

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 531

BY SENATORS GAUNCH AND CLINE

[Introduced February 13, 2018; Referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §8-10-2a and §8-10-2b of the Code of West Virginia, 1931, as
2 amended; and to amend and reenact §17B-3-6 of said code, all relating to eliminating the
3 requirement that municipal courts wait at least 90 days prior to notifying the Division of
4 Motor Vehicles of a person's failure to appear or failure to pay assessed costs, fines,
5 forfeitures, or penalties.

Be it enacted by the Legislature of West Virginia:

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 of all costs, fines, forfeitures, or
2 penalties. A municipal court may collect a substantial portion of all costs, fines, forfeitures, or
3 penalties at the time such amount is imposed by the court so long as the court requires the
4 balance to be paid within 180 days from the date of judgment and in accordance with a payment
5 plan: *Provided*, That all costs, fines, forfeitures, or penalties imposed by the municipal court upon
6 a nonresident of this state by judgment entered upon a conviction for a motor vehicle violation
7 defined in §17B-3-3a of this code must be paid within 80 days from the date of judgment. The
8 payment plan shall specify: (1) The number of additional payments to be made; (2) the dates on
9 which such payments and amounts shall be made; and (3) amounts due on such dates.

10 (b) If costs, fines, forfeitures, or penalties imposed by the municipal court for motor vehicle
11 violations as defined in §17B-3-3a of this code are not paid within the time limits imposed pursuant
12 to §8-10-2a(a) of this code, or if a person fails to appear or otherwise respond in court when
13 charged with a motor vehicle violation as defined in §17B-3-3a of this code, the municipal court
14 must notify the Commissioner of the Division of Motor Vehicles of such failure to pay or failure to
15 appear. ~~*Provided*, That notwithstanding any other provision of this code to the contrary, the~~

16 ~~municipal court shall wait at least ninety days from the date that all costs, fines, forfeitures or~~
17 ~~penalties are due in full or, for failure to appear or otherwise respond, ninety days from the date~~
18 ~~of such failure before notifying the Division of 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 municipal court upon conviction
2 of a person for a criminal offense as defined in §17B-3-3c of this code are not paid in full within
3 180 days of the judgment, the municipal court clerk or, upon a judgment rendered on appeal, the
4 circuit clerk shall notify the Division of Motor Vehicles of the failure to pay: ~~Provided, That~~
5 ~~notwithstanding any other provision of this code to the contrary, for residents of this state, the~~
6 ~~municipal court shall wait at least ninety days from the date that all costs, fines, forfeitures or~~
7 ~~penalties are due in full before notifying the Division of Motor Vehicles thereof~~ *Provided, however*
8 That at the time the judgment is imposed, the judge shall provide the person with written notice
9 that failure to pay the same as ordered may result in the withholding of any income tax refund due
10 the licensee and shall result in the suspension of the person's license or privilege to operate a
11 motor vehicle in this state and that the suspension could result in the cancellation of, the failure
12 to renew, or the failure to issue an automobile insurance policy providing coverage for the person
13 or the person's family: *Provided, further however,* That the failure of the judge to provide notice
14 does not affect the validity of any suspension of the person's license or privilege to operate a
15 motor vehicle in this state. For purposes of this section, payment shall be stayed during any period
16 an appeal from the conviction which resulted in the imposition of costs, fines, forfeitures, or
17 penalties is pending.

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

21 (b) Notwithstanding the provisions of this section to the contrary, the notice of the failure

22 to pay costs, fines, forfeitures, or penalties may not be given where the municipal court, upon
23 application of the person upon whom the costs, fines, forfeitures, or penalties were imposed filed
24 prior to the expiration of the period within which these are required to be paid, enters an order
25 finding that the person is financially unable to pay all or a portion of the costs, fines, forfeitures,
26 or penalties: *Provided*, That where the municipal court, upon finding that the person is financially
27 unable to pay a portion of the costs, fines, forfeitures, or penalties, requires the person to pay the
28 remaining portion, the municipal court shall notify the Division of Motor Vehicles of the person's
29 failure to pay if not paid within the period of time ordered by the court.

30 (c) If a person charged with a criminal offense fails to appear or otherwise respond in
31 court, the municipal court clerk shall notify the Division of Motor Vehicles of the failure to appear.
32 ~~*Provided*, That notwithstanding any other provision of this code to the contrary, for residents of~~
33 ~~this state, the municipal court clerk shall wait at least ninety days from the date of the person's~~
34 ~~failure to appear or otherwise respond before notifying the Division of Motor Vehicles thereof Upon~~
35 notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to
36 operate a motor vehicle in this state until such time that the person appears as required.

