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HOUSE BILL NO. 2101

House Amendments in [] — February 4, 2001

A BILL to amend and reenact §§ 19.2-258.1, 19.2-349, 19.2-354, 46.2-395 and 46.2-416 of the Code of Virginia, relating to court costs and fines.

Patron Prior to Engrossment—Delegate Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-258.1, 19.2-349, 19.2-354, 46.2-395 and 46.2-416 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-258.1. Trial of traffic infractions; measure of proof; failure to appear.

For any traffic infraction cases tried in a district court, the court shall hear and determine the case without the intervention of a jury. For any traffic infraction case appealed to a circuit court, the defendant shall have the right to trial by jury. The defendant shall be presumed innocent until proven guilty beyond a reasonable doubt.

When a person charged with a traffic infraction fails to enter a written or court appearance, he shall be deemed to have waived court hearing and the case may be heard in his absence, after which he shall be notified of the court's finding. He shall be advised that if he fails to comply [within ~~ten~~ fifteen days of the date of the notice] with any order of the court therein, the court may order suspension of his driver's license as provided in § 46.2-395 but the court shall not issue a warrant for his failure to appear pursuant to § 46.2-938.

§ 19.2-349. Responsibility for collections; clerks to report unsatisfied fines, etc.; duty of attorneys for Commonwealth; assistance by the office of the Attorney General.

A. The clerk of the circuit court and district court of every county and city shall submit to the judge of his court, the Department of Taxation, the State Compensation Board and the attorney for the Commonwealth of his county or city a monthly report of all fines, costs, forfeitures and penalties which are delinquent more than thirty days, including court-ordered restitution of a sum certain, imposed in his court for a violation of state law or a local ordinance which remain unsatisfied, including those which are delinquent in installment payments. The monthly report shall include the social security number or driver's license number of the defendant, if known, and such other information as the Department of Taxation and the Compensation Board deem appropriate. The Executive Secretary shall make the report required by this subsection on behalf of those clerks who participate in the Supreme Court's automated information system.

B. It shall be the duty of the attorney for the Commonwealth to cause proper proceedings to be instituted for the collection and satisfaction of all fines, costs, forfeitures, penalties and restitution. The attorney for the Commonwealth shall determine whether it would be impractical or uneconomical for such service to be rendered by the office of the attorney for the Commonwealth. If the defendant does not enter into an installment payment agreement under § 19.2-354, the attorney for the Commonwealth and the clerk may agree to a process by which collection activity may be commenced ~~ten~~ fifteen days after judgment.

If the attorney for the Commonwealth does not undertake collection, he shall contract with (i) private attorneys or private collection agencies, (ii) enter into an agreement with a local governing body, or (iii) use the services of the Department of Taxation, upon such terms and conditions as may be established by guidelines promulgated by the Office of the Attorney General, the Executive Secretary of the Supreme Court with the Department of Taxation and the Compensation Board. If the attorney for the Commonwealth undertakes collection, he shall follow the procedures established by the Department of Taxation and the Compensation Board. Such guidelines shall not supersede contracts between attorneys for the Commonwealth and private attorneys and collection agencies when active collection efforts are being undertaken.

The fees of any private attorneys or collection agencies shall be paid on a contingency fee basis out of the proceeds of the amounts collected. However, in no event shall such attorney or collection agency receive a fee for amounts collected by the Department of Taxation under the Setoff Debt Collection Act (§ 58.1-520 et seq.).

C. The Department of Taxation and the State Compensation Board shall be responsible for the collection of any judgment which remains unsatisfied or does not meet the conditions of § 19.2-354. Persons owing such unsatisfied judgments or failing to comply with installment payment agreements under § 19.2-354 shall be subject to the delinquent tax collection provisions of Title 58.1. The

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59 Department of Taxation and the State Compensation Board shall establish procedures to be followed by
60 clerks of courts, attorneys for the Commonwealth, other state agencies and any private attorneys or
61 collection agents and may employ private attorneys or collection agencies, or engage other state agencies
62 to collect the judgment. The Department of Taxation and the Commonwealth shall be entitled to deduct
63 a fee for services from amounts collected for violations of local ordinances.

