

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4007

By Delegate Westfall

[Introduced February 13, 2024; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §8-10-2b of the Code of West Virginia, 1931, as amended, relating to
 2 allowing city attorneys or municipal court clerks to file judgment liens; and ensuring that if a
 3 person establishes a payment plan, but does not make at least one payment within six
 4 months either from the date of setting up the payment plan, or from the date of the most
 5 recent payment, that person's driver's license may be suspended.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2b. Payment plan; failure to pay will result in late fee and judgment lien; 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 pay in full the costs, fines, forfeitures, restitution, or
 11 penalties or enroll in a payment plan upon the entry of the order assessing the costs, fines,
 12 forfeitures, restitution, or penalties; and

13 (3) If the person is incarcerated, ~~he or she~~ the person ~~must~~ shall pay in full the costs, fines,
 14 forfeitures, restitution, or penalties or enroll in a payment plan within 30 calendar days after
 15 release.

16 (b) The West Virginia Supreme Court of Appeals shall develop a uniform payment plan
 17 form and financial affidavit for requests for the establishment of a payment plan pursuant to

18 subsection (a) of this section. The forms shall be made available for distribution to the offices of
19 municipal clerks, and municipal clerks shall use the payment plan form and affidavit form
20 developed by the Supreme Court of Appeals when establishing payment plans.

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

26 (2) The monthly payment under the payment plan shall be calculated based upon all costs,
27 fines, forfeitures, restitution, or penalties owed within the court, and shall be two percent of the
28 person's annual net income divided by 12, or \$10, whichever is greater: *Provided*, That if this
29 calculation results in a payment plan lasting more than three years, the monthly payments shall be
30 set by dividing the total amount owed by 36.

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

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

38 (A) Is not incarcerated;

39 (B) Has not brought the account current;

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

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

42 (2) If after 90 days, a payment has not been received, the clerk may do one or both of the
43 following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign

44 the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency
45 contained on the Tax Commissioner's list of eligible debt collection agencies established and
46 maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*,
47 That the entire amount of all delinquent payments collected shall be remitted to the court and may
48 not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not
49 exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically
50 or by U.S. mail, to remind the person of an upcoming or missed payment.

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

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

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

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

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

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

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

64 (B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt
65 collection agency contained on the Tax Commissioner's list of eligible debt collection agencies
66 established and maintained pursuant to §14-1-18c of this code, an internal collection division, or
67 both: *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the
68 court and may not be reduced by any collection costs or fees: *Provided, however*, That the
69 collection fee may not exceed 25 percent of the delinquent payment amount.

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

87 ~~(g) Any driver's license suspension entered by the Division of Motor Vehicles prior to July~~
88 ~~1, 2016, for the failure to appear or otherwise respond in court or for nonpayment of costs, fines,~~
89 ~~forfeitures, restitution, or penalties is null and void. A person whose driver's license was suspended~~
90 ~~on or after July 1, 2016, but prior to July 1, 2020, solely for the nonpayment of costs, fines,~~
91 ~~forfeitures, restitution, or penalties, if otherwise eligible, shall have his or her license reinstated:~~

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

94 (2) Upon establishing a payment plan pursuant to subsection (a) of this section and the
95 payment of a \$25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a

96 payment plan is in effect, and upon receipt of the notification, the division shall waive the
97 reinstatement fee.

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

106 (i) In addition to the penalties set forth in subsection (d)(1) and (d)(2) of this section, if an
107 individual has established a payment plan and after six months the individual has made no
108 payments on their payment plan or after six months from the due date of any of the individual's
109 payments they have failed to make payment or otherwise contact the court, then the municipal
110 court clerk may notify the Division of Motor Vehicles thereof. Upon notice, the Division of Motor
111 Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this
112 state until such time as that person either makes full payment of all costs, fines, forfeitures,
113 restitution, or penalties to the court or otherwise enters into an agreement with the court, and a
114 verification of satisfaction is provided by the court to the Division of Motor Vehicles.

115 (j) Any costs, fines, forfeitures, or penalties imposed by a municipal court shall not be
116 subject to § 46A-2-128(d) of this code.

NOTE: The purpose of this bill is to allow city attorneys or municipal court clerks to file judgment liens; it also allows suspension of drivers' license if a person who has entered into a payment plan for a fine fails to make payments.

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