

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2471

By Delegates Pinson, Steele, Hillenbrand, Butler,

Burkhammer and Fast

[Introduced January 11, 2023; 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 to
 2 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, or
 7 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, have
23 a judgment lien recorded against him or her, or have the debt sent to collections for nonpayment;

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

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

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

34 (A) Is not incarcerated;

35 (B) Has not brought the account current;

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

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

38 (2) If after 90 days, a payment has not been received, the clerk may do one or both of the
39 following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign
40 the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency
41 contained on the State Tax Commissioner's list of eligible debt collection agencies established and
42 maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided,*
43 That the entire amount of all delinquent payments collected shall be remitted to the court and may
44 not be reduced by any collection costs or fees: *Provided, however,* That the collection fee may not

45 exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically
46 or by U.S. mail, to remind the person of an upcoming or missed payment.

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

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

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

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

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

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

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

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

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

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

82 ~~(g) Any driver's license suspension entered by the Division of Motor Vehicles prior to July~~
83 ~~1, 2016, for the failure to appear or otherwise respond in court or for nonpayment of costs, fines,~~
84 ~~forfeitures, restitution, or penalties is null and void. A person whose driver's license was~~
85 ~~suspended on or after July 1, 2016, but prior to July 1, 2020, solely for the nonpayment of costs,~~
86 ~~fines, forfeitures, restitution, or penalties is null and void. A person whose driver's license was~~
87 ~~suspended on or after July 1, 2016, but prior to July 1, 2020, solely for the nonpayment of costs,~~
88 fines, forfeitures, restitution, or penalties, if otherwise eligible, shall have his or her license
89 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 shall
100 wait at least 90 days from the date of the person's failure to appear or otherwise respond before
101 notifying the Division of Motor Vehicles thereof. Upon notice, the Division of Motor Vehicles shall
102 suspend the person's driver's license or privilege to operate a motor vehicle in this state until such
103 time that the person appears as required.

104 (i) If, after 6 months from the date that the payment plan is set up, a person has not made
105 their first payment on the payment plan, then his or her driver's license shall be suspended, in
106 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 licenses 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.