37 (d) On and after July 1, 2008, if the licensee fails to respond to the Division of Motor
38 Vehicles' order of suspension within 90 days of receipt of the certified letter, the municipal court
39 of original jurisdiction shall notify the Tax Commissioner that the licensee has failed to pay the
40 costs, fines, forfeitures, or penalties assessed by the court or has failed to respond to the citation.
41 The notice provided by the municipal court to the Tax Commissioner must include the licensee's
42 Social Security number. The Tax Commissioner, or his or her designee, shall withhold from any
43 personal income tax refund due and owing to a licensee the costs, fines, forfeitures, or penalties
44 due to the municipality, the Tax Commissioner's administration fee for the withholding, and any
45 and all fees that the municipal court would have collected had the licensee appeared: *Provided*,
46 That the Tax Commissioner's administration fee may not exceed \$25: *Provided, however*, That
47 the Tax Commissioner may change the maximum amount limitation for this fee for fiscal years

48 beginning on or after July 1, 2008, by legislative rule promulgated in accordance with ~~the~~
49 ~~provisions of §29A-3-1 et seq.~~ of this code: *Provided further*, That the administrative fees
50 deducted shall be deposited in the special revolving fund hereby created in the State Treasury,
51 which shall be designated as the Municipal Fines and Fees Collection Fund, and the Tax
52 Commissioner shall make such expenditures from the fund as he or she deems appropriate for
53 the administration of this subsection. After deduction of the Tax Commissioner's administration
54 fee, the Tax Commissioner shall remit to the municipality all remaining amounts withheld pursuant
55 to this section and the municipal court shall distribute applicable costs, fines, forfeitures, or
56 penalties owed to the municipality, the Regional Jail Authority Fund, the Crime Victims
57 Compensation Fund, the Community Corrections Fund, the Governor's subcommittee on law-
58 enforcement training, or any other fund or payee that may be applicable. After the costs, fines,
59 forfeitures, or penalties are withheld, the Tax Commissioner shall refund any remaining balance
60 due the licensee. If the refund is not sufficient to cover all the costs, fines, forfeitures, or penalties
61 being withheld pursuant to this section, the Tax Commissioner's administration fee shall be
62 retained by the Tax Commissioner and the remaining money withheld shall be remitted by the
63 Tax Commissioner to the municipality. The municipality shall then allocate the money so remitted
64 to the municipality in the following manner: (1) Any costs, fines, forfeitures, or penalties due to the
65 municipality; (2) 75 percent of the remaining balance shall be paid to the appropriate Regional
66 Jail Authority Fund; (3) 15 percent of the remaining balance shall be paid to the Crime Victims
67 Compensation Fund; (4) six percent of the remaining balance shall be paid into the Community
68 Corrections Fund; and (5) the final four percent shall be paid to the Governor's subcommittee on
69 law-enforcement training. When the costs, fines, forfeitures, or penalties exceed the licensee's
70 income tax refund, the Tax Commissioner shall withhold the remaining balance in subsequent
71 years until such time as the costs, fines, forfeitures, or penalties owed are paid in full. The Tax
72 Commissioner shall remit the moneys that he or she collects to the appropriate municipality no
73 later than July 1 of each year. If the municipal court or the municipality subsequently determines

74 that any such costs, fines, forfeitures, or penalties were erroneously imposed, the municipality
75 shall promptly notify the Tax Commissioner. If the refunds have not been withheld and remitted,
76 the Tax Commissioner may not withhold and remit payment to the municipality and shall so inform
77 the municipality. If the refunds have already been withheld and remitted to the municipality, the
78 Tax Commissioner shall so inform the municipality. In either event, all refunds for erroneously
79 imposed costs, fines, forfeitures, or penalties shall be made by the municipality and not by the
80 Tax Commissioner.

81 (e) *Rules and effective date.* — The Tax Commissioner may promulgate such rules as
82 may be useful or necessary to carry out the purpose of this section and to implement the intent of
83 the Legislature, to be effective on July 1, 2008. Rules shall be promulgated in accordance with
84 ~~the provisions of §29A-3-1 et seq.~~ of this code.

85 (f) On or before July 1, 2005, the municipal court may elect to reissue notice as provided
86 in §8-10-2b(a) and §8-10-2b(c) of this code to the Division of Motor Vehicles for persons who
87 remain noncompliant: *Provided*, That the person was convicted or failed to appear on or after
88 January 1, 1993. If the original notification cannot be located, the Division of Motor Vehicles shall
89 accept an additional or duplicate notice from the municipal court clerk.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 3. CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSES.

