

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 618**

5 (SENATORS SNYDER, BEACH AND BROWNING, *original sponsors*)

6 _____
7 [Passed March 10, 2012; in effect ninety days from passage.]
8 _____

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11
12 AN ACT to amend the Code of West Virginia, 1931, as amended, by
13 adding thereto a new section, designated §7-5-2a; to amend and
14 reenact §8-10-2a and §8-10-2b of said code; to amend and
15 reenact §8-13-15 of said code; and to amend and reenact §50-3-
16 2a of said code, all relating to certain payments to
17 governmental units; authorizing the use of credit or check
18 cards for certain payments; authorizing a fee to be collected
19 for the use of credit or check cards; requiring governmental
20 units to obtain bids for credit card services; requiring
21 compliance with rules of issuer of credit cards; requiring
22 governmental units to wait ninety days after failure to pay
23 costs, fines, forfeitures, restitutions or penalties or
24 failure to appear before notifying the Division of Motor

1 Vehicles; requiring costs, fines, forfeitures, restitutions or
2 penalties imposed by magistrate courts to be paid in full; and
3 establishing the priority of crediting payments to certain
4 funds.

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

6 That the Code of West Virginia, 1931, as amended, be amended
7 by adding thereto a new section, designated §7-5-2a; that 8-10-2a
8 and §8-10-2b of said code be amended and reenacted; that §8-13-15
9 of said code be amended and reenacted; and that §50-3-2a of said
10 code be amended and reenacted, all to read as follows:

11 **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

12 **ARTICLE 5. FISCAL AFFAIRS.**

13 **§7-5-2a. Credit cards as form of payment.**

14 Notwithstanding any code provision to the contrary, county
15 officers required or authorized to collect fines, fees, taxes or
16 other moneys provided by law may accept credit or check cards as a
17 form of payment. County officers may set a fee to be added to each
18 transaction equal to the charge paid by the county officers for the
19 use of the credit or check card by the payor: *Provided*, That the
20 county officer is required to obtain three bids and use the lowest
21 qualified bid received: *Provided, however*, That if a county officer
22 has obtained credit card services, another county officer may be
23 added to that service without receiving bids for that service. The
24 county officer shall disclose the amount of the fee to the payor

1 prior to the transaction and no other fees for the use of a credit
2 or check card may be imposed upon the payor. Acceptance of a
3 credit or check card as a form of payment shall be in accordance
4 with the rules and requirements set forth by the credit or check
5 card provider.

6 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

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

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

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

1 dates.

2 (b) If costs, fines, forfeitures or penalties imposed by the
3 municipal court for motor vehicle violations as defined in section
4 three-a, article three, chapter seventeen-b of this code are not
5 paid within the time limits imposed pursuant to subsection (a) of
6 this section, or if a person fails to appear or otherwise respond
7 in court when charged with a motor vehicle violation as defined in
8 section three-a, article three, chapter seventeen-b of this code,
9 the municipal court must notify the Commissioner of the Division of
10 Motor Vehicles of such failure to pay or failure to appear:
11 *Provided*, That notwithstanding any other provision of this code to
12 the contrary, the municipal court shall wait at least ninety days
13 from the date that all costs, fines, forfeitures or penalties are
14 due in full or, for failure to appear or otherwise respond, ninety
15 days from the date of such failure before notifying the Division of
16 Motor Vehicles thereof.

17 **§8-10-2b. Suspension of licenses for failure to pay fines and**
18 **costs or failure to appear in court.**

19 (a) If costs, fines, forfeitures or penalties imposed by the
20 municipal court upon conviction of a person for a criminal offense
21 as defined in section three-c, article three, chapter seventeen-b
22 of this code are not paid in full within one hundred eighty days of
23 the judgment, the municipal court clerk or, upon a judgment
24 rendered on appeal, the circuit clerk shall notify the Division of

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

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

1 (b) Notwithstanding the provisions of this section to the
2 contrary, the notice of the failure to pay costs, fines,
3 forfeitures or penalties may not be given where the municipal
4 court, upon application of the person upon whom the costs, fines,
5 forfeitures or penalties were imposed filed prior to the expiration
6 of the period within which these are required to be paid, enters an
7 order finding that the person is financially unable to pay all or
8 a portion of the costs, fines, forfeitures or penalties: *Provided,*
9 That where the municipal court, upon finding that the person is
10 financially unable to pay a portion of the costs, fines,
11 forfeitures or penalties, requires the person to pay the remaining
12 portion, the municipal court shall notify the Division of Motor
13 Vehicles of the person's failure to pay if not paid within the
14 period of time ordered by the court.

