

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 618**

4 (By Senators Snyder, Beach and Browning)

5 _____
6 [Originating in the Committee on the Judiciary;

7 reported February 24, 2012.]

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12 A BILL to amend and reenact §8-10-2a and §8-10-2b of the Code of
13 West Virginia, 1931, as amended; and to amend and reenact §50-
14 3-2a of said code, all relating to failure to pay costs,
15 fines, forfeitures or penalties imposed when charged with a
16 motor vehicle or criminal violation; and requiring municipal
17 courts and magistrate courts to wait at least ninety days from
18 the date that all costs, fines, forfeitures or penalties are
19 due in full, or the date of the failure to appear, before
20 notifying the Division of Motor Vehicles of that person's
21 failure to pay or failure to appear.

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

23 That §8-10-2a and §8-10-2b of the Code of West Virginia, 1931,
24 as amended, be amended and reenacted; and that §50-3-2a of said

1 code be amended and reenacted, all to read as follows:

2 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

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

4 **§8-10-2a. Payment of fines by credit cards or payment plan;**
5 **suspension of driver's license for failure to pay**
6 **motor vehicle violation fines or to appear in court.**

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

22 (b) If costs, fines, forfeitures or penalties imposed by the
23 municipal court for motor vehicle violations as defined in section
24 three-a, article three, chapter seventeen-b of this code are not

1 paid within the time limits imposed pursuant to subsection (a) of
2 this section, or if a person fails to appear or otherwise respond
3 in court when charged with a motor vehicle violation as defined in
4 section three-a, article three, chapter seventeen-b of this code,
5 the municipal court must notify the Commissioner of the Division of
6 Motor Vehicles of such failure to pay or failure to appear:_
7 Provided, That the municipal court shall wait at least ninety days
8 from the date that all costs, fines, forfeitures or penalties are
9 due in full or, for failure to appear or otherwise respond, ninety
10 days from the date of such failure before notifying the Division of
11 Motor Vehicles thereof.

12 **§8-10-2b. Suspension of licenses for failure to pay fines and**
13 **costs or failure to appear in court.**

14 (a) If costs, fines, forfeitures or penalties imposed by the
15 municipal court upon conviction of a person for a criminal offense
16 as defined in section three-c, article three, chapter seventeen-b
17 of this code are not paid in full within one hundred eighty days of
18 the judgment, the municipal court clerk or, upon a judgment
19 rendered on appeal, the circuit clerk shall notify the Division of
20 Motor Vehicles of the failure to pay: Provided, That for residents
21 of this state, the municipal court shall wait at least ninety days
22 from the date that all costs, fines, forfeitures or penalties are
23 due in full before notifying the Division of Motor Vehicles
24 thereof: Provided, however, That at the time the judgment is

1 imposed, the judge shall provide the person with written notice
2 that failure to pay the same as ordered may result in the
3 withholding of any income tax refund due the licensee and shall
4 result in the suspension of the person's license or privilege to
5 operate a motor vehicle in this state and that the suspension could
6 result in the cancellation of, the failure to renew or the failure
7 to issue an automobile insurance policy providing coverage for the
8 person or the person's family: *Provided however further*, That the
9 failure of the judge to provide notice does not affect the validity
10 of any suspension of the person's license or privilege to operate
11 a motor vehicle in this state. For purposes of this section,
12 payment shall be stayed during any period an appeal from the
13 conviction which resulted in the imposition of costs, fines,
14 forfeitures or penalties is pending.

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

19 (b) Notwithstanding the provisions of this section to the
20 contrary, the notice of the failure to pay costs, fines,
21 forfeitures or penalties may not be given where the municipal
22 court, upon application of the person upon whom the costs, fines,
23 forfeitures or penalties were imposed filed prior to the expiration
24 of the period within which these are required to be paid, enters an

1 order finding that the person is financially unable to pay all or
2 a portion of the costs, fines, forfeitures or penalties: *Provided,*
3 That where the municipal court, upon finding that the person is
4 financially unable to pay a portion of the costs, fines,
5 forfeitures or penalties, requires the person to pay the remaining
6 portion, the municipal court shall notify the Division of Motor
7 Vehicles of the person's failure to pay if not paid within the
8 period of time ordered by the court.

9 (c) If a person charged with a criminal offense fails to
10 appear or otherwise respond in court, the municipal court clerk
11 shall notify the Division of Motor Vehicles ~~within fifteen days of~~
12 ~~the scheduled date to appear unless the person sooner appears or~~
13 ~~otherwise responds in court to the satisfaction of the judge of the~~
14 failure to appear: *Provided,* That for residents of this state, the
15 municipal court clerk shall wait at least ninety days from the date
16 of the person's failure to appear or otherwise respond before
17 notifying the Division of Motor Vehicles thereof. Upon notice, the
18 Division of Motor Vehicles shall suspend the person's driver's
19 license or privilege to operate a motor vehicle in this state until
20 such time that the person appears as required.

