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SENATE BILL NO. 239

Offered January 11, 2006

Prefiled January 10, 2006

A *BILL to amend and reenact §§ 19.2-354 and 46.2-395 of the Code of Virginia, relating to payment of fine, costs, forfeitures, penalties or restitution.*

Patrons—Ticer and Cuccinelli; Delegate: Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

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

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

A. Whenever (i) a defendant, convicted of a traffic infraction or a violation of any criminal law of the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a juvenile, is sentenced to pay a fine, restitution, forfeiture or penalty and (ii) the defendant is unable to make payment of the fine, restitution, forfeiture, or penalty and costs within ~~fifteen~~60 days of sentencing, the court shall order the defendant to pay such fine, restitution, forfeiture or penalty and any costs which the defendant may be required to pay in deferred payments or installments *consistent with the defendant's ability to pay*. The court may authorize the clerk to establish and approve the conditions of all deferred or installment payment agreements, pursuant to guidelines established by the court. *However, upon the request of the defendant, the judge shall review the defendant's agreement to ensure that such agreement is consistent with the defendant's ability to pay.* As a condition of every such agreement, a defendant who enters into an installment or deferred payment agreement shall promptly inform the court of any change of mailing address during the term of the agreement. If the defendant is unable to make payment within ~~fifteen~~60 days of sentencing, the court may assess a one-time fee not to exceed ten dollars to cover the costs of management of the defendant's account until such account is paid in full. This one-time fee shall not apply to cases in which costs are assessed pursuant to §§ 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8 or § 17.1-275.9. Installment or deferred payment agreements shall include terms for payment if the defendant participates in a program as provided in subsection B or C. The court, if such sum or sums are not paid in full by the date ordered, shall proceed in accordance with § 19.2-358.

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

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

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

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

4. Defray the offender's keep.

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

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

C. The court shall establish a program to provide an option to any person upon whom a fine and costs have been imposed to discharge all or part of the fine or costs by earning credits for the performance of community service work before or after imprisonment. The program shall specify the rate at which credits are earned and provide for the manner of applying earned credits against the fine

INTRODUCED

SB239

59 or costs. *The court shall provide written notice of this program to any person against whom a fine or*
60 *costs have been imposed at the time of imposition.* The court shall have such other authority as is
61 reasonably necessary for or incidental to carrying out this program.

62 D. When the court has authorized deferred payment or installment payments, the clerk shall give
63 notice to the defendant that upon his failure to pay as ordered he may be fined or imprisoned pursuant
64 to § 19.2-358 and his privilege to operate a motor vehicle will be suspended pursuant to § 46.2-395.

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

69 § 46.2-395. Suspension of license for failure or refusal to pay fines or costs.

70 A. Any person, whether licensed by Virginia or not, who drives a motor vehicle on the highways in
71 the Commonwealth shall thereby, as a condition of such driving, consent to pay all lawful fines, court
72 costs, forfeitures, restitution, and penalties assessed against him for violations of the laws of the
73 Commonwealth; of any county, city, or town; or of the United States. For the purpose of this section,
74 such fines and costs shall be deemed to include any fee assessed by the court under the provisions of
75 § 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
76 safety action program.

77 B. In addition to any penalty provided by law, when any person is convicted of any violation of the
78 law of the Commonwealth or of the United States or of any valid local ordinance and fails or refuses to
79 provide for immediate payment in full *within 60 days* of any fine, costs, forfeitures, restitution, or
80 penalty lawfully assessed against him, or fails to make deferred payments or installment payments as
81 ordered by the court, the court shall forthwith suspend the person's privilege to drive a motor vehicle on
82 the highways in the Commonwealth. The driver's license of the person shall continue suspended until the
83 fine, costs, forfeiture, restitution, or penalty has been paid in full. However, if the defendant, after
84 having his license suspended, pays the reinstatement fee to the Department of Motor Vehicles and enters
85 into an agreement under § 19.2-354 that is acceptable to the court to make deferred payments or
86 installment payments of unpaid fines, costs, forfeitures, restitution, or penalties as ordered by the court,
87 the defendant's driver's license shall thereby be restored. If the person has not obtained a license as
88 provided in this chapter, or is a nonresident, the court may direct in the judgment of conviction that the
89 person shall not drive any motor vehicle in Virginia for a period to coincide with the nonpayment of the
90 amounts due.

91 C. Before transmitting to the Commissioner a record of the person's failure or refusal to pay all or
92 part of any fine, costs, forfeiture, restitution, or penalty or a failure to comply with an order issued
93 pursuant to § 19.2-354, the clerk of the court that convicted the person shall provide or cause to be sent
94 to the person written notice of the suspension of his license or privilege to drive a motor vehicle in
95 Virginia, effective ~~45~~60 days from the date of conviction, if the fine, costs, forfeiture, restitution, or
96 penalty is not paid prior to the effective date of the suspension as stated on the notice. Notice shall be
97 provided to the person at the time of trial or shall be mailed by first-class mail to the address certified
98 on the summons or bail recognizance document as the person's current mailing address, or to such
99 mailing address as the person has subsequently provided to the court as a change of address. If so
100 mailed on the date of conviction or within five business days thereof, or if delivered to the person at the
101 time of trial, such notice shall be adequate notice of the license suspension and of the person's ability to
102 avoid suspension by paying the fine, costs, forfeiture, restitution, or penalty prior to the effective date.
103 *Notice shall not be provided by mail at the person's address of record, but at the place of incarceration*
104 *when the person is being held in custody or incarcerated based on the conviction.* No other notice shall
105 be required to make the suspension effective. A record of the person's failure or refusal and of the
106 license suspension shall be sent to the Commissioner if the fine, costs, forfeiture, restitution, or penalty
107 remains unpaid on the effective date of the suspension specified in the notice or on the failure to make a
108 scheduled payment.

109 C1. Whenever a person provides for payment of a fine, costs, forfeiture, restitution or penalty other
110 than by cash and such provision for payment fails, the clerk of the court that convicted the person shall
111 cause to be sent to the person written notice of the failure and of the suspension of his license or
112 privilege to drive in Virginia. The license suspension shall be effective 10 days from the date of the
113 notice. The notice shall be effective notice of the suspension and of the person's ability to avoid the
114 suspension by paying the full amount owed by cash, cashier's check or certified check prior to the
115 effective date of the suspension if the notice is mailed by first class mail to the address provided by the
116 person to the court pursuant to subsection C or § 19.2-354. Upon such a failure of payment and notice,
117 the fine, costs, forfeiture, restitution or penalty due shall be paid only in cash, cashier's check or
118 certified check, unless otherwise ordered by the court, for good cause shown.

119 D. If the person pays the amounts assessed against him subsequent to the time the suspended license
120 has been transmitted to the Department, and his license is not under suspension or revocation for any

121 other lawful reason, except pursuant to this section, then the Commissioner shall return the license to the
122 person on presentation of the official report of the court evidencing the payment of the fine, costs,
123 forfeiture, restitution, or penalty.

124 E. If the court has suspended or revoked the driver's license for any lawful reason other than this
125 section, or the conviction is one for which revocation or suspension is required under any provision of
126 this title, except for this section, then the suspension permitted under this section shall be in addition to,
127 and run consecutively with, the revocation or suspension. The period of suspension shall be calculated
128 from the date of the assessment of the fine, costs, forfeiture, restitution, or penalty until the date it has
129 been paid.

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SB239