

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 2041**

By Delegates Reynolds and Hillenbrand

[Introduced January 11, 2023; Referred to the  
Committee on Government Organization then the  
Judiciary]

1 A BILL to amend and reenact §8-10-2b of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §17B-3-3a of said code, all relating to providing a municipal court clerk  
 3 the ability to suspend the driver's license if a person has failed to enter into a payment plan  
 4 or pay towards his or her of costs, fines, forfeitures, restitution, or penalties in a certain time  
 5 period following judgment.

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

**CHAPTER 8. MUNICIPAL CORPORATIONS.**

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

**§8-10-2b. Payment plan; failure to pay will result in late fee, and judgment lien, or suspension of driver's license; suspension of licenses for failure to pay fines and costs or failure to appear in court.**

1 (a) Upon request and subject to the following requirements, the municipal court clerk or,  
 2 upon a judgment rendered on appeal, the clerk shall establish a payment plan for a person owing  
 3 costs, fines, forfeitures, restitution, or penalties imposed by the court for a motor vehicle violation  
 4 as defined in §17B-3-3a of this code, a criminal offense as defined in §17B-3-3c of this code, or  
 5 other applicable municipal ordinances, so long as the person signs and files with the clerk an  
 6 affidavit stating that he or she is financially unable to pay the costs, fines, forfeitures, restitution, or  
 7 penalties imposed:

8 (1) A \$25 administrative processing fee shall be paid at the time the payment form is filed  
 9 or, in the alternative, the fee may be paid in no more than five equal monthly payments;

10 (2) Unless incarcerated, a person must enroll in a payment plan no later than 90 calendar  
 11 days after the date the court enters the order assessing the costs, fines, forfeitures, restitution, or  
 12 penalties; and

13 (3) If the person is incarcerated, he or she may enroll in a payment plan within 90 calendar  
 14 days after release.

15 (b) The West Virginia Supreme Court of Appeals shall develop a uniform payment plan  
16 form and financial affidavit for requests for the establishment of a payment plan pursuant to  
17 subsection (a) of this section. The forms shall be made available for distribution to the offices of  
18 municipal clerks, and municipal clerks shall use the payment plan form and affidavit form  
19 developed by the West Virginia Supreme Court of Appeals when establishing payment plans.

20 (c)(1) The payment plan shall specify: (A) The number of payments to be made; (B) the  
21 dates on which such payments are due; (C) the amount due for each payment; (D) all acceptable  
22 payment methods; and (E) the circumstances under which the person may receive a late fee, have  
23 a judgment lien recorded against him or her, or have the debt sent to collections for nonpayment;

24 (2) The monthly payment under the payment plan shall be calculated based upon all costs,  
25 fines, forfeitures, restitution, or penalties owed within the court, and shall be two percent of the  
26 person's annual net income divided by 12, or \$10, whichever is greater;

27 (3) The court may review the reasonableness of the payment plan, and may on its own  
28 motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, restitution,  
29 or penalties to community service if the court determines that the individual has had a change in  
30 circumstances and is unable to comply with the terms of the payment plan.

31 (d) (1) The clerk may assess a \$10 late fee each month if a person fails to comply with the  
32 terms of a payment plan and if any payment due is not received within 30 days after the due date,  
33 and the person:

34 (A) Is not incarcerated;

35 (B) Has not brought the account current;

36 (C) Has not made alternative payment arrangements with the court; or

37 (D) Has not entered into a revised payment plan with the clerk before the due date.

38 (2) If after 90 days, a payment has not been received, the clerk may do one or both of the  
39 following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign  
40 the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency

41 contained on the State Tax Commissioner's list of eligible debt collection agencies established and  
42 maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*,  
43 That the entire amount of all delinquent payments collected shall be remitted to the court and may  
44 not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not  
45 exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically  
46 or by U.S. mail, to remind the person of an upcoming or missed payment; (C) notify the Division of  
47 Motor Vehicles of the failure to pay and order the suspension of the person's driver's license.

48 (e)(1) If after 90 days of a judgment a person fails to enroll in a payment plan and fails to  
49 pay their costs, fines, forfeitures, restitution, or penalties, the clerk may assess a \$10 late fee and  
50 shall notify the person of the following:

51 (A) That he or she is 90 days past due in the payment of costs, fines, forfeitures, restitution,  
52 or penalties imposed pursuant to a judgment of the court;

53 (B) That he or she has failed to enroll in a payment plan;

54 (C) Whether a \$10 late fee has been assessed; and

55 (D) That he or she may be the subject of a judgment lien, ~~or~~ have his or her debt sent to a  
56 collection agency, or have his or her driver's license suspended if the overdue payment of costs,  
57 fines, forfeitures, restitution, or penalties is not resolved within 30 days of the date of the notice  
58 issued pursuant to this subsection.

59 (2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this  
60 subsection, a payment has not been received, the clerk may do one or both of the following:

61 (A) Record a judgment lien as described in subsection (f) of this section; or

62 (B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt  
63 collection agency contained on the State Tax Commissioner's list of eligible debt collection  
64 agencies established and maintained pursuant to §14-1-18c of this code, an internal collection  
65 division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be  
66 remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*,

67 That the collection fee may not exceed 25 percent of the delinquent payment amount; or

68 (C) Notify the Division of Motor Vehicles that the person's license is to be suspended.

