any fishing license issued to the person by the Division of
77 Natural Resources, until all the costs, fines, fees, forfeitures,
78 restitution or penalties are paid in full.

79 (d) (1) If a person charged with any criminal violation of
80 this code fails to appear or otherwise respond in court, the
81 magistrate court shall notify the Commissioner of the
82 Division of Motor Vehicles: thereof within ~~fifteen~~ ninety days
83 of the scheduled date to appear unless the person sooner
84 appears or otherwise responds in court to the satisfaction of
85 the magistrate. Upon notice, the Division of Motor Vehicles
86 shall suspend any privilege the person failing to appear or
87 otherwise respond may have to operate a motor vehicle in
88 this state, including any driver's license issued to the person
89 by the Division of Motor Vehicles, until final judgment in the
90 case and, if a judgment of guilty, until all costs, fines, fees,
91 forfeitures, restitution or penalties imposed are paid in full.
92 The suspension shall be imposed in accordance with the
93 provisions of section six, article three, chapter seventeen-b
94 of this code.

95 (2) In addition to the provisions of subdivision (1) of this
96 subsection, if a person charged with any hunting violation
97 described in chapter twenty of this code fails to appear or
98 otherwise respond in court, the magistrate court shall notify
99 the Director of the Division of Natural Resources of the
100 failure thereof within fifteen days of the scheduled date to
101 appear unless the person sooner appears or otherwise
102 responds in court to the satisfaction of the magistrate. Upon
103 notice, the Director of the Division of Natural Resources
104 shall suspend any privilege the person failing to appear or
105 otherwise respond may have to hunt in this state, including
106 any hunting license issued to the person by the Division of
107 Natural Resources, until final judgment in the case and, if a
108 judgment of guilty, until all costs, fines, fees, forfeitures,
109 restitution or penalties imposed are paid in full.

110 (3) In addition to the provisions of subdivision (1) of this
111 subsection, if a person charged with any fishing violation
112 described in chapter twenty of this code fails to appear or
113 otherwise respond in court, the magistrate court shall notify
114 the Director of the Division of Natural Resources of the
115 failure thereof within fifteen days of the scheduled date to
116 appear unless the person sooner appears or otherwise

117 responds in court to the satisfaction of the magistrate. Upon
118 notice, the Director of the Division of Natural Resources
119 shall suspend any privilege the person failing to appear or
120 otherwise respond may have to fish in this state, including
121 any fishing license issued to the person by the Division of
122 Natural Resources, until final judgment in the case and, if a
123 judgment of guilty, until all costs, fines, fees, forfeitures,
124 restitution or penalties imposed are paid in full.

125 (e) In every criminal case which involves a misdemeanor
126 violation, a magistrate may order restitution where appropri-
127 ate when rendering judgment.

128 (f) (1) If all costs, fines, fees, forfeitures, restitution or
129 penalties imposed by a magistrate court and ordered to be
130 paid are not paid within one hundred eighty days from the
131 date of judgment and the expiration of any stay of execution,
132 the clerk of the magistrate court shall notify the prosecuting
133 attorney of the county of nonpayment and provide the
134 prosecuting attorney with an abstract of judgment. The
135 prosecuting attorney shall file the abstract of judgment in
136 the office of the clerk of the county commission in the county
137 where the defendant was convicted and in any county
138 wherein the defendant resides or owns property. The clerks

139 of the county commissions shall record and index the
140 abstracts of judgment without charge or fee to the prosecut-
141 ing attorney and when so recorded, the amount stated to be
142 owing in the abstract shall constitute a lien against all
143 property of the defendant.

144 (2) When all the costs, fines, fees, forfeitures, restitution
145 or penalties described in subdivision (1) of this subsection for
146 which an abstract of judgment has been recorded are paid in
147 full, the clerk of the magistrate court shall notify the prose-
148 cuting attorney of the county of payment and provide the
149 prosecuting attorney with a release of judgment, prepared in
150 accordance with the provisions of section one, article twelve,
151 chapter thirty-eight of this code, for filing and recordation
152 pursuant to the provisions of this subdivision. Upon receipt
153 from the clerk, the prosecuting attorney shall file the release
154 of judgment in the office of the clerk of the county commis-
155 sion in each county where an abstract of the judgment was
156 recorded. The clerks of the county commissions shall record
157 and index the release of judgment without charge or fee to
158 the prosecuting attorney.

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