

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 316

FISCAL
NOTE

BY SENATOR JEFFRIES

[Introduced February 17, 2021; 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-3-3c of said code; and to amend and reenact §62-4-17 of said code, all
 3 relating to eliminating the ability of a person’s driver’s license to be suspended for failure
 4 to pay court fines and costs.

Be it enacted by the Legislature of West Virginia:

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 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, That~~
 14 ~~the failure of the judge to provide notice does not affect the validity of any suspension of the~~
 15 ~~person's license or privilege to operate a motor vehicle in this state. For purposes of this section,~~
 16 ~~payment shall be stayed during any period an appeal from the conviction which resulted in the~~

17 ~~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 90 days from the date of the person's failure~~
34 ~~to appear or otherwise respond before notifying the Division of Motor Vehicles thereof. Upon~~
35 ~~notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to~~
36 ~~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 this 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-3-3c. Suspending license for failure to pay fines or penalties 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 of this state or the privilege of a
 2 nonresident to drive a motor vehicle in this state upon receiving notice from a circuit court,
 3 magistrate court, or municipal court of this state, pursuant to ~~§50-3-2b~~, §8-10-2b, or §62-4-17 of

4 this code, that the person has ~~defaulted on the payment of costs, fines, forfeitures, penalties, or~~
5 ~~restitution imposed on the person by the circuit court, magistrate court, or municipal court upon~~
6 ~~conviction for any criminal offense by the date the court had required the person to pay the same,~~
7 ~~or that the person has failed to appear in court when charged with an a criminal offense.~~ For the
8 purposes of this section, ~~§50-3-2b, §8-10-2b, or §62-4-17~~ of this code, “criminal offense” shall be
9 defined as any violation of the provisions of this code, or the violation of any municipal ordinance,
10 for which the violation of the offense may result in a fine, confinement in jail, or imprisonment in a
11 correctional facility of this state: *Provided*, That any parking violation or other violation for which
12 a citation may be issued to an unattended vehicle shall not be considered a criminal offense for
13 the purposes of this section, ~~§8-10-2b, §50-3-2b, or §62-4-17~~ of this code.

14 (b) A copy of the order of suspension shall be forwarded to the person by certified mail,
15 return receipt requested. No order of suspension becomes effective until 10 days after receipt of
16 a copy of the order. The order of suspension shall advise the person that because of the receipt
17 of notice of the failure ~~to pay costs, fines, forfeitures, or penalties, or the failure~~ to appear, a
18 presumption exists that the person named in the order of suspension is the same person named
19 in the notice. The commissioner may grant an administrative hearing which substantially complies
20 with the requirements of the provisions §17C-5A-2 of this code upon a preliminary showing that
21 a possibility exists that the person named in the notice of conviction is not the same person whose
22 license is being suspended. The request for hearing shall be made within 10 days after receipt of
23 a copy of the order of suspension. The sole purpose of this hearing shall be for the person
24 requesting the hearing to present evidence that he or she is not the person named in the notice.
25 In the event the commissioner grants an administrative hearing, the commissioner shall stay the
26 license suspension pending the commissioner’s order resulting from the hearing.

27 (c) 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.

31 (d) Upon notice from an appropriate state official that the person is successfully
 32 participating in an approved treatment and job program as prescribed in §61-11-26a of this code
 33 and that the person is believed to be safe to drive, the Division of Motor Vehicles shall stay or
 34 supersede the imposition of any suspension under this section or §17B-3-3a of this code. The
 35 Division of Motor Vehicles shall waive the reinstatement fee established by the provisions §17B-
 36 3-9 upon receipt of proper documentation of the person's successful completion of a program
 37 under §61-11-26a of this code and proof of compliance from the municipal, magistrate, or circuit
 38 court. The stay or supersedeas shall be removed by the Division of Motor Vehicles upon receipt
 39 of notice from an appropriate state official of a participant's failure to complete or comply with the
 40 approved treatment and job program as established under §61-11-26a of this code.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 4. RECOVERY OF FINES IN CRIMINAL CASES.

§62-4-17. Suspension of licenses for failure to ~~pay fines and costs or failure to appear in~~ court.

1 (a) ~~If costs, fines, forfeitures, penalties or restitution imposed by the circuit court upon~~
 2 ~~conviction of a person for any criminal offense under this code are not paid in full when ordered~~
 3 ~~to do so by the court, the circuit clerk shall notify the Division of Motor Vehicles of such failure to~~
 4 ~~pay: *Provided,* That at the time the judgment is imposed, the court shall provide the person with~~
 5 ~~written notice that failure to pay the same when ordered to do so shall result in the suspension of~~
 6 ~~such person's license or privilege to operate a motor vehicle in this state and that such suspension~~
 7 ~~could result in the cancellation of, the failure to renew or the failure to issue an automobile~~
 8 ~~insurance policy providing coverage for such person or such person's family: *Provided, however,*~~
 9 ~~That the failure of the court to provide such notice shall not affect the validity of any suspension~~
 10 ~~of such person's license or privilege to operate a motor vehicle in this state. For purposes of this~~
 11 ~~section, such period of time within which the person is required to pay shall be stayed during any~~
 12 ~~period an appeal from the conviction which resulted in the imposition of such costs, fines,~~