15 (c) If a person charged with a criminal offense fails to
16 appear or otherwise respond in court, the municipal court clerk
17 shall notify the Division of Motor Vehicles of the failure to
18 appear: *Provided,* That notwithstanding any other provision of this
19 code to the contrary, for residents of this state, the municipal
20 court clerk shall wait at least ninety days from the date of the
21 person's failure to appear or otherwise respond before notifying
22 the Division of Motor Vehicles thereof. Upon notice, the Division
23 of Motor Vehicles shall suspend the person's driver's license or
24 privilege to operate a motor vehicle in this state until such time

1 that the person appears as required.

2 (d) On and after July 1, 2008, if the licensee fails to
3 respond to the Division of Motor Vehicles order of suspension
4 within ninety days of receipt of the certified letter, the
5 municipal court of original jurisdiction shall notify the Tax
6 Commissioner that the licensee has failed to pay the costs, fines,
7 forfeitures or penalties assessed by the court or has failed to
8 respond to the citation. The notice provided by the municipal
9 court to the Tax Commissioner must include the licensee's Social
10 Security number. The Tax Commissioner, or his or her designee,
11 shall withhold from any personal income tax refund due and owing to
12 a licensee the costs, fines, forfeitures or penalties due to the
13 municipality, the Tax Commissioner's administration fee for the
14 withholding and any and all fees that the municipal court would
15 have collected had the licensee appeared: *Provided*, That the Tax
16 Commissioner's administration fee may not exceed \$25: *Provided*,
17 *however*, That the Tax Commissioner may change this maximum amount
18 limitation for this fee for fiscal years beginning on or after July
19 1, 2008, by legislative rule promulgated in accordance with the
20 provisions of article three, chapter twenty-nine-a of this code:
21 *Provided further*, That the administrative fees deducted shall be
22 deposited in the special revolving fund hereby created in the State
23 Treasury, which shall be designated as the Municipal Fines and Fees
24 Collection Fund, and the Tax Commissioner shall make such

1 expenditures from the fund as he or she deems appropriate for the
2 administration of this subsection. After deduction of the Tax
3 Commissioner's administration fee, the Tax Commissioner shall remit
4 to the municipality all remaining amounts withheld pursuant to this
5 section and the municipal court shall distribute applicable costs,
6 fines, forfeitures or penalties owed to the municipality, the
7 Regional Jail Authority Fund, the Crime Victims Compensation Fund,
8 the Community Corrections Fund, the Governor's subcommittee on law-
9 enforcement training or any other fund or payee that may be
10 applicable. After the costs, fines, forfeitures or penalties are
11 withheld, the Tax Commissioner shall refund any remaining balance
12 due the licensee. If the refund is not sufficient to cover all the
13 costs, fines, forfeitures or penalties being withheld pursuant to
14 this section, the Tax Commissioner's administration fee shall be
15 retained by the Tax Commissioner and the remaining money withheld
16 shall be remitted by the Tax Commissioner to the municipality. The
17 municipality shall then allocate the money so remitted to the
18 municipality in the following manner: (1) Any costs, fines,
19 forfeitures or penalties due to the municipality; (2) seventy-five
20 percent of the remaining balance shall be paid to the appropriate
21 Regional Jail Authority Fund; (3) fifteen percent of the remaining
22 balance shall be paid to the Crime Victims Compensation Fund; (4)
23 six percent of the remaining balance shall be paid into the
24 Community Corrections Fund; and (5) the final four percent shall be

1 paid to the Governor's subcommittee on law-enforcement training.
2 When the costs, fines, forfeitures or penalties exceed the
3 licensee's income tax refund, the Tax Commissioner shall withhold
4 the remaining balance in subsequent years until such time as the
5 costs, fines, forfeitures or penalties owed are paid in full. The
6 Tax Commissioner shall remit the moneys that he or she collects to
7 the appropriate municipality no later than July 1, of each year.
8 If the municipal court or the municipality subsequently determines
9 that any such costs, fines, forfeitures or penalties were
10 erroneously imposed, the municipality shall promptly notify the Tax
11 Commissioner. If the refunds have not been withheld and remitted,
12 the Tax Commissioner may not withhold and remit payment to the
13 municipality and shall so inform the municipality. If the refunds
14 have already been withheld and remitted to the municipality, the
15 Tax Commissioner shall so inform the municipality. In either
16 event, all refunds for erroneously imposed costs, fines,
17 forfeitures or penalties shall be made by the municipality and not
18 by the Tax Commissioner.