21 (d) On and after July 1, 2008, if the licensee fails to
22 respond to the Division of Motor Vehicles order of suspension
23 within ninety days of receipt of the certified letter, the
24 municipal court of original jurisdiction shall notify the Tax

1 Commissioner that the licensee has failed to pay the costs, fines,
2 forfeitures or penalties assessed by the court or has failed to
3 respond to the citation. The notice provided by the municipal
4 court to the Tax Commissioner must include the licensee's social
5 security number. The Tax Commissioner, or his or her designee,
6 shall withhold from any personal income tax refund due and owing to
7 a licensee the costs, fines, forfeitures or penalties due to the
8 municipality, the Tax Commissioner's administration fee for the
9 withholding and any and all fees that the municipal court would
10 have collected had the licensee appeared: *Provided*, That the Tax
11 Commissioner's administration fee may not exceed \$25: *Provided*,
12 *however*, That the Tax Commissioner may change this maximum amount
13 limitation for this fee for fiscal years beginning on or after July
14 1, 2008, by legislative rule promulgated in accordance with the
15 provisions of article three, chapter twenty-nine-a of this code:
16 *Provided further*, That the administrative fees deducted shall be
17 deposited in the special revolving fund hereby created in the State
18 Treasury, which shall be designated as the "municipal fines and
19 fees collection fund", and the Tax Commissioner shall make such
20 expenditures from the fund as he or she deems appropriate for the
21 administration of this subsection. After deduction of the Tax
22 Commissioner's administration fee, the Tax Commissioner shall remit
23 to the municipality all remaining amounts withheld pursuant to this
24 section and the municipal court shall distribute applicable costs,

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

1 Tax Commissioner shall remit the moneys that he or she collects to
2 the appropriate municipality no later than July 1, of each year.
3 If the municipal court or the municipality subsequently determines
4 that any such costs, fines, forfeitures or penalties were
5 erroneously imposed, the municipality shall promptly notify the Tax
6 Commissioner. If the refunds have not been withheld and remitted,
7 the Tax Commissioner may not withhold and remit payment to the
8 municipality and shall so inform the municipality. If the refunds
9 have already been withheld and remitted to the municipality, the
10 Tax Commissioner shall so inform the municipality. In either
11 event, all refunds for erroneously imposed costs, fines,
12 forfeitures or penalties shall be made by the municipality and not
13 by the Tax Commissioner.

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

20 (f) On or before July 1, 2005, the municipal court may elect
21 to reissue notice as provided in subsections (a) and (c) of this
22 section to the Division of Motor Vehicles for persons who remain
23 noncompliant: *Provided,* That the person was convicted or failed to
24 appear on or after January 1, 1993. If the original notification

1 cannot be located, the Division of Motor Vehicles shall accept an
2 additional or duplicate notice from the municipal court clerk.

3 **CHAPTER 50. MAGISTRATE COURTS.**

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

5 **§50-3-2a. Payment by credit card or payment plan; suspension of**
6 **licenses for failure to make payments or appear or**
7 **respond; restitution; liens.**

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

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

24 (c) (1) If any costs, fines, fees, forfeitures, restitution or

1 penalties imposed by the magistrate court in a criminal case are
2 not paid within one hundred eighty days from the date of judgment
3 and the expiration of any stay of execution, the magistrate court
4 clerk or, upon judgment rendered on appeal, the circuit clerk shall
5 notify the Commissioner of the Division of Motor Vehicles of the
6 failure to pay: *Provided*, That in a criminal case in which a
7 nonresident of this state is convicted of a motor vehicle violation
8 defined in section three-a, article three, chapter seventeen-b of
9 this code, the appropriate clerk shall notify the Division of Motor
10 Vehicles of the failure to pay within eighty days from the date of
11 judgment and expiration of any stay of execution. Upon notice, the
12 Division of Motor Vehicles shall suspend any privilege the person
13 defaulting on payment may have to operate a motor vehicle in this
14 state, including any driver's license issued to the person by the
15 Division of Motor Vehicles, until all costs, fines, fees,
16 forfeitures, restitution or penalties are paid in full. The
17 suspension shall be imposed in accordance with the provisions of
18 section six, article three, chapter seventeen-b of this code:
19 *Provided*, That any person who has had his or her license to operate
20 a motor vehicle in this state suspended pursuant to this subsection
21 and his or her failure to pay is based upon inability to pay, may,
22 if he or she is employed on a full or part-time basis, petition to
23 the circuit court for an order authorizing him or her to operate a
24 motor vehicle solely for employment purposes. Upon a showing

1 satisfactory to the court of inability to pay, employment and
2 compliance with other applicable motor vehicle laws, the court
3 shall issue an order granting relief.

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

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

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

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

23 (2) In addition to the provisions of subdivision (1) of this
24 subsection, if a person charged with any hunting violation

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

13 (3) In addition to the provisions of subdivision (1) of this
14 subsection, if a person charged with any fishing violation
15 described in chapter twenty of this code fails to appear or
16 otherwise respond in court, the magistrate court shall notify the
17 Director of the Division of Natural Resources of the failure
18 thereof within fifteen days of the scheduled date to appear unless
19 the person sooner appears or otherwise responds in court to the
20 satisfaction of the magistrate. Upon notice, the Director of the
21 Division of Natural Resources shall suspend any privilege the
22 person failing to appear or otherwise respond may have to fish in
23 this state, including any fishing license issued to the person by
24 the Division of Natural Resources, until final judgment in the case

1 and, if a judgment of guilty, until all costs, fines, fees,
2 forfeitures, restitution or penalties imposed are paid in full.

3 (e) In every criminal case which involves a misdemeanor
4 violation, a magistrate may order restitution where appropriate
5 when rendering judgment.

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

21 (2) When all the costs, fines, fees, forfeitures, restitution
22 or penalties described in subdivision (1) of this subsection for
23 which an abstract of judgment has been recorded are paid in full,
24 the clerk of the magistrate court shall notify the prosecuting

1 attorney of the county of payment and provide the prosecuting
2 attorney with a release of judgment, prepared in accordance with
3 the provisions of section one, article twelve, chapter thirty-eight
4 of this code, for filing and recordation pursuant to the provisions
5 of this subdivision. Upon receipt from the clerk, the prosecuting
6 attorney shall file the release of judgment in the office of the
7 clerk of the county commission in each county where an abstract of
8 the judgment was recorded. The clerks of the county commissions
9 shall record and index the release of judgment without charge or
10 fee to the prosecuting attorney.

(NOTE: Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)