64 The Department of Taxation and the State Compensation Board shall annually report to the Governor
65 and the General Assembly the total of fines, costs, forfeitures and penalties assessed, collected, and
66 unpaid and those which remain unsatisfied or do not meet the conditions of § 19.2-354 by each circuit
67 and district court. The report shall include the procedures established by the Department of Taxation and
68 the State Compensation Board pursuant to this section and a plan for increasing the collection of unpaid
69 fines, costs, forfeitures and penalties. The Auditor of Public Accounts shall annually report to the
70 Governor, the Executive Secretary of the Supreme Court and the General Assembly as to the adherence
71 of clerks of courts, attorneys for the Commonwealth and other state agencies to the procedures
72 established by the Department of Taxation and the State Compensation Board.

73 § 19.2-354. Authority of court to order payment of fine, costs, forfeitures, penalties or restitution in
74 installments or upon other terms and conditions; community work in lieu of payment.

75 A. Whenever (i) a defendant, convicted of a traffic infraction or a violation of any criminal law of
76 the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a
77 juvenile, is sentenced to pay a fine, restitution, forfeiture or penalty and (ii) the defendant is unable to
78 make payment of the fine, restitution, forfeiture, or penalty and costs within ~~ten~~ fifteen days of
79 sentencing, the court shall order the defendant to pay such fine, restitution, forfeiture or penalty and any
80 costs which the defendant may be required to pay in deferred payments or installments. The court may
81 authorize the clerk to establish and approve the conditions of all deferred or installment payment
82 agreements, pursuant to guidelines established by the court. As a condition of every such agreement, a
83 defendant who enters into an installment or deferred payment agreement shall promptly inform the court
84 of any change of mailing address during the term of the agreement. If the defendant is unable to make
85 payment within ~~ten~~ fifteen days of sentencing, the court may assess a one-time fee not to exceed ten
86 dollars to cover the costs of management of the defendant's account until such account is paid in full.
87 This one-time fee shall not apply to cases in which costs are assessed pursuant to §§ 17.1-275.1,
88 17.1-275.2, 17.1-275.3 or § 17.1-275.4. Installment or deferred payment agreements shall include terms
89 for payment if the defendant participates in a program as provided in subsection B or C. The court, if
90 such sum or sums are not paid in full by the date ordered, shall proceed in accordance with § 19.2-358.

91 B. When a person sentenced to the Department of Corrections or a local correctional facility owes
92 any fines, costs, forfeitures, restitution or penalties, he shall be required as a condition of participating in
93 any work release, home/electronic incarceration or nonconsecutive days program as set forth in
94 §§ 53.1-60, 53.1-131, 53.1-131.1 or § 53.1-131.2 to either make full payment or make payments in
95 accordance with his installment or deferred payment agreement while participating in such program. If,
96 after the person has an installment or deferred payment agreement, the person fails to pay as ordered,
97 his participation in the program may be terminated until all fines, costs, forfeitures, restitution and
98 penalties are satisfied. The Director of the Department of Corrections and any sheriff or other
99 administrative head of any local correctional facility shall withhold such ordered payments from any
100 amounts due to such person. Distribution of the money collected shall be made in the following order of
101 priority to:

102 1. Meet the obligation of any judicial or administrative order to provide support and such funds shall
103 be disbursed according to the terms of such order;

104 2. Pay any fines, restitution or costs as ordered by the court;

105 3. Pay travel and other such expenses made necessary by his work release employment or
106 participation in an education or rehabilitative program, including the sums specified in § 53.1-150; and

107 4. Defray the offender's keep.

108 The balance shall be credited to the offender's account or sent to his family in an amount the
109 offender so chooses.