69 (f) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county of  
70 nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The  
71 prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county  
72 commission in the county where the defendant was convicted and in any county in which the  
73 defendant resides or owns property. The clerk of the county commission shall record and index  
74 these abstracts of judgment without charge or fee to the prosecuting attorney and when recorded,  
75 the amount stated to be owed in the abstract constitutes a lien against all property of the  
76 defendant: *Provided*, That when all the costs, fines, fees, forfeitures, restitution, or penalties for  
77 which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court  
78 shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney  
79 with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code,  
80 for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk,  
81 the prosecuting attorney shall file the release of judgment in the office of the clerk of the county  
82 commission in each county where an abstract of the judgment was recorded. The clerk of the  
83 county commission shall record and index the release of judgment without charge or fee to the  
84 prosecuting attorney.

85 (g) A person whose driver's license ~~was~~ is suspended ~~prior to July 1, 2020,~~ ~~solely~~ for the  
86 nonpayment of costs, fines, forfeitures, restitution, or penalties, if otherwise eligible, shall have his  
87 or her license reinstated:

88 (1) Upon payment in full of all outstanding costs, fines, forfeitures, restitution, or penalties  
89 and a \$25 reinstatement fee paid to the Division of Motor Vehicles; or

90 (2) Upon establishing a payment plan pursuant to subsection (a) of this section and the  
91 payment of a \$25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a  
92 payment plan is in effect, and upon receipt of the notification, the division shall waive the

93 reinstatement fee.

94 (h) If a person charged with a motor vehicle violation as defined in §17B-3-3a of this code  
 95 or criminal offense fails to appear or otherwise respond in court, the municipal court clerk shall  
 96 notify the Division of Motor Vehicles of the failure to appear: *Provided*, That notwithstanding any  
 97 other provision of this code to the contrary, for residents of this state, the municipal court clerk shall  
 98 wait at least 90 days from the date of the person's failure to appear or otherwise respond before  
 99 notifying the Division of Motor Vehicles thereof. Upon notice, the Division of Motor Vehicles shall  
 100 suspend the person's driver's license or privilege to operate a motor vehicle in this state until such  
 101 time that the person appears as required.

## CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

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

#### §17B-3-3a. Suspending license for failure to respond or appear in court or pay costs, fines, forfeitures, restitution, or penalties.

1 (a) The division shall suspend the license of any resident of this state or the privilege of a  
 2 nonresident to drive a motor vehicle in this state upon receiving notice from a magistrate court or  
 3 municipal court of this state that such person has failed to respond or appear in court when  
 4 charged with a motor vehicle violation or failed to pay the person's costs, fines, forfeitures,  
 5 restitution, or penalties as prescribed by §8-10-2b of this code.

6 (b) For the purposes of this section, §50-3-2a of this code and §8-10-2b of this code,  
 7 "motor vehicle violation" is as any violation designated in chapters 17A, 17B, 17C, 17D, or 17E of  
 8 this code, or the violation of any municipal ordinance relating to the operation of a motor vehicle for  
 9 which the violation thereof would result in a fine or penalty: *Provided*, That any parking violation or  
 10 other violation for which a citation may be issued to an unattended vehicle shall not be considered  
 11 a motor vehicle violation for the purposes of this section, §50-3-2a of this code, or §8-10-2b of this  
 12 code.

13           (c) A copy of the order of suspension shall be forwarded to the person by certified mail,  
14 return receipt requested. No order of suspension becomes effective until 10 days after receipt of a  
15 copy of the order. The order of suspension shall advise the person that because of the receipt of  
16 notice of the failure to pay the person's costs, fines, forfeitures, restitution, or penalties as  
17 prescribed by §8-10-2b of this code, a presumption exists that the person named in the order of  
18 suspension is the same person named in the notice. The commissioner may grant an  
19 administrative hearing which substantially complies with the requirements of the provisions of  
20 §17C-5A-2 of this code upon a preliminary showing that a possibility exists that the person named  
21 in the notice of conviction is not the same person whose license is being suspended. The request  
22 for hearing shall be made within 10 days after receipt of a copy of the order of suspension. The  
23 sole purpose of this hearing shall be for the person requesting the hearing to present evidence that  
24 he or she is not the person named in the notice. In the event the commissioner grants an  
25 administrative hearing, the commissioner shall stay the license suspension pending the  
26 commissioner's order resulting from the hearing.

27           (d) A suspension under this section and §17B-3-3a of this code will continue until the  
28 person provides proof of compliance from the municipal, magistrate, or circuit court and pays the  
29 reinstatement fee as provided in §17B-3-9 of this code. The reinstatement fee is assessed upon  
30 issuance of the order of suspension regardless of the effective date of suspension.

NOTE: The purpose of this bill is to require a person owing a judgment to a municipal court to pay, or enter into a payment plan, within 90 days of judgment. The bill further provides that a municipal court may request the DMV to suspend the driver's license of any person who fails to pay costs, fines, fees, and penalties owed within a specified timeframe.

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