

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 481

BY SENATOR BLAIR

[Originating in the Committee on Government

Organization; reported on March 8, 2017]

1 A BILL to amend and reenact §8-10-2a and §8-10-2b of the Code of West Virginia, 1931, as
2 amended; and to amend and reenact §17B-3-6 of said code, all relating to eliminating the
3 requirement that municipal courts wait at least ninety days prior to notifying the Division of
4 Motor Vehicles of a person's failure to appear or failure to pay assessed costs, fines,
5 forfeitures or penalties.

Be it enacted by the Legislature of West Virginia:

1 That §8-10-2a and §8-10-2b of the Code of West Virginia, 1931, as amended, be amended
2 and reenacted; and that §17B-3-6 of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

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

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

11 (b) If costs, fines, forfeitures or penalties imposed by the municipal court for motor vehicle
12 violations as defined in section three-a, article three, chapter seventeen-b of this code are not
13 paid within the time limits imposed pursuant to subsection (a) of this section, or if a person fails

14 to appear or otherwise respond in court when charged with a motor vehicle violation as defined
15 in section three-a, article three, chapter seventeen-b of this code, the municipal court must notify
16 the Commissioner of the Division of Motor Vehicles of such failure to pay or failure to appear:
17 ~~Provided, That notwithstanding any other provision of this code to the contrary, the municipal~~
18 ~~court shall wait at least ninety days from the date that all costs, fines, forfeitures or penalties are~~
19 ~~due in full or, for failure to appear or otherwise respond, ninety days from the date of such failure~~
20 ~~before notifying the Division of Motor Vehicles thereof.~~

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

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

21 (b) Notwithstanding the provisions of this section to the contrary, the notice of the failure
22 to pay costs, fines, forfeitures or penalties may not be given where the municipal court, upon
23 application of the person upon whom the costs, fines, forfeitures or penalties were imposed filed
24 prior to the expiration of the period within which these are required to be paid, enters an order
25 finding that the person is financially unable to pay all or a portion of the costs, fines, forfeitures or
26 penalties: *Provided*, That where the municipal court, upon finding that the person is financially
27 unable to pay a portion of the costs, fines, forfeitures or penalties, requires the person to pay the
28 remaining portion, the municipal court shall notify the Division of Motor Vehicles of the person's
29 failure to pay if not paid within the period of time ordered by the court.

30 (c) If a person charged with a criminal offense fails to appear or otherwise respond in
31 court, the municipal court clerk shall notify the Division of Motor Vehicles of the failure to appear:
32 ~~*Provided*, That notwithstanding any other provision of this code to the contrary, for residents of~~
33 ~~this state, the municipal court clerk shall wait at least ninety days from the date of the person's~~
34 ~~failure to appear or otherwise respond before notifying the Division of Motor Vehicles thereof.~~
35 Upon notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege
36 to operate a motor vehicle in this state until such time that the person appears as required.

37 (d) On and after July 1, 2008, if the licensee fails to respond to the Division of Motor
38 Vehicles order of suspension within ninety days of receipt of the certified letter, the municipal court
39 of original jurisdiction shall notify the Tax Commissioner that the licensee has failed to pay the
40 costs, fines, forfeitures or penalties assessed by the court or has failed to respond to the citation.
41 The notice provided by the municipal court to the Tax Commissioner must include the licensee's
42 Social Security number. The Tax Commissioner, or his or her designee, shall withhold from any
43 personal income tax refund due and owing to a licensee the costs, fines, forfeitures or penalties

44 due to the municipality, the Tax Commissioner's administration fee for the withholding and any
45 and all fees that the municipal court would have collected had the licensee appeared: *Provided,*
46 That the Tax Commissioner's administration fee may not exceed \$25: *Provided, however,* That
47 the Tax Commissioner may change the maximum amount limitation for this fee for fiscal years
48 beginning on or after July 1, 2008, by legislative rule promulgated in accordance with the
49 provisions of article three, chapter twenty-nine-a of this code: *Provided further,* That the
50 administrative fees deducted shall be deposited in the special revolving fund hereby created in
51 the State Treasury, which shall be designated as the Municipal Fines and Fees Collection Fund,
52 and the Tax Commissioner shall make such expenditures from the fund as he or she deems
53 appropriate for the administration of this subsection. After deduction of the Tax Commissioner's
54 administration fee, the Tax Commissioner shall remit to the municipality all remaining amounts
55 withheld pursuant to this section and the municipal court shall distribute applicable costs, fines,
56 forfeitures or penalties owed to the municipality, the Regional Jail Authority Fund, the Crime
57 Victims Compensation Fund, the Community Corrections Fund, the Governor's subcommittee on
58 law-enforcement training or any other fund or payee that may be applicable. After the costs, fines,
59 forfeitures or penalties are withheld, the Tax Commissioner shall refund any remaining balance
60 due the licensee. If the refund is not sufficient to cover all the costs, fines, forfeitures or penalties
61 being withheld pursuant to this section, the Tax Commissioner's administration fee shall be
62 retained by the Tax Commissioner and the remaining money withheld shall be remitted by the
63 Tax Commissioner to the municipality. The municipality shall then allocate the money so remitted
64 to the municipality in the following manner: (1) Any costs, fines, forfeitures or penalties due to the
65 municipality; (2) seventy-five percent of the remaining balance shall be paid to the appropriate
66 Regional Jail Authority Fund; (3) fifteen percent of the remaining balance shall be paid to the
67 Crime Victims Compensation Fund; (4) six percent of the remaining balance shall be paid into the
68 Community Corrections Fund; and (5) the final four percent shall be paid to the Governor's
69 subcommittee on law-enforcement training. When the costs, fines, forfeitures or penalties exceed

70 the licensee's income tax refund, the Tax Commissioner shall withhold the remaining balance in
71 subsequent years until such time as the costs, fines, forfeitures or penalties owed are paid in full.
72 The Tax Commissioner shall remit the moneys that he or she collects to the appropriate
73 municipality no later than July 1 of each year. If the municipal court or the municipality
74 subsequently determines that any such costs, fines, forfeitures or penalties were erroneously
75 imposed, the municipality shall promptly notify the Tax Commissioner. If the refunds have not
76 been withheld and remitted, the Tax Commissioner may not withhold and remit payment to the
77 municipality and shall so inform the municipality. If the refunds have already been withheld and
78 remitted to the municipality, the Tax Commissioner shall so inform the municipality. In either
79 event, all refunds for erroneously imposed costs, fines, forfeitures or penalties shall be made by
80 the municipality and not by the Tax Commissioner.