§17B-3-6. Authority of division to suspend or revoke license; hearing.

1 (a) The division is hereby authorized to suspend the driver's license of any person without
2 preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

3 (1) Has committed an offense for which mandatory revocation of a driver's license is
4 required upon conviction;

5 (2) Has by reckless or unlawful operation of a motor vehicle, caused or contributed to an
6 accident resulting in the death or personal injury of another or property damage;

7 (3) Has been convicted with such frequency of serious offenses against traffic regulations
8 governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for
9 the safety of other persons on the highways;

10 (4) Is an habitually reckless or negligent driver of a motor vehicle;

11 (5) Is incompetent to drive a motor vehicle;

12 (6) Has committed an offense in another state which if committed in this state would be a
13 ground for suspension or revocation;

14 (7) Has failed to pay or has defaulted on a plan for the payment of all costs, fines,
15 forfeitures, or penalties imposed by a magistrate court or municipal court ~~within ninety days~~ as
16 required by §50-3-2a or §8-10-2a of this code;

17 (8) Has failed to appear or otherwise respond before a magistrate court or municipal court
18 when charged with a motor vehicle violation as defined in §17B-3-3a of this code;

19 (9) Is under the age of 18 and has withdrawn either voluntarily or involuntarily due to
20 misconduct from a secondary school or has failed to maintain satisfactory academic progress, as
21 provided in §18-8-11 of this code; or

22 (10) Has failed to pay overdue child support or comply with subpoenas or warrants relating
23 to paternity or child support proceedings, if a circuit court has ordered the suspension of the
24 license as provided in §48A-5A-1 *et seq.* of this code and the Child Support Enforcement Division
25 has forwarded to the division a copy of the court order suspending the license, or has forwarded
26 its certification that the licensee has failed to comply with a new or modified order that stayed the
27 suspension and provided for the payment of current support and any arrearage due.

28 (b) The driver's license of any person having his or her license suspended shall be
29 reinstated if:

30 (1) The license was suspended under the provisions of §17B-3-6(a)(7) of this code and
31 the payment of costs, fines, forfeitures, or penalties imposed by the applicable court has been
32 made;

33 (2) The license was suspended under the provisions of §17B-3-6(a)(8) of this code and
34 the person having his or her license suspended has appeared in court and has prevailed against
35 the motor vehicle violations charged; or

36 (3) The license was suspended under the provisions of §17B-3-6(a)(10) of this code and
37 the division has received a court order restoring the license or a certification by the Child Support
38 Enforcement Division that the licensee is complying with the original support order or a new or
39 modified order that provides for the payment of current support and any arrearage due.

40 (c) Any reinstatement of a license under §17B-3-6(b)(1), §17B-3-6(b)(2), or §17B-3-6(b)(3)
41 of this code shall be subject to a reinstatement fee designated in §17B-3-9 of this code.

42 (d) Upon suspending the driver's license of any person as hereinbefore in this section
43 authorized, the division shall immediately notify the licensee in writing, sent by certified mail,
44 return receipt requested, to the address given by the licensee in applying for a license, and upon
45 his or her request shall afford him or her an opportunity for a hearing as early as practical within,
46 but not to exceed, 20 days after receipt of such request in the county wherein the licensee resides
47 unless the division and the licensee agree that such hearing may be held in some other county.
48 Upon such hearing the commissioner or his or her duly authorized agent may administer oaths
49 and may issue subpoenas for the attendance of witnesses and the production of relevant books
50 and papers and may require a reexamination of the licensee. Upon such hearing the division shall
51 either rescind its order of suspension or, good cause appearing therefor, may extend the
52 suspension of such license or revoke such license. The provisions of this subsection providing for
53 notice and hearing are not applicable to a suspension under §17B-3-6(a)(10) of this code.

54 (e) Notwithstanding the provisions of legislative rule 91 CSR 5, the division may, upon
55 completion of an approved defensive driving course, deduct three points from a licensee's point
56 accumulation provided the licensee has not reached 14 points. If a licensee has been notified of
57 a pending 30-day driver's license suspension based on the accumulation of 12 or 13 points, the
58 licensee may submit proof of completion of an approved defensive driving course to deduct three

59 points and rescind the pending license suspension: *Provided*, That the licensee submits proof of
60 prior completion of the course and payment of the reinstatement fee in accordance with §17B-3-
61 9 of this code to the division prior to the effective date of the suspension.

NOTE: The purpose of this bill is to remove the required 90-day waiting period for municipal court notifications to the Division of Motor Vehicles.

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