19 (e) *Rules and effective date.* -- The Tax Commissioner may
20 promulgate such rules as may be useful or necessary to carry out
21 the purpose of this section and to implement the intent of the
22 Legislature, to be effective on July 1, 2008. Rules shall be
23 promulgated in accordance with the provisions of article three,
24 chapter twenty-nine-a of this code.

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

8 **ARTICLE 13. TAXATION AND FINANCE.**

9 PART V. COLLECTION OF MUNICIPAL TAXES, FINES AND ASSESSMENTS.

10 **§8-13-15. Collection of municipal taxes, fines and assessments.**

11 Unless otherwise provided, it shall be the duty of the
12 treasurer of the municipality or other individual who may be
13 designated by general law, by charter provisions or by the
14 governing body, to collect and promptly pay into the municipal
15 treasury all taxes, fines, special assessments or other moneys due
16 the municipality. All such taxes, fines, special assessments
17 (except assessments for permanent or semipermanent public
18 improvements) and other moneys due the municipality are hereby
19 declared to be debts owing to the municipality, for which the
20 debtor shall be personally liable, and the treasurer, or other
21 individual so designated, may enforce this liability by appropriate
22 civil action in any court of competent jurisdiction, and is hereby
23 vested with the same rights to distrain for the same as is vested
24 in the sheriff for the collection of taxes. Such treasurer or

1 other individual shall give a bond, conditioned according to law,
2 in such penalty and with such security as the governing body may
3 require: *Provided*, That nothing in this article shall prohibit the
4 payment of taxes, fines, special assessments or other moneys due
5 the municipality by credit or check card. The municipality or
6 municipal court may set a fee to be added to each transaction equal
7 to the charge paid by the municipality for the use of the credit or
8 check card by the debtor: *Provided*, That the municipality is
9 required to obtain three bids and use the lowest qualified bid
10 received. *Provided, however*, That if a municipality has obtained
11 credit card services, the municipal court may be added to that
12 service without receiving bids for that service. The municipality
13 or municipal court shall disclose the amount of the fee to the
14 debtor prior to the transaction and no other fees for the use of a
15 credit or check card may be imposed upon the debtor. Acceptance of
16 a credit or check card as a form of payment shall be in accordance
17 with the rules and requirements set forth by the credit or check
18 card provider. Allowing for the collection of these funds by
19 credit or check card shall be at the discretion of the municipality
20 or municipal court.

21 **CHAPTER 50. MAGISTRATE COURTS.**

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

23 **§50-3-2a. Payment by credit card or payment plan; suspension of**
24 **licenses for failure to make payments or appear or respond;**

1 **restitution; liens.**

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

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

18 (c) (1) If any costs, fines, fees, forfeitures, restitution or
19 penalties imposed by the magistrate court in a criminal case are
20 not paid within one hundred eighty days from the date of judgment
21 and the expiration of any stay of execution, the magistrate court
22 clerk or, upon judgment rendered on appeal, the circuit clerk shall
23 notify the Commissioner of the Division of Motor Vehicles of the
24 failure to pay: *Provided*, That in a criminal case in which a

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

22 (2) In addition to the provisions of subdivision (1) of this
23 subsection, if any costs, fines, fees, forfeitures, restitution or
24 penalties imposed or ordered by the magistrate court for a hunting

1 violation described in chapter twenty of this code are not paid
2 within one hundred eighty days from the date of judgment and the
3 expiration of any stay of execution, the magistrate court clerk or,
4 upon a judgment rendered on appeal, the circuit clerk shall notify
5 the Director of the Division of Natural Resources of the failure to
6 pay. Upon notice, the Director of the Division of Natural
7 Resources shall suspend any privilege the person failing to appear
8 or otherwise respond may have to hunt in this state, including any
9 hunting license issued to the person by the Division of Natural
10 Resources, until all the costs, fines, fees, forfeitures,
11 restitution or penalties are paid in full.

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

1 restitution or penalties are paid in full.