13 ~~forfeitures or penalties is pending.~~

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

17 ~~(b) Notwithstanding the provisions of this section to the contrary, the notice of the failure~~
18 ~~to pay such costs, fines, forfeitures or penalties shall not be given where the circuit court, upon~~
19 ~~application of the person upon whom the same were imposed filed prior to the expiration of the~~
20 ~~period within which the same are required to be paid, enters an order finding that such person is~~
21 ~~financially unable to pay all or a portion of the same: *Provided*, That where the circuit court, upon~~
22 ~~finding that the person is financially unable to pay the full amount thereof, requires the person to~~
23 ~~pay the remaining portion thereof, the circuit clerk shall notify the Division of Motor Vehicles of~~
24 ~~such person's failure to pay the same if the same is not paid within the period of time ordered by~~
25 ~~such court~~

26 ~~(e) (a) If a person charged with a any criminal offense fails to appear or otherwise respond~~
27 ~~in court after having received notice to do so, the court shall notify the Division of Motor Vehicles~~
28 ~~thereof within 15 days of the scheduled date to appear unless such person sooner appears or~~
29 ~~otherwise responds in court to the satisfaction of the court. Upon such notice, the Division of Motor~~
30 ~~Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this~~
31 ~~state until such time that the person appears as required.~~

32 ~~(b) For the purposes of this section, if the licensee fails to respond to the Division of Motor~~
33 ~~Vehicles order of suspension within 90 days of receipt of the certified letter, the municipal court~~
34 ~~of original jurisdiction shall notify the Tax Commissioner that the licensee has failed to pay the~~
35 ~~costs, fines, forfeitures, or penalties assessed by the court or has failed to respond to the citation.~~
36 ~~The notice provided by the municipal court to the Tax Commissioner must include the licensee's~~
37 ~~Social Security number. The Tax Commissioner, or his or her designee, shall withhold from any~~
38 ~~personal income tax refund due and owing to a licensee the costs, fines, forfeitures or penalties~~
39 ~~due to the municipality, the Tax Commissioner's administration fee for the withholding and any~~

40 and all fees that the municipal court would have collected had the licensee appeared: *Provided,*
41 That the Tax Commissioner's administration fee may not exceed \$25: *Provided, however,* That
42 the Tax Commissioner may change this maximum amount limitation for this fee for fiscal years
43 beginning on or after July 1, 2022, by legislative rule promulgated in accordance with the
44 provisions of §29A-3-1 *et seq.* of this code: *Provided further,* That the administrative fees
45 deducted shall be deposited in the special revolving fund hereby created in the State Treasury,
46 which shall be designated as the Municipal Fines and Fees Collection Fund, and the Tax
47 Commissioner shall make such expenditures from the fund as he or she deems appropriate for
48 the administration of this subsection. After deduction of the Tax Commissioner's administration
49 fee, the Tax Commissioner shall remit to the municipality all remaining amounts withheld pursuant
50 to this section and the municipal court shall distribute applicable costs, fines, forfeitures or
51 penalties owed to the municipality, the Regional Jail Authority Fund, the Crime Victims
52 Compensation Fund, the Community Corrections Fund, the Governor's subcommittee on law-
53 enforcement training or any other fund or payee that may be applicable. After the costs, fines,
54 forfeitures or penalties are withheld, the Tax Commissioner shall refund any remaining balance
55 due the licensee. If the refund is not sufficient to cover all the costs, fines, forfeitures or penalties
56 being withheld pursuant to this section, the Tax Commissioner's administration fee shall be
57 retained by the Tax Commissioner and the remaining money withheld shall be remitted by the
58 Tax Commissioner to the municipality. The municipality shall then allocate the money so remitted
59 to the municipality in the following manner: (1) Any costs, fines, forfeitures or penalties due to the
60 municipality; (2) seventy-five percent of the remaining balance shall be paid to the appropriate
61 Regional Jail Authority Fund; (3) fifteen percent of the remaining balance shall be paid to the
62 Crime Victims Compensation Fund; (4) six percent of the remaining balance shall be paid into the
63 Community Corrections Fund; and (5) the final four percent shall be paid to the Governor's
64 subcommittee on law-enforcement training. When the costs, fines, forfeitures or penalties exceed
65 the licensee's income tax refund, the Tax Commissioner shall withhold the remaining balance in
66 subsequent years until such time as the costs, fines, forfeitures or penalties owed are paid in full.

67 The Tax Commissioner shall remit the moneys that he or she collects to the appropriate
68 municipality no later than July 1, of each year. If the municipal court or the municipality
69 subsequently determines that any such costs, fines, forfeitures or penalties were erroneously
70 imposed, the municipality shall promptly notify the Tax Commissioner. If the refunds have not
71 been withheld and remitted, the Tax Commissioner may not withhold and remit payment to the
72 municipality and shall so inform the municipality. If the refunds have already been withheld and
73 remitted to the municipality, the Tax Commissioner shall so inform the municipality. In either
74 event, all refunds for erroneously imposed costs, fines, forfeitures or penalties shall be made by
75 the municipality and not by the Tax Commissioner.

76 (c) Rules and effective date. – The Tax Commissioner may promulgate such rules as may
77 be useful or necessary to carry out the purpose of this section and to implement the intent of the
78 Legislature, to be effective on July 1, 2022. Rules shall be promulgated in accordance with the
79 provisions of §29A-3-1 et seq. of this code.

80 (d) On or before July 1, 2022, the municipal court may elect to reissue notice as provided
81 in this section to the Division of Motor Vehicles for persons who remain noncompliant: *Provided,*
82 That the person was convicted or failed to appear on or after January 1, 1993. If the original
83 notification cannot be located, the Division of Motor Vehicles shall accept an additional or
84 duplicate notice from the municipal court clerk.

NOTE: The purpose of this bill is to eliminate the ability of a person's driver's license to be suspended for the failure to pay court fines and costs.

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