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HOUSE BILL NO. 1374

Offered January 9, 2008

Prefiled January 9, 2008

A *BILL to amend and reenact §§ 19.2-354 and 46.2-395 of the Code of Virginia, relating to suspension of license for failure or refusal to pay fines or costs; issuance of restricted permit.*

Patrons—Morrissey, Amundson, Barlow, Bouchard, Brink and Caputo

Referred to Committee on Transportation

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, *or a civil remedial fee payable to the court* and (ii) the defendant is unable to make payment of the fine, restitution, forfeiture, *fee*, or penalty and costs within fifteen days of sentencing, the court shall order the defendant to pay such fine, restitution, forfeiture, *fee*, or penalty and any costs which the defendant may be required to pay in deferred payments or installments. 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 *in accordance with its findings under this subsection*. 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 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~~*may* proceed in accordance with § 19.2-358.

If the court finds that the defendant may be unable to enter into an installment or deferred payment plan at the time of his conviction, or for other good cause shown, it may authorize the issuance of a restricted permit in accordance with the provisions of § 18.2-271.1. The court may require that the restricted permit be in force for the duration of the installment or deferred payment plan, if any is imposed, and may impose additional terms and conditions upon the defendant's privilege to operate a motor vehicle as are suitable to the case and to the defendant's ability to pay.

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

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59 funds.

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

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

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

73 § 46.2-395. Suspension of license for failure or refusal to pay fines or costs.

74 A. Any person, whether licensed by Virginia or not, who drives a motor vehicle on the highways in
75 the Commonwealth shall thereby, as a condition of such driving, consent to pay all lawful fines, court
76 costs, forfeitures, restitution, and penalties assessed against him for violations of the laws of the
77 Commonwealth; of any county, city, or town; or of the United States. For the purpose of this section,
78 such fines and costs shall be deemed to include any fee assessed by the court under the provisions of
79 § 46.2-206.1 or under the provisions of § 18.2-271.1 for entry by a person convicted of a violation of
80 § 18.2-51.4 or § 18.2-266 into an alcohol safety action program.

81 B. In addition to any penalty provided by law, when any person is convicted of any violation of the
82 law of the Commonwealth or of the United States or of any valid local ordinance and fails or refuses to
83 provide for immediate payment in full of any fine, costs, forfeitures, restitution, or penalty lawfully
84 assessed against him, or fails to make deferred payments or installment payments as ordered by the
85 court, the court shall forthwith suspend the person's privilege to drive a motor vehicle on the highways
86 in the Commonwealth. The driver's license of the person shall continue suspended until the fine, costs,
87 forfeiture, restitution, or penalty has been paid in full. ~~However, if~~

88 C. ~~If~~ the defendant, after having his license suspended, pays the reinstatement fee to the Department
89 of Motor Vehicles and enters into an agreement under § 19.2-354 that is acceptable to the court to make
90 deferred payments or installment payments of unpaid fines, costs, forfeitures, restitution, or penalties as
91 ordered by the court, the defendant's driver's license shall thereby be restored. ~~However, if the court~~
92 ~~finds, pursuant to the terms of subsection A of § 19.2-354, that the defendant is eligible therefor, it may~~
93 ~~issue a restricted permit subject to the conditions set forth in that subsection.~~

94 D. If the person has not obtained a license as provided in this chapter, or is a nonresident, the court
95 may direct in the judgment of conviction that the person shall not drive any motor vehicle in Virginia
96 for a period to coincide with the nonpayment of the amounts due.

97 ~~CE.~~ Before transmitting to the Commissioner a record of the person's failure or refusal to pay all or
98 part of any fine, costs, forfeiture, restitution, or penalty or a failure to comply with an order issued
99 pursuant to § 19.2-354, the clerk of the court that convicted the person shall provide or cause to be sent
100 to the person written notice of the suspension of his license or privilege to drive a motor vehicle in
101 Virginia, effective 15 days from the date of conviction, if the fine, costs, forfeiture, restitution, or
102 penalty is not paid prior to the effective date of the suspension as stated on the notice. Notice shall be
103 provided to the person at the time of trial or shall be mailed by first-class mail to the address certified
104 on the summons or bail recognizance document as the person's current mailing address, or to such
105 mailing address as the person has subsequently provided to the court as a change of address. If so
106 mailed on the date of conviction or within five business days thereof, or if delivered to the person at the
107 time of trial, such notice shall be adequate notice of the license suspension and of the person's ability to
108 avoid suspension by paying the fine, costs, forfeiture, restitution, or penalty prior to the effective date.
109 No other notice shall be required to make the suspension effective. A record of the person's failure or
110 refusal and of the license suspension shall be sent to the Commissioner if the fine, costs, forfeiture,
111 restitution, or penalty remains unpaid on the effective date of the suspension specified in the notice or
112 on the failure to make a scheduled payment.

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

121 the fine, costs, forfeiture, restitution or penalty due shall be paid only in cash, cashier's check or
122 certified check, unless otherwise ordered by the court, for good cause shown.

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

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