2 (d) (1) If a person charged with any criminal violation of
3 this code fails to appear or otherwise respond in court, the
4 magistrate court shall notify the Commissioner of the Division of
5 Motor Vehicles thereof within ninety days of the scheduled date to
6 appear unless the person sooner appears or otherwise responds in
7 court to the satisfaction of the magistrate. Upon notice, the
8 Division of Motor Vehicles shall suspend any privilege the person
9 failing to appear or otherwise respond may have to operate a motor
10 vehicle in this state, including any driver's license issued to the
11 person by the Division of Motor Vehicles, until final judgment in
12 the case and, if a judgment of guilty, until all costs, fines,
13 fees, forfeitures, restitution or penalties imposed are paid in
14 full. The suspension shall be imposed in accordance with the
15 provisions of section six, article three, chapter seventeen-b of
16 this code.

17 (2) In addition to the provisions of subdivision (1) of this
18 subsection, if a person charged with any hunting violation
19 described in chapter twenty of this code fails to appear or
20 otherwise respond in court, the magistrate court shall notify the
21 Director of the Division of Natural Resources of the failure
22 thereof within fifteen days of the scheduled date to appear unless
23 the person sooner appears or otherwise responds in court to the
24 satisfaction of the magistrate. Upon notice, the Director of the

1 Division of Natural Resources shall suspend any privilege the
2 person failing to appear or otherwise respond may have to hunt in
3 this state, including any hunting license issued to the person by
4 the Division of Natural Resources, until final judgment in the case
5 and, if a judgment of guilty, until all costs, fines, fees,
6 forfeitures, restitution or penalties imposed are paid in full.

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

21 (e) In every criminal case which involves a misdemeanor
22 violation, a magistrate may order restitution where appropriate
23 when rendering judgment.

24 (f) (1) If all costs, fines, fees, forfeitures, restitution or

1 penalties imposed by a magistrate court and ordered to be paid are
2 not paid within one hundred eighty days from the date of judgment
3 and the expiration of any stay of execution, the clerk of the
4 magistrate court shall notify the prosecuting attorney of the
5 county of nonpayment and provide the prosecuting attorney with an
6 abstract of judgment. The prosecuting attorney shall file the
7 abstract of judgment in the office of the clerk of the county
8 commission in the county where the defendant was convicted and in
9 any county wherein the defendant resides or owns property. The
10 clerks of the county commissions shall record and index the
11 abstracts of judgment without charge or fee to the prosecuting
12 attorney and when so recorded, the amount stated to be owing in the
13 abstract shall constitute a lien against all property of the
14 defendant.

15 (2) When all the costs, fines, fees, forfeitures, restitution
16 or penalties described in subdivision (1) of this subsection for
17 which an abstract of judgment has been recorded are paid in full,
18 the clerk of the magistrate court shall notify the prosecuting
19 attorney of the county of payment and provide the prosecuting
20 attorney with a release of judgment, prepared in accordance with
21 the provisions of section one, article twelve, chapter thirty-eight
22 of this code, for filing and recordation pursuant to the provisions
23 of this subdivision. Upon receipt from the clerk, the prosecuting
24 attorney shall file the release of judgment in the office of the

1 clerk of the county commission in each county where an abstract of
2 the judgment was recorded. The clerks of the county commissions
3 shall record and index the release of judgment without charge or
4 fee to the prosecuting attorney.

5 (g) Notwithstanding any provision of this code to the
6 contrary, except as authorized by this section, payments of all
7 costs, fines, fees, forfeitures, restitution or penalties imposed
8 by the magistrate court in civil or criminal matters shall be made
9 in full. Partial payments of costs, fines, fees, forfeitures,
10 restitution or penalties made pursuant to this section shall be
11 credited to amounts due in the following order:

- 12 (1) Regional Jail Fund;
- 13 (2) Worthless Check Payee;
- 14 (3) Restitution;
- 15 (4) Magistrate Court Fund;
- 16 (5) Worthless Check Fund;
- 17 (6) Per Diem Regional Jail Fee;
- 18 (7) Community Corrections Fund;
- 19 (8) Regional Jail Operational Fund;
- 20 (9) Law Enforcement Training Fund;
- 21 (10) Crime Victims Compensation Fund;
- 22 (11) Court Security Fund;
- 23 (12) Courthouse Improvement Fund;
- 24 (13) Litter Control Fund;

- 1 (14) Sheriff arrest fee;
- 2 (15) Teen Court Fund;
- 3 (16) Other costs, if any;
- 4 (17) Fine.