

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **House Bill 4423**

BY DELEGATES BARNHART, D. KELLY, ZATEZALO, J.

KELLY, REYNOLDS, MANDT AND HAYNES

[Introduced January 27, 2022; 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; to amend  
 2 and reenact §17B-3-3a of said code; and to amend and reenact §50-3-2a of said code, all  
 3 relating to providing authority municipal court clerk and magistrate court the ability to  
 4 suspend the driver's license if a person has failed to enter into a payment plan or pay  
 5 towards his or her of costs, fines, forfeitures, restitution, or penalties in a certain time  
 6 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,  
 7 or 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,  
23 have a judgment lien recorded against him or her, or have the debt sent to collections for  
24 nonpayment;

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

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

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

35 (A) Is not incarcerated;

36 (B) Has not brought the account current;

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

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

39 (2) If after 90 days, a payment has not been received, the clerk may do one or both of the

40 following: (A) Record a judgment lien as described in subsection (f) of this section; ~~or~~ (B) consign  
41 the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency  
42 contained on the State Tax Commissioner's list of eligible debt collection agencies established  
43 and maintained pursuant to §14-1-18c of this code, an internal collection division, or both:  
44 *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the  
45 court and may not be reduced by any collection costs or fees: *Provided, however*, That the  
46 collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send  
47 notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment;  
48 (C) notify the Division of Motor Vehicles of the failure to pay and order the suspension of the  
49 persons' driver's license.

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

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

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

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

57 (D) That he or she may be the subject of a judgment lien, ~~or~~ have his or her debt sent to  
58 a collection agency, or have his or her driver's license suspended if the overdue payment of costs,  
59 fines, forfeitures, restitution, or penalties is not resolved within 30 days of the date of the notice  
60 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 State Tax Commissioner's list of eligible debt collection

66 agencies established and maintained pursuant to §14-1-18c of this code, an internal collection  
67 division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be  
68 remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*,  
69 That the collection fee may not exceed 25 percent of the delinquent payment amount; or

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

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

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

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

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

96 (h) If a person charged with a motor vehicle violation as defined in §17B-3-3a of this code  
97 or criminal offense fails to appear or otherwise respond in court, the municipal court clerk shall  
98 notify the Division of Motor Vehicles of the failure to appear: *Provided*, That notwithstanding any  
99 other provision of this code to the contrary, for residents of this state, the municipal court clerk  
100 shall wait at least 90 days from the date of the person's failure to appear or otherwise respond  
101 before notifying the Division of Motor Vehicles thereof. Upon notice, the Division of Motor Vehicles  
102 shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until  
103 such 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 §50-3-2a 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  
9 for which the violation thereof would result in a fine or penalty: *Provided*, That any parking violation

10 or other violation for which a citation may be issued to an unattended vehicle shall not be  
11 considered a motor vehicle violation for the purposes of this section, §50-3-2a of this code, or §8-  
12 10-2b of this 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  
15 a copy of the order. The order of suspension shall advise the person that because of the receipt  
16 of notice of the failure to pay the person's costs, fines, forfeitures, restitution, or penalties as  
17 prescribed by §8-10-2b or §50-3-2a of this code, a presumption exists that the person named in  
18 the order of 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  
24 that 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.

## **CHAPTER 50. MAGISTRATE COURTS.**

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

**§50-3-2a. Payment by electronic payments, credit card payments, cash, money orders, or  
certified checks; payment plan; failure to pay fines results in a late fee, and  
judgment lien, or suspension of driver's license.**

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

6 (b) Upon request and subject to the following requirements, the magistrate clerk shall  
7 establish a payment plan for a person owing costs, fines, forfeitures, restitution, or penalties  
8 imposed by the court, so long as the person signs and files with the clerk, an affidavit stating that  
9 he or she is financially unable to pay the costs, fines, forfeitures, restitution, or penalties imposed:

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

12 (2) Unless incarcerated, a person must enroll in a payment plan no later than ~~480~~ 90  
13 calendar days after the date the court enters the order assessing the costs, fines, forfeitures,  
14 restitution, or penalties; and

15 (3) If the person is incarcerated, he or she may enroll in a payment plan within ~~480~~ 90  
16 calendar days after release.

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

22 (d)(1) The payment plan shall specify: (A) The number of payments to be made; (B) the  
23 dates on which the payments are due; (C) the amount due for each payment; (D) all acceptable  
24 payment methods; and (E) the circumstances under which the person may receive a late fee,  
25 have a judgment lien recorded against him or her, ~~or~~ have the debt sent to collections for  
26 nonpayment, or have his or her driver's license suspended.



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

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

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

37 (A) Is not incarcerated;

38 (B) Has not brought the account current;

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

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

41 (2) If, after 90 days, a payment has not been received, the clerk may do ~~one or both~~ of the  
42 following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign  
43 the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency  
44 contained on the State Tax Commissioner's list of eligible debt collection agencies established  
45 and maintained pursuant to §14-1-18c of this code, an internal collection division, or both:  
46 *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the  
47 court and may not be reduced by any collection costs or fees: *Provided, however*, That the  
48 collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send  
49 notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment;  
50 or (C) notify the Division of Motor Vehicles of the failure to pay and order the suspension of the  
51 persons' driver's license.

