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SENATE BILL NO. 1421

Offered January 20, 2011

A *BILL to amend and reenact § 46.2-395 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 53.1 an article numbered 6.1, consisting of sections numbered 53.1-127.2 through 53.1-127.6, relating to collection of fees and costs owed to local correctional facilities.*

Patron—Quayle

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-395 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title 53.1 an article numbered 6.1, consisting of sections numbered 53.1-127.2 through 53.1-127.6, as follows:

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

A. Any person, whether licensed by Virginia or not, who drives a motor vehicle on the highways in the Commonwealth shall thereby, as a condition of such driving, consent to pay all lawful fines, court costs, forfeitures, restitution, and penalties assessed against him for violations of the laws of the Commonwealth; of any county, city, or town; or of the United States. For the purpose of this section, such fines and costs shall be deemed to include (i) any fee assessed by the court under the provisions of § 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 safety action program or (ii) any fees or costs imposed under § 53.1-131.3 or 53.1-133.01.

B. In addition to any penalty provided by law, when any person is convicted of any violation of the law of the Commonwealth or of the United States or of any valid local ordinance and fails or refuses to provide for immediate payment in full of any fine, costs, forfeitures, restitution, or penalty lawfully assessed against him, or fails to make deferred payments or installment payments as ordered by the court or imposed by the sheriff or jail superintendent, the court shall forthwith suspend the person's privilege to drive a motor vehicle on the highways in the Commonwealth. The driver's license of the person shall continue suspended until the fine, costs, forfeiture, restitution, or penalty has been paid in full. However, if the defendant, after having his license suspended, pays the reinstatement fee to the Department of Motor Vehicles and enters into an agreement under (i) § 19.2-354 that is acceptable to the court or (ii) § 53.1-127.4, to make deferred payments or installment payments of unpaid fines, costs, forfeitures, restitution, or penalties as ordered by the court or imposed by the sheriff or jail superintendent, the defendant's driver's license shall thereby be restored. If the person has not obtained a license as provided in this chapter, or is a nonresident, the court may direct in the judgment of conviction that the person shall not drive any motor vehicle in Virginia for a period to coincide with the nonpayment of the amounts due.

C. Before transmitting to the Commissioner a record of the person's failure or refusal to pay all or part of any fine, costs, forfeiture, restitution, or penalty or a failure to comply with an order issued pursuant to § 19.2-354, the clerk of the court that convicted the person or the sheriff or jail superintendent shall provide or cause to be sent to the person written notice of the suspension of his license or privilege to drive a motor vehicle in Virginia, effective 15 days from the date of conviction, if the fine, costs, forfeiture, restitution, or penalty is not paid prior to the effective date of the suspension as stated on the notice. Notice shall be provided to the person at the time of trial, or release from a local correctional facility, or shall be mailed by first-class mail to the address certified on the summons or bail recognizance document or provided to the sheriff or jail superintendent as the person's current mailing address, or to such mailing address as the person has subsequently provided to the court or to the sheriff or jail superintendent as a change of address. If so mailed on the date of conviction or within five business days thereof, or if delivered to the person at the time of trial, or delivered to the prisoner upon release from a local correctional facility or upon entering into a deferred or installment payment agreement under § 53.1-127.4, such notice shall be adequate notice of the license suspension and of the person's ability to avoid suspension by paying the fine, costs, forfeiture, restitution, or penalty prior to the effective date. No other notice shall be required to make the suspension effective. A record of the person's failure or refusal and of the license suspension shall be sent to the Commissioner by the clerk or by the sheriff or jail superintendent if the fine, costs, forfeiture, restitution, or penalty remains unpaid on the effective date of the suspension specified in the notice or on the failure to make a scheduled payment.

C1. Whenever a person provides for payment of a fine, costs, forfeiture, restitution or penalty other

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than by cash and such provision for payment fails, the clerk of the court that convicted the person *or the sheriff or jail superintendent to whom such payment is owed* shall cause to be sent to the person written notice of the failure and of the suspension of his license or privilege to drive in Virginia. The license suspension shall be effective 10 days from the date of the notice. The notice shall be effective notice of the suspension and of the person's ability to avoid the suspension by paying the full amount owed by cash, cashier's check or certified check prior to the effective date of the suspension if the notice is mailed by ~~first class~~ *first-class* mail to the address provided by the person to the court pursuant to subsection C or § 19.2-354 *or to the sheriff or jail superintendent pursuant to § 53.1-127.4*. Upon such a failure of payment and notice, the fine, costs, forfeiture, restitution or penalty due shall be paid only in cash, cashier's check or certified check, unless otherwise ordered by the court, for good cause shown.

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

E. Any person otherwise eligible for a restricted license may petition each court that suspended his license pursuant to this section for authorization for a restricted license. A court may, upon written verification of employment and for good cause shown, authorize the Department of Motor Vehicles to issue a restricted license to operate a motor vehicle for any of the purposes set forth in subsection E of § 18.2-271.1. No restricted license may be issued unless each court which suspended the person's license pursuant to this section provides authorization for a restricted license. Such restricted license shall not be issued for more than a six-month period. No restricted license issued pursuant to this subsection shall permit a person to operate a commercial motor vehicle as defined in the Commercial Driver's License Act (§ 46.2-341.1 et seq.).