110 The Board of Corrections shall promulgate regulations governing the receipt of wages paid to
111 persons participating in such programs, the withholding of payments and the disbursement of appropriate
112 funds.

113 C. The court shall establish a program to provide an option to any person upon whom a fine and
114 costs have been imposed to discharge all or part of the fine or costs by earning credits for the
115 performance of community service work before or after imprisonment. The program shall specify the
116 rate at which credits are earned and provide for the manner of applying earned credits against the fine
117 or costs. The court shall have such other authority as is reasonably necessary for or incidental to
118 carrying out this program.

119 D. When the court has authorized deferred payment or installment payments, the clerk shall give
120 notice to the defendant that upon his failure to pay as ordered he may be fined or imprisoned pursuant

121 to § 19.2-358 and his privilege to operate a motor vehicle will be suspended pursuant to § 46.2-395.

122 E. The failure of the defendant to enter into a deferred payment or installment payment agreement
123 with the court or the failure of the defendant to make payments as ordered by the agreement shall allow
124 the Tax Commissioner to act in accordance with § 19.2-349 to collect all fines, costs, forfeitures and
125 penalties.

126 § 46.2-395. Suspension of license for failure or refusal to pay fines or costs.

127 A. Any person, whether licensed by Virginia or not, who drives a motor vehicle on the highways in
128 the Commonwealth shall thereby, as a condition of such driving, consent to pay all lawful fines, court
129 costs, forfeitures, restitution, and penalties assessed against him for violations of the laws of the
130 Commonwealth; of any county, city, or town; or of the United States. For the purpose of this section,
131 such fines and costs shall be deemed to include any fee assessed by the court under the provisions of
132 § 18.2-271.1 for entry by a person convicted of a violation of § 18.2-51.4 or § 18.2-266 into an alcohol
133 safety action program.

134 B. In addition to any penalty provided by law, when any person is convicted of any violation of the
135 law of the Commonwealth or of the United States or of any valid local ordinance and fails or refuses to
136 provide for immediate payment in full of any fine, costs, forfeitures, restitution, or penalty lawfully
137 assessed against him, or fails to make deferred payments or installment payments as ordered by the
138 court, the court shall forthwith suspend the person's privilege to drive a motor vehicle on the highways
139 in the Commonwealth. The driver's license of the person shall continue suspended until the fine, costs,
140 forfeiture, restitution, or penalty has been paid in full. However, if the defendant, after having his license
141 suspended, pays the reinstatement fee to the Department of Motor Vehicles and enters into an agreement
142 under § 19.2-354 that is acceptable to the court to make deferred payments or installment payments of
143 unpaid fines, costs, forfeitures, restitution, or penalties as ordered by the court, the court shall restore the
144 defendant's driver's license. If the person has not obtained a license as provided in this chapter, or is a
145 nonresident, the court may direct in the judgment of conviction that the person shall not drive any motor
146 vehicle in Virginia for a period to coincide with the nonpayment of the amounts due.

147 C. Before transmitting to the Commissioner a record of the person's failure or refusal to pay all or
148 part of any fine, costs, forfeiture, restitution, or penalty or a failure to comply with an order issued
149 pursuant to § 19.2-354, the clerk of the court that convicted the person shall send or provide the person
150 written notice of the suspension of his license or privilege to drive a motor vehicle in Virginia, effective
151 ~~ten~~ fifteen days from the date of conviction, if the fine, costs, forfeiture, restitution, or penalty is not
152 paid prior to the effective date of the suspension as stated on the notice. Notice shall be provided to the
153 person at the time of trial or shall be mailed by first-class mail to the address certified on the summons
154 or bail recognizance document as the person's current mailing address, or to such mailing address as the
155 person has subsequently provided to the court as a change of address. If so mailed on the date of
156 conviction or within two business days thereof, or if delivered to the person at the time of trial, such
157 notice shall be adequate notice of the license suspension and of the person's ability to avoid suspension
158 by paying the fine, costs, forfeiture, restitution, or penalty prior to the effective date. No other notice
159 shall be required to make the suspension effective. A record of the person's failure or refusal and of the
160 license suspension shall be sent to the Commissioner if the fine, costs, forfeiture, restitution, or penalty
161 remains unpaid on the effective date of the suspension specified in the notice or on the failure to make a
162 scheduled payment.

