

1 **H. B. 2397**

2
3 (By Delegates Miley, Brown, Moore, Wells,
4 Ferro, Longstreth and Ellem)

5
6 [Introduced January 12, 2011; referred to the
7 Committee on Roads and Transportation then the
8 Judiciary.]
9

10 A BILL to amend and reenact §17B-3-3a of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §50-3-2a of said
12 code, all relating to changes in the time frame that a court
13 notifies the Division of Motor Vehicles when a resident or
14 nonresident person defaults on payment or fails to appear in
15 response to motor vehicle violations.

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

17 That §17B-3-3a of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted; and that §50-3-2a of said code be amended
19 and reenacted, all to read as follows:

20 **CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.**

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

22 **§17B-3-3a. Suspending license for failure to pay fines or**
23 **penalties imposed by magistrate court or municipal**
24 **court.**

25 (a) The division shall suspend the license of any resident of

1 this state or the privilege of a nonresident to drive a motor
2 vehicle in this state upon receiving notice from a magistrate court
3 or municipal court of this state, pursuant to subsection (b),
4 section two-a, article three, chapter fifty of this code or
5 subsection (b), section two-a, article ten, chapter eight of this
6 code, that ~~such~~ the person has defaulted on the payment of costs,
7 fines, forfeitures or penalties ~~which were imposed on the person~~ by
8 the magistrate court or municipal court by judgment entered upon
9 conviction of any motor vehicle violation or that such person has
10 failed to respond or appear in court when charged with a motor
11 vehicle violation.

12 (b) The magistrate court or municipal court shall notify the
13 division upon a default of payment as follows:

14 (1) For a resident of this state, pursuant to section two-a,
15 article three, chapter fifty of this code:

16 (A) One hundred eighty days following the date of judgment
17 upon the conviction; or

18 (B) Fifteen days from the initial appearance date for failure
19 to appear; or

20 (C) Immediately upon failure to respond to a court hearing.

21 (2) For a nonresident of this state, after ~~eighty ninety~~ ninety days
22 following the date ~~of judgment upon the conviction~~ the citation was
23 issued.

24 (c) For the purposes of this section, section two-a, article

1 three, chapter fifty of this code and section two-a, article ten,
 2 chapter eight of this code, "motor vehicle violation" ~~shall be~~ is
 3 defined as any violation designated in chapter seventeen-a,
 4 seventeen-b, seventeen-c, seventeen-d or seventeen-e of this code
 5 or the violation of ~~any~~ a municipal ordinance relating to the
 6 operation of a motor vehicle for which the violation ~~thereof~~ would
 7 result in a fine or penalty. ~~Provided, That any~~ A parking
 8 violation or other violation for which a citation may be issued to
 9 an unattended vehicle ~~shall~~ is not be ~~considered~~ a motor vehicle
 10 violation for the purposes of this section, section two-a, article
 11 three, chapter fifty of this code or section two-a, article ten,
 12 chapter eight of this code.

13 **CHAPTER 50. MAGISTRATE COURTS.**

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

15 **§50-3-2a. Payment by credit card or payment plan; suspension of**
 16 **licenses for failure to make payments or appear or**
 17 **respond; restitution; liens.**

18 (a) A magistrate court may accept credit cards in payment of
 19 ~~all~~ costs, fines, fees, forfeitures, restitution or penalties in
 20 accordance with rules promulgated by the Supreme Court of Appeals.
 21 ~~Any~~ Charges made by the credit company shall be paid by the person
 22 responsible for paying the cost, fine, forfeiture or penalty.

23 (b) Unless otherwise required by law, a magistrate court may

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

12 (c) (1) If ~~any~~ the costs, fines, fees, forfeitures, restitution
13 or penalties imposed by the magistrate court in a criminal case are
14 not paid within one hundred eighty days from the date of judgment
15 and the expiration of ~~any~~ a stay of execution, the magistrate court
16 clerk or, upon judgment rendered on appeal, the circuit clerk shall
17 notify the Commissioner of the Division of Motor Vehicles of the
18 failure to pay. ~~Provided, That~~ In a criminal case in which a
19 nonresident of this state ~~is convicted of~~ is charged with a motor
20 vehicle violation defined in section three-a, article three, chapter
21 seventeen-b of this code, the appropriate clerk shall notify the
22 Division of Motor Vehicles of the failure to appear, respond or pay
23 within ~~eighty days from the date of judgment and expiration of any~~
24 ~~stay of execution~~ ninety days from the date the citation was issued.

