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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED

Committee Substitute for
SENATE BILL NO. 435

(By Senator Kessler and JENKINS)

PASSED April 9, 2005

In Effect 90 days from Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 435

(SENATORS KESSLER AND JENKINS, *original sponsors*)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §8-10-2b of the Code of West Virginia, 1931, as amended; and to amend and reenact §17B-3-3c and §15B-3-9 of said code, all relating to consequences of not paying fines and fees; requiring notice of possibility of withholding of income tax refund under certain circumstances; providing that Tax Commissioner may withhold income tax refund under certain circumstances; providing for distribution of income tax refund withheld; providing Tax Commissioner's administrative fee; providing Tax Commissioner authority to promulgate rules; authorizing reissuance of notice by municipal court under certain circumstances; providing for continuance of driver's license suspension under certain circumstances; creating fund for administrative fee and providing for expenditures from the fund; providing for consequences of erroneous imposition of fines or fees; and increasing fees.

Be it enacted by the Legislature of West Virginia:

That §8-10-2b of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17B-3-3c and §17B-3-9 of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

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

1 (a) If costs, fines, forfeitures or penalties imposed by the
2 municipal court upon conviction of a person for a criminal
3 offense as defined in section three-c, article three, chapter
4 seventeen-b of this code are not paid in full within one
5 hundred eighty days of the judgment, the municipal court
6 clerk or, upon a judgment rendered on appeal, the circuit
7 clerk shall notify the Division of Motor Vehicles of the
8 failure to pay: *Provided*, That at the time the judgment is
9 imposed, the judge shall provide the person with written
10 notice that failure to pay the same as ordered may result
11 in the withholding of any income tax refund due the
12 licensee and shall result in the suspension of the person's
13 license or privilege to operate a motor vehicle in this state
14 and that the suspension could result in the cancellation of,
15 the failure to renew or the failure to issue an automobile
16 insurance policy providing coverage for the person or the
17 person's family: *Provided, however*, That the failure of the
18 judge to provide notice does not affect the validity of any
19 suspension of the person's license or privilege to operate a
20 motor vehicle in this state. For purposes of this section,
21 payment shall be stayed during any period an appeal from
22 the conviction which resulted in the imposition of costs,
23 fines, forfeitures or penalties is pending.

24 Upon notice, the Division of Motor Vehicles shall
25 suspend the person's driver's license or privilege to operate

26 a motor vehicle in this state until such time that the costs,
27 fines, forfeitures or penalties are paid.

28 (b) Notwithstanding the provisions of this section to the
29 contrary, the notice of the failure to pay costs, fines,
30 forfeitures or penalties may not be given where the
31 municipal court, upon application of the person upon
32 whom the costs, fines, forfeitures or penalties were im-
33 posed filed prior to the expiration of the period within
34 which these are required to be paid, enters an order
35 finding that the person is financially unable to pay all or
36 a portion of the costs, fines, forfeitures or penalties:
37 *Provided*, That where the municipal court, upon finding
38 that the person is financially unable to pay a portion of the
39 costs, fines, forfeitures or penalties, requires the person to
40 pay the remaining portion, the municipal court shall notify
41 the Division of Motor Vehicles of the person's failure to
42 pay if not paid within the period of time ordered by the
43 court.

44 (c) If a person charged with a criminal offense fails to
45 appear or otherwise respond in court, the municipal court
46 clerk shall notify the Division of Motor Vehicles within
47 fifteen days of the scheduled date to appear unless the
48 person sooner appears or otherwise responds in court to
49 the satisfaction of the judge. Upon notice, the Division of
50 Motor Vehicles shall suspend the person's driver's license
51 or privilege to operate a motor vehicle in this state until
52 such time that the person appears as required.

