

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4327

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[Introduced January 21, 2022; Referred to the
Committee on Technology and Infrastructure then the
Judiciary]

1 A BILL to amend and reenact §8-10-2b of the Code of West Virginia, 1931, as amended, relating
 2 to ensuring that if a person establishes a payment plan, but does not make at least one
 3 payment within 6 months from the date of setting up the payment plan, that person’s
 4 driver’s license will be suspended.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2b. Payment plan; failure to pay will result in late fee and judgment lien; 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 (e)(1) If after 90 days of a judgment a person fails to enroll in a payment plan and fails to
49 pay their costs, fines, forfeitures, restitution, or penalties, the clerk may assess a \$10 late fee and
50 shall notify the person of the following:

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

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

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

55 (D) That he or she may be the subject of a judgment lien or have his or her debt sent to a
56 collection agency if the overdue payment of costs, fines, forfeitures, restitution, or penalties is not
57 resolved within 30 days of the date of the notice issued pursuant to this subsection.

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

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

61 (B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt
62 collection agency contained on the State Tax Commissioner's list of eligible debt collection
63 agencies established and maintained pursuant to §14-1-18c of this code, an internal collection
64 division, or both: *Provided,* That the entire amount of all delinquent payments collected shall be
65 remitted to the court and may not be reduced by any collection costs or fees: *Provided, however,*
66 That the collection fee may not exceed 25 percent of the delinquent payment amount.

67 (f) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county
68 of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The
69 prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county
70 commission in the county where the defendant was convicted and in any county in which the

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

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

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

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

92 (h) If a person charged with a motor vehicle violation as defined in §17B-3-3a of this code
93 or criminal offense fails to appear or otherwise respond in court, the municipal court clerk shall
94 notify the Division of Motor Vehicles of the failure to appear: *Provided*, That notwithstanding any
95 other provision of this code to the contrary, for residents of this state, the municipal court clerk
96 shall wait at least 90 days from the date of the person's failure to appear or otherwise respond

97 before notifying the Division of Motor Vehicles thereof. Upon notice, the Division of Motor Vehicles
98 shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until
99 such time that the person appears as required.

100 (i) If, after 6 months from the date that the payment plan is set up, a person has not made
101 their first payment on the payment plan, then his or her driver's license shall be suspended, in
102 addition to the penalties set forth in subsection (d)(1) and (d)(2) of this section.

NOTE: The purpose of this bill is to ensure that persons setting up a payment plan make payments on that plan or else their license will be suspended.

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