The court shall forward to the Commissioner a copy of its authorization entered pursuant to this section, which shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a license is issued as is reasonably necessary to identify the person. The court shall also provide a copy of its authorization to the person, who may not operate a motor vehicle until receipt from the Commissioner of a restricted license. A copy of the restricted license issued by the Commissioner shall be carried at all times while operating a motor vehicle. Any person who operates a motor vehicle in violation of any restrictions imposed pursuant to this section shall be punished as provided in subsection C of § 46.2-301.

Article 6.1.

Collection of Fees and Costs.

§ 53.1-127.2. *Accounting of fees and costs owed by prisoner.*

Upon discharge from a local correctional facility, each prisoner shall be provided with a printed accounting of all unpaid fees and costs imposed under § 53.1-131.3 or 53.1-133.01 incurred by the prisoner as of the date of his release. The accounting shall include notice to the prisoner of his right to dispute the accounting within 60 days following the date of the prisoner's release by filing a pleading for relief in the general district court of the county or city in which the local correctional facility is located. An accounting shall be presumed correct if the prisoner does not file a pleading for relief within the 60-day period. Payment of fees and costs shall be made and accepted in a manner consistent with the provisions of § 19.2-353.3.

§ 53.1-127.3. *Interest on fees and costs.*

No interest shall accrue on unpaid fees or costs imposed under § 53.1-131.3 or 53.1-133.01 for a period of 60 days from the date of a prisoner's release from a local correctional facility. In no event shall interest accrue on unpaid fees or costs during any period in which such fees or costs are being paid in deferred or installment payments pursuant to an agreement with the sheriff or jail superintendent under the provisions of § 53.1-127.4. Whenever interest on unpaid fees or costs accrues, it shall accrue at the judgment rate of interest set forth in § 6.2-302.

§ 53.1-127.4. *Deferred or installment payment agreement for unpaid fees and costs; suspension of privilege to operate a motor vehicle.*

The sheriff or jail superintendent may establish deferred or installment payment agreements, pursuant to guidelines established by the Board. As a condition of every such agreement, a prisoner who enters into a deferred or installment payment agreement shall promptly inform the sheriff or jail superintendent of any change of mailing address during the term of the agreement. The sheriff or jail superintendent shall give notice to the prisoner that upon his failure or refusal to pay in accordance with a deferred or installment payment agreement that his privilege to operate a motor vehicle shall be suspended pursuant to § 46.2-395.

§ 53.1-127.5. *Suspension of privilege to operate motor vehicle for failure to pay fees and costs.*

When any prisoner fails or refuses to provide for immediate payment in full of fees or costs imposed

under § 53.1-131.3 or 53.1-133.01 or fails to make payments under a deferred or installment payment agreement, the sheriff or jail superintendent shall provide notice of such default to the Commissioner of Motor Vehicles who shall forthwith suspend the prisoner's privilege to operate a motor vehicle on the highways of the Commonwealth. The driver's license of the prisoner shall continue to be suspended until the prisoner's account has been paid in full.

Prior to transmitting to the Commissioner a record of the prisoner's failure or refusal to pay all or part of the prisoner's account, the sheriff or jail superintendent, or private attorney or private collection agency under a contract with the sheriff or jail superintendent, shall provide or cause to be sent to the prisoner written notice of the suspension of his privilege to operate a motor vehicle in Virginia as required under § 46.2-395.

The provisions of this section shall apply to all unpaid fees and costs imposed under § 53.1-131.3 or 53.1-133.01 prior to July 1, 2011, provided the sheriff or jail administrator or other entity under a contract pursuant to § 53.1-127.6 provides 60 days notice by first-class mail to the prisoner at his address on the records of the Department of Motor Vehicles that his license shall be suspended if he fails or refuses to provide for immediate payment in full of all such unpaid fees and costs or enters into an installment agreement pursuant to § 53.1-127.4.

§ 53.1-127.6. Collection of fees and costs owed by prisoner; contract for collection; duties of Department of Taxation.

The sheriff or jail superintendent may (i) contract with private attorneys or private collection agencies, (ii) enter into an agreement with a local governing body, (iii) enter into an agreement with the county or city treasurer, or (iv) use the services of the Department of Taxation, upon such terms and conditions as may be established by guidelines promulgated by the Board. Such guidelines shall not supersede contracts between the sheriff or jail superintendent and private attorneys and collection agencies when active collection efforts are being undertaken. As part of such contract, private attorneys or collection agencies shall be given access to the social security number of the prisoner in order to assist in the collection effort. Any such private attorney or collection agency shall be subject to the penalties and provisions of § 18.2-186.3.

The fees of any private attorney or collection agency 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.). A local treasurer undertaking collection pursuant to an agreement with the sheriff or jail superintendent may collect the administrative fee authorized by § 58.1-3958.