53 (d) On and after the first day of July, two thousand
54 eight, if the licensee fails to respond to the Division of
55 Motor Vehicles' order of suspension within ninety days of
56 receipt of the certified letter, the municipal court of
57 original jurisdiction shall notify the Tax Commissioner
58 that the licensee has failed to pay the costs, fines, forfei-
59 tures or penalties assessed by the court or has failed to
60 respond to the citation. The notice provided by the
61 municipal court to the Tax Commissioner must include the
62 licensee's social security number. The Tax Commissioner,

63 or his or her designee, shall withhold from any personal
64 income tax refund due and owing to a licensee the costs,
65 fines, forfeitures or penalties due to the municipality, the
66 Tax Commissioner's administration fee for the withhold-
67 ing and any and all fees that the municipal court would
68 have collected had the licensee appeared: *Provided*, That
69 the Tax Commissioner's administration fee may not exceed
70 twenty-five dollars: *Provided, however*, That the Tax
71 Commissioner may change this maximum amount limita-
72 tion for this fee for fiscal years beginning on or after the
73 first day of July, two thousand eight, by legislative rule
74 promulgated in accordance with the provisions of article
75 three, chapter twenty-nine-a of this code: *Provided*
76 *further*, That the administrative fees deducted shall be
77 deposited in the special revolving fund hereby created in
78 the state treasury, which shall be designated as the
79 "municipal fines and fees collection fund", and the Tax
80 Commissioner shall make such expenditures from the fund
81 as he or she deems appropriate for the administration of
82 this subsection. After deduction of the Tax Commis-
83 sioner's administration fee, the Tax Commissioner shall
84 remit to the municipality all remaining amounts withheld
85 pursuant to this section and the municipal court shall
86 distribute applicable costs, fines, forfeitures or penalties
87 owed to the municipality, the Regional Jail Authority
88 Fund, the Crime Victims Compensation Fund, the Commu-
89 nity Corrections Fund, the Governor's subcommittee on
90 law-enforcement training or any other fund or payee that
91 may be applicable. After the costs, fines, forfeitures or
92 penalties are withheld, the Tax Commissioner shall refund
93 any remaining balance due the licensee. If the refund is
94 not sufficient to cover all the costs, fines, forfeitures or
95 penalties being withheld pursuant to this section, the Tax
96 Commissioner's administration fee shall be retained by the
97 Tax Commissioner and the remaining money withheld
98 shall be remitted by the Tax Commissioner to the munic-
99 ipality. The municipality shall then allocate the money so
100 remitted to the municipality in the following manner: (1)

101 Any costs, fines, forfeitures or penalties due to the municipi-
102 pality; (2) seventy-five percent of the remaining balance
103 shall be paid to the appropriate Regional Jail Authority
104 Fund; (3) fifteen percent of the remaining balance shall be
105 paid to the Crime Victims Compensation Fund; (4) six
106 percent of the remaining balance shall be paid into the
107 Community Corrections Fund; and (5) the final four
108 percent shall be paid to the Governor's subcommittee on
109 law-enforcement training. When the costs, fines, forfei-
110 tures or penalties exceed the licensee's income tax refund,
111 the Tax Commissioner shall withhold the remaining
112 balance in subsequent years until such time as the costs,
113 fines, forfeitures or penalties owed are paid in full. The
114 Tax Commissioner shall remit the moneys that he or she
115 collects to the appropriate municipality no later than the
116 first day of July of each year. If the municipal court or the
117 municipality subsequently determines that any such costs,
118 fines, forfeitures or penalties were erroneously imposed,
119 the municipality shall promptly notify the tax commis-
120 sioner. If the refunds have not been withheld and remit-
121 ted, the tax commissioner may not withhold and remit
122 payment to the municipality and shall so inform the
123 municipality. If the refunds have already been withheld
124 and remitted to the municipality, the tax commissioner
125 shall so inform the municipality. In either event, all
126 refunds for erroneously imposed costs, fines, forfeitures or
127 penalties shall be made by the municipality and not by the
128 tax commissioner.

129 (e) *Rules and effective date.* – The Tax Commissioner
130 may promulgate such rules as may be useful or necessary
131 to carry out the purpose of this section and to implement
132 the intent of the Legislature, to be effective on the first
133 day of July, two thousand eight. Rules shall be promul-
134 gated in accordance with the provisions of article three,
135 chapter twenty-nine-a of this code.