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

85 (f) On or before July 1, 2005, the municipal court may elect to reissue notice as provided
86 in subsections (a) and (c) of this section to the Division of Motor Vehicles for persons who remain
87 noncompliant: *Provided*, That the person was convicted or failed to appear on or after January 1,
88 1993. If the original notification cannot be located, the Division of Motor Vehicles shall accept an
89 additional or duplicate notice from the municipal court clerk.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-6. Authority of division to suspend or revoke license; hearing.

1 (a) The division is hereby authorized to suspend the driver's license of any person without
2 preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

3 (1) Has committed an offense for which mandatory revocation of a driver's license is
4 required upon conviction;

5 (2) Has by reckless or unlawful operation of a motor vehicle, caused or contributed to an
6 accident resulting in the death or personal injury of another or property damage;

7 (3) Has been convicted with such frequency of serious offenses against traffic regulations
8 governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for
9 the safety of other persons on the highways;

10 (4) Is an habitually reckless or negligent driver of a motor vehicle;

11 (5) Is incompetent to drive a motor vehicle;

12 (6) Has committed an offense in another state which if committed in this state would be a
13 ground for suspension or revocation;

14 (7) Has failed to pay or has defaulted on a plan for the payment of all costs, fines,
15 forfeitures or penalties imposed by a magistrate court or municipal court ~~within ninety days~~, as
16 required by section two-a, article three, chapter fifty of this code or section two-a, article ten,
17 chapter eight of this code;

18 (8) Has failed to appear or otherwise respond before a magistrate court or municipal court
19 when charged with a motor vehicle violation as defined in section three-a of this article;

20 (9) Is under the age of eighteen and has withdrawn either voluntarily or involuntarily due
21 to misconduct from a secondary school or has failed to maintain satisfactory academic progress,
22 as provided in section eleven, article eight, chapter eighteen of this code; or

23 (10) Has failed to pay overdue child support or comply with subpoenas or warrants relating
24 to paternity or child support proceedings, if a circuit court has ordered the suspension of the
25 license as provided in article five-a, chapter forty-eight-a of this code and the Child Support
26 Enforcement Division has forwarded to the division a copy of the court order suspending the
27 license, or has forwarded its certification that the licensee has failed to comply with a new or
28 modified order that stayed the suspension and provided for the payment of current support and

29 any arrearage due.

30 (b) The driver's license of any person having his or her license suspended shall be
31 reinstated if:

32 (1) The license was suspended under the provisions of subdivision (7), subsection (a) of
33 this section and the payment of costs, fines, forfeitures or penalties imposed by the applicable
34 court has been made;

35 (2) The license was suspended under the provisions of subdivision (8), subsection (a) of
36 this section and the person having his or her license suspended has appeared in court and has
37 prevailed against the motor vehicle violations charged; or

38 (3) The license was suspended under the provisions of subdivision (10), subsection (a) of
39 this section and the division has received a court order restoring the license or a certification by
40 the Child Support Enforcement Division that the licensee is complying with the original support
41 order or a new or modified order that provides for the payment of current support and any
42 arrearage due.

43 (c) Any reinstatement of a license under subdivision (1), (2) or (3), subsection (b) of this
44 section shall be subject to a reinstatement fee designated in section nine of this article.

45 (d) Upon suspending the driver's license of any person as hereinbefore in this section
46 authorized, the division shall immediately notify the licensee in writing, sent by certified mail,
47 return receipt requested, to the address given by the licensee in applying for a license, and upon
48 his or her request shall afford him or her an opportunity for a hearing as early as practical within,
49 but not to exceed, twenty days after receipt of such request in the county wherein the licensee
50 resides unless the division and the licensee agree that such hearing may be held in some other
51 county. Upon such hearing the commissioner or his or her duly authorized agent may administer
52 oaths and may issue subpoenas for the attendance of witnesses and the production of relevant
53 books and papers and may require a reexamination of the licensee. Upon such hearing the
54 division shall either rescind its order of suspension or, good cause appearing therefor, may extend

55 the suspension of such license or revoke such license. The provisions of this subsection providing
56 for notice and hearing are not applicable to a suspension under subdivision (10), subsection (a)
57 of this section.

58 (e) Notwithstanding the provisions of legislative rule 91 CSR 5, the division may, upon
59 completion of an approved defensive driving course, deduct three points from a licensee's point
60 accumulation provided the licensee has not reached fourteen points. If a licensee has been
61 notified of a pending thirty-day driver's license suspension based on the accumulation of twelve
62 or thirteen points, the licensee may submit proof of completion of an approved defensive driving
63 course to deduct three points and rescind the pending license suspension: *Provided*, That the
64 licensee submits proof of prior completion of the course and payment of the reinstatement fee in
65 accordance with section nine, article three of this chapter to the division prior to the effective date
66 of the suspension.

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NOTE: The purpose of this bill is to remove the required ninety-day waiting period for municipal court notifications to the Division of Motor Vehicles.

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