163 C1. Whenever a person provides for payment of a fine, costs, forfeiture, restitution or penalty other
164 than by cash and such provision for payment fails, the clerk of the court that convicted the person shall
165 send to the person written notice of the failure and of the suspension of his license or privilege to drive
166 in Virginia. The license suspension shall be effective ten days from the date of the notice. The notice
167 shall be effective notice of the suspension and of the person's ability to avoid the suspension by paying
168 the full amount owed by cash, cashier's check or certified check prior to the effective date of the
169 suspension if the notice is mailed by first class mail to the address provided by the person to the court
170 pursuant to subsection C or § 19.2-354. Upon such a failure of payment and notice, the fine, costs,
171 forfeiture, restitution or penalty due shall be paid only in cash, cashier's check or certified check, unless
172 otherwise ordered by the court, for good cause shown.

173 D. If the person pays the amounts assessed against him subsequent to the time the suspended license
174 has been transmitted to the Department, and his license is not under suspension or revocation for any
175 other lawful reason, except pursuant to this section, then the Commissioner shall return the license to the
176 person on presentation of the official report of the court evidencing the payment of the fine, costs,
177 forfeiture, restitution, or penalty.

178 E. If the court has suspended or revoked the driver's license for any lawful reason other than this
179 section, or the conviction is one for which revocation or suspension is required under any provision of
180 this title, except for this section, then the suspension permitted under this section shall be in addition to,
181 and run consecutively with, the revocation or suspension. The period of suspension shall be calculated

182 from the date of the assessment of the fine, costs, forfeiture, restitution, or penalty until the date it has
183 been paid.

184 § 46.2-416. Notice of suspension or revocation of license.

185 Whenever it is provided in this title that a driver's license may or shall be suspended or revoked
186 either by the Commissioner or by a court, notice of the suspension or revocation or any certified copy
187 of the decision or order of the Commissioner may be sent by the Department by certified mail to the
188 driver at the most recent address of the driver on file at the Department. If the driver has previously
189 been notified by mail or in person of the suspension or revocation or of an impending suspension for
190 failure to pay fines and costs pursuant to § 46.2-395, whether notice is given by the court or
191 law-enforcement officials as provided by law, and the Department has been notified by the court that
192 notice was so given and the fines and costs were not paid within ~~ten~~ *fifteen* days, no notice of
193 suspension shall be sent by the Department to the driver. If the certificate of the Commissioner or
194 someone designated by him for that purpose shows that the notice or copy has been so sent or provided,
195 it shall be deemed prima facie evidence that the notice or copy has been sent and delivered or otherwise
196 provided to the driver for all purposes involving the application of the provisions of this title. In the
197 discretion of the Commissioner, service may be made as provided in § 8.01-296, which service on the
198 driver shall be made by delivery in writing to the driver in person in accordance with subdivision 1 of
199 § 8.01-296 by a sheriff or deputy sheriff in the county or city in which the address is located, who shall,
200 as directed by the Commissioner, take possession of any suspended or revoked license, registration card,
201 or set of license plates or decals and return them to the office of the Commissioner. No such service
202 shall be made if, prior to service, the driver has complied with the requirement which caused the
203 issuance of the decision or order. In any such case, return shall be made to the Commissioner.

204 In lieu of making a direct payment to sheriffs as a fee for delivery of the Department's processes, the
205 Commissioner shall effect a transfer of funds, on a monthly basis, to the Compensation Board to be
206 used to provide additional support to sheriffs' departments. The amount of funds so transferred shall be
207 as provided in the general appropriation act.