136 (f) On or before the first day of July, two thousand five,
137 the municipal court may elect to reissue notice as provided

138 in subsections (a) and (c) of this section to the Division of
139 Motor Vehicles for persons who remain noncompliant:
140 *Provided*, That the person was convicted or failed to
141 appear on or after the first day of January, one thousand
142 nine hundred ninety-three. If the original notification
143 cannot be located, the Division of Motor Vehicles shall
144 accept an additional or duplicate notice from the municipi-
145 pal court clerk.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LI- CENSES.

§17B-3-3c. Suspending license for failure to pay fines or penal- ties imposed as the result of criminal conviction or for failure to appear in court.

1 (a) The Division shall suspend the license of any resident
2 of this state or the privilege of a nonresident to drive a
3 motor vehicle in this state upon receiving notice from a
4 circuit court, magistrate court or municipal court of this
5 state, pursuant to section two-b, article three, chapter fifty
6 of this code or section two-b, article ten, chapter eight of
7 said code or section seventeen, article four, chapter
8 sixty-two of said code, that such person has defaulted on
9 the payment of costs, fines, forfeitures, penalties or
10 restitution imposed on the person by the circuit court,
11 magistrate court or municipal court upon conviction for
12 any criminal offense by the date such court had required
13 such person to pay the same, or that such person has failed
14 to appear in court when charged with such an offense. For
15 the purposes of this section; section two-b, article three,
16 chapter fifty of said code; section two-b, article ten,
17 chapter eight of said code; and section seventeen, article
18 four, chapter sixty-two of said code, "criminal offense"
19 shall be defined as any violation of the provisions of this
20 code, or the violation of any municipal ordinance, for
21 which the violation thereof may result in a fine, confine-
22 ment in jail or imprisonment in a correctional facility

23 of this state: *Provided*, That any parking violation or
24 other violation for which a citation may be issued to an
25 unattended vehicle shall not be considered a criminal
26 offense for the purposes of this section; section two-b,
27 article ten, chapter eight of said code; section two-b,
28 article three, chapter fifty of said code; or section seven-
29 teen, article four, chapter sixty-two of said code.

30 (b) A copy of the order of suspension shall be forwarded
31 to such person by certified mail, return receipt requested.
32 No order of suspension becomes effective until ten days
33 after receipt of a copy of such order. The order of suspen-
34 sion shall advise the person that because of the receipt of
35 notice of the failure to pay costs, fines, forfeitures or
36 penalties, or the failure to appear, a presumption exists
37 that the person named in the order of suspension is the
38 same person named in the notice. The Commissioner may
39 grant an administrative hearing which substantially
40 complies with the requirements of the provisions of section
41 two, article five-a, chapter seventeen-c of this code upon
42 a preliminary showing that a possibility exists that the
43 person named in the notice of conviction is not the same
44 person whose license is being suspended. Such request for
45 hearing shall be made within ten days after receipt of a
46 copy of the order of suspension. The sole purpose of this
47 hearing shall be for the person requesting the hearing to
48 present evidence that he or she is not the person named in
49 the notice. In the event the Commissioner grants an
50 administrative hearing, the Commissioner shall stay the
51 license suspension pending the Commissioner's order
52 resulting from the hearing.

53 (c) A suspension under this section and section three-a
54 of this chapter will continue until the person provides
55 proof of compliance from the municipal, magistrate or
56 circuit court and pays the reinstatement fee as provided in
57 section nine of this article. The reinstatement fee is
58 assessed upon issuance of the order of suspension regard-
59 less of the effective date of suspension.

§17B-3-9. Surrender and return of license not required.

1 The Division, upon suspending or revoking a license,
2 may not require that the license be surrendered to and be
3 retained by the Division. The surrender of a license may
4 not be a precondition to the commencement and tolling of
5 any applicable period of suspension or revocation: *Pro-*
6 *vided,* That before the license may be reinstated, the
7 licensee shall pay a fee of fifty dollars, in addition to all
8 other fees and charges, which shall be collected by the
9 Division and deposited in a special revolving fund to be
10 appropriated to the Division for use in the enforcement of
11 the provisions of this section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Charles White
.....
Chairman Senate Committee

D. Rubin Buz
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell Holmes
.....
Clerk of the Senate

Bryce W. Smith
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *11th*
Day of *May*, 2005.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 29 2005

Time 9:40