52 (f)(1) If after ~~480~~ 90 days of a judgment a person fails to enroll in a payment plan and fails

53 to pay his or her costs, fines, forfeitures, restitution, or penalties, the clerk may assess a \$10 late  
54 fee and shall notify the person of the following:

55 (A) That he or she is ~~480~~ 90 days past due in the payment of costs, fines, forfeitures,  
56 restitution, or penalties imposed pursuant to a judgment of the court;

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

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

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

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

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

66 (B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt  
67 collection agency contained on the State Tax Commissioner's list of eligible debt collection  
68 agencies established and maintained pursuant to §14-1-18c of this code, an internal collection  
69 division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be  
70 remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*,  
71 That the collection fee may not exceed 25 percent of the delinquent payment amount or (C) notify  
72 the Division of Motor Vehicles of the failure to pay and order the suspension of the persons'  
73 driver's license.

74 (g) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county  
75 of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The  
76 prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county  
77 commission in the county where the defendant was convicted and in any county wherein the  
78 defendant resides or owns property. The clerk of the county commission shall record and index

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

90 (h) A person whose driver's license ~~was~~is suspended ~~before July 1, 2020~~, solely for the  
91 nonpayment of costs, fines, forfeitures, restitution, or penalties, if otherwise eligible, shall have  
92 his or her license reinstated:

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

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

99 (i)(1) If any costs, fines, fees, forfeitures, restitution, or penalties imposed or ordered by  
100 the magistrate court for a hunting violation described in chapter 20 of this code are not paid within  
101 180 days from the date of judgment and the expiration of any stay of execution, the magistrate  
102 court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Director of  
103 the Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of  
104 Natural Resources shall suspend any privilege the person failing to appear or otherwise respond

105 may have to hunt in this state, including any hunting license issued to the person by the Division  
106 of Natural Resources, until all the costs, fines, fees, forfeitures, restitution, or penalties are paid  
107 in full.

108 (2) If any costs, fines, fees, forfeitures, restitution, or penalties imposed or ordered by the  
109 magistrate court for a fishing violation described in chapter 20 of this code are not paid within 180  
110 days from the date of judgment and the expiration of any stay of execution, the magistrate court  
111 clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Director of the  
112 Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of  
113 Natural Resources shall suspend any privilege the person failing to appear or otherwise respond  
114 may have to fish in this state, including any fishing license issued to the person by the Division of  
115 Natural Resources, until all the costs, fines, fees, forfeitures, restitution, or penalties are paid in  
116 full.

117 (j)(1) If a person charged with any criminal violation of this code fails to appear or otherwise  
118 respond in court, the magistrate court shall notify the Commissioner of the Division of Motor  
119 Vehicles thereof within 90 days of the scheduled date to appear unless the person sooner appears  
120 or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Division of  
121 Motor Vehicles shall suspend any privilege the person failing to appear or otherwise respond may  
122 have to operate a motor vehicle in this state, including any driver's license issued to the person  
123 by the Division of Motor Vehicles, until final judgment in the case and, if a judgment of guilty, until  
124 all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full. The suspension  
125 shall be imposed in accordance with the provisions of §17B-3-6 of this code.

126 (2) In addition to the provisions of subdivision (1) of this subsection, if a person charged  
127 with any hunting violation described in chapter 20 of this code fails to appear or otherwise respond  
128 in court, the magistrate court shall notify the Director of the Division of Natural Resources of the  
129 failure thereof within 15 days of the scheduled date to appear unless the person sooner appears  
130 or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of

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

135 (3) In addition to the provisions of subdivision (1) of this subsection, if a person charged  
136 with any fishing violation described in chapter 20 of this code fails to appear or otherwise respond  
137 in court, the magistrate court shall notify the Director of the Division of Natural Resources of the  
138 failure thereof within 15 days of the scheduled date to appear unless the person sooner appears  
139 or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of  
140 the Division of Natural Resources shall suspend any privilege the person failing to appear or  
141 otherwise respond may have to fish in this state, including any fishing license issued to the person  
142 by the Division of Natural Resources, until final judgment in the case and, if a judgment of guilty,  
143 until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full.

144 (k) In every criminal case which involves a misdemeanor violation, a magistrate may order  
145 restitution where appropriate when rendering judgment.

146 (l) Notwithstanding any provision of this code to the contrary, except as authorized by this  
147 section, payments of all costs, fines, fees, forfeitures, restitution, or penalties imposed by the  
148 magistrate court in civil or criminal matters shall be made in full. Partial payments of costs, fines,  
149 fees, forfeitures, restitution, or penalties made pursuant to this section shall be credited to  
150 amounts due in the following order:

- 151 (1) Regional Jail Fund;
- 152 (2) Worthless check payee;
- 153 (3) Restitution;
- 154 (4) Magistrate Court Fund;
- 155 (5) Worthless Check Fund;
- 156 (6) Per diem regional jail fee;

- 157 (7) Community Corrections Fund;
- 158 (8) Regional Jail Operational Fund;
- 159 (9) Law-Enforcement Training Fund;
- 160 (10) Crime Victims Compensation Fund;
- 161 (11) Court Security Fund;
- 162 (12) Courthouse Improvement Fund;
- 163 (13) Litter Control Fund;
- 164 (14) Sheriff arrest fee;
- 165 (15) Teen Court Fund;
- 166 (16) Other costs, if any;
- 167 (17) Fine.

NOTE: The purpose of this bill is to require a person owing a judgment to a magistrate or municipal court to pay, or enter into a payment plan, within 90 days of judgment. The bill further provides that a magistrate or 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.