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

17 (2) In addition to the provisions of subdivision (1) of this
18 subsection, if ~~any~~ costs, fines, fees, forfeitures, restitution or
19 penalties imposed or ordered by the magistrate court for a hunting
20 violation described in chapter twenty of this code are not paid
21 within one hundred eighty days from the date of judgment and the
22 expiration of ~~any~~ a stay of execution, the magistrate court clerk
23 or, upon a judgment rendered on appeal, the circuit clerk shall
24 notify the Director of the Division of Natural Resources of the

1 failure to pay. Upon notice, the Director of the Division of
2 Natural Resources shall suspend any privilege the person failing to
3 appear or otherwise respond may have to hunt in this state,
4 including ~~any~~ a hunting license issued ~~to the person~~ by the
5 division, ~~of Natural Resources,~~ until ~~all~~ the costs, fines, fees,
6 forfeitures, restitution or penalties are paid in full.

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

21 (d) (1) If a person charged with any criminal violation of this
22 code fails to appear or otherwise respond in court, the magistrate
23 court shall notify the Commissioner of the Division of Motor
24 Vehicles ~~thereof~~ within fifteen days of the scheduled date to appear

1 unless the person sooner appears or otherwise responds in court to
2 the satisfaction of the magistrate. Upon notice, the Division of
3 Motor Vehicles shall suspend any privilege the person ~~failing to~~
4 ~~appear or otherwise respond~~ may have to operate a motor vehicle in
5 this state, including ~~any~~ a driver's license issued ~~to the person~~
6 by the division, ~~of Motor Vehicles,~~ 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. The
9 suspension shall be imposed in accordance with the provisions of
10 section six, article three, chapter seventeen-b of this code.

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

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

15 (e) In every criminal case which involves a misdemeanor
16 violation, a magistrate may order restitution where appropriate when
17 rendering judgment.

18 (f) (1) If all costs, fines, fees, forfeitures, restitution or
19 penalties imposed by a magistrate court and ordered to be paid are
20 not paid within one hundred eighty days from the date of judgment
21 and the expiration of ~~any~~ a stay of execution, the clerk of the
22 magistrate court shall notify the prosecuting attorney of the county
23 of nonpayment and provide the prosecuting attorney with an abstract
24 of judgment. The prosecuting attorney shall file the abstract of

1 judgment in the office of the clerk of the county commission in the
2 county where the defendant was convicted and in any county ~~wherein~~
3 where the defendant resides or owns property. The clerks of the
4 county commissions shall record and index the abstracts of judgment
5 without charge or fee to the prosecuting attorney. ~~and when so~~
6 ~~recorded,~~ The amount stated to be owing in the abstract ~~shall~~
7 ~~constitute~~ is a lien against all property of the defendant.

8 (2) When ~~all~~ the costs, fines, fees, forfeitures, restitution
9 or penalties described in subdivision (1) of this subsection for
10 which an abstract of judgment has been recorded are paid in full,
11 the clerk of the magistrate court shall notify the prosecuting
12 attorney of the county of payment and provide the prosecuting
13 attorney with a release of judgment, prepared in accordance with the
14 provisions of section one, article twelve, chapter thirty-eight of
15 this code, for filing and recordation pursuant to the provisions of
16 this subdivision. Upon receipt from the clerk, the prosecuting
17 attorney shall file the release of judgment in the office of the
18 clerk of the county commission in each county where an abstract of
19 the judgment was recorded. The clerks of the county commissions
20 shall record and index the release of judgment without charge or fee
21 to the prosecuting attorney.

NOTE: The purpose of this bill is to modify the time frames for courts to notify the Division of Motor Vehicles of defaults of

payment and failures to appear of resident and nonresident persons who have motor vehicle violations in the state.

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