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HOUSE BILL NO. 2488

Offered January 9, 2019

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A BILL to amend and reenact §§ 19.2-354, 19.2-354.1, 46.2-301, 46.2-395, 46.2-416, and 46.2-1200.1 of the Code of Virginia, relating to suspension of license for failure or refusal to pay fines.

Patrons—Lopez; Senator: Surovell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-354, 19.2-354.1, 46.2-301, 46.2-395, 46.2-416, and 46.2-1200.1 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 30 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. The court assessing the fine, restitution, forfeiture, or penalty and costs may authorize the clerk to establish and approve individual deferred or installment payment agreements. If the defendant owes court-ordered restitution and enters into a deferred or installment payment agreement, any money collected pursuant to such agreement shall be used first to satisfy such restitution order and any collection costs associated with restitution prior to being used to satisfy any other fine, forfeiture, penalty, or cost owed. Any payment agreement authorized under this section shall be consistent with the provisions of § 19.2-354.1, including any required minimum payments or other required conditions. The requirements set forth in § 19.2-354.1 shall be posted in the clerk's office and on the court's website, if a website is available. 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 90 days of sentencing, the court may assess a one-time fee not to exceed \$10 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 restitution as ordered by the court;

3. Pay any fines or costs as ordered by the court;

4. 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

5. 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.

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

62 C. The court shall establish a program and may provide an option to any person upon whom a fine
63 and costs have been imposed to discharge all or part of the fine or costs by earning credits for the
64 performance of community service work before or after imprisonment. The program shall specify the
65 rate at which credits are earned and provide for the manner of applying earned credits against the fine
66 or costs. The court assessing the fine or costs against a person shall inform such person of the
67 availability of earning credit toward discharge of the fine or costs through the performance of
68 community service work under this program and provide such person with written notice of terms and
69 conditions of this program. The court shall have such other authority as is reasonably necessary for or
70 incidental to carrying out this program.

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

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

78 **§ 19.2-354.1. Deferred or installment payment agreements.**

79 A. For purposes of this section:

80 "Deferred payment agreement" means an agreement in which no installment payments are required
81 and the defendant agrees to pay the full amount of the fines and costs at the end of the agreement's
82 stated term.

83 "Fines and costs" means all fines, court costs, forfeitures, and penalties assessed in any case by a
84 single court against a defendant for the commission of any crime or traffic infraction. "Fines and costs"
85 includes restitution unless the court orders a separate payment schedule for restitution.

86 "Installment payment agreement" means an agreement in which the defendant agrees to make
87 monthly or other periodic payments until the fines and costs are paid in full.

88 "Modified deferred payment agreement" means a deferred payment agreement in which the defendant
89 also agrees to use best efforts to make monthly or other periodic payments.

90 B. The court shall give a defendant ordered to pay fines and costs written notice of the availability
91 of deferred, modified deferred, and installment payment agreements and, if a community service
92 program has been established, the availability of earning credit toward discharge of fines and costs
93 through the performance of community service work. The court shall offer any defendant who is unable
94 to pay in full the fines and costs within 30 days of sentencing the opportunity to enter into a deferred
95 payment agreement, modified deferred payment agreement, or installment payment agreement.

96 C. The court shall not deny a defendant the opportunity to enter into a deferred, modified deferred,
97 or installment payment agreement solely (i) because of the category of offense for which the defendant
98 was convicted or found not innocent, (ii) because of the total amount of all fines and costs, (iii) because
99 the defendant previously defaulted under the terms of a payment agreement, (iv) because the fines and
100 costs have been referred for collections pursuant to § 19.2-349, (v) because the defendant has not
101 established a payment history, or (vi) because the defendant is eligible for a restricted driver's license
102 under subsection E D of § 46.2-395.

103 D. In determining the length of time to pay under a deferred, modified deferred, or installment
104 payment agreement and the amount of the payments, a court shall take into account the defendant's
105 financial resources and obligations, including any fines and costs owed by the defendant in other courts.
106 In assessing the defendant's ability to pay, the court shall use a written financial statement, on a form
107 developed by the Executive Secretary of the Supreme Court, setting forth the defendant's financial
108 resources and obligations or conduct an oral examination of the defendant to determine his financial
109 resources and obligations. The court may require the defendant to present a summary prepared by the
110 Department of Motor Vehicles of the other courts in which the defendant also owes fines and costs. The
111 length of a payment agreement and the amount of the payments shall be reasonable in light of the
112 defendant's financial resources and obligations and shall not be based solely on the amount of fines and
113 costs. The court may offer a payment agreement combining an initial period during which no payment
114 of fines and costs is required followed by a period of installment payments.

115 E. A court may require a down payment as a condition of a defendant entering a deferred, modified
116 deferred, or installment payment agreement. Any down payment shall be a minimal amount to
117 demonstrate the defendant's commitment to paying the fines and costs. In the case of an installment
118 payment agreement, the required down payment may not exceed (i) if the fines and costs owed are \$500
119 or less, 10 percent of such amount or (ii) if the fines and costs owed are more than \$500, five percent
120 of such amount or \$50, whichever is greater. A defendant may make a larger down payment than what

is provided by this subsection.

F. All fines and costs that a defendant owes for all cases in any single court may be incorporated into one payment agreement, unless otherwise ordered by the court in specific cases. A payment agreement shall include only those outstanding fines and costs for which the limitations period set forth in § 19.2-341 has not run.

G. Any payment received within 10 days of its due date shall be considered to be timely made.

H. At any time during the duration of a payment agreement, the defendant may request a modification of the agreement in writing on a form provided by the Executive Secretary of the Supreme Court, and the court may grant such modification based on a good faith showing of need.

I. A court shall consider a request by a defendant who has defaulted on a payment agreement to enter into a subsequent payment agreement. In determining whether to approve the request for a subsequent payment agreement, the court shall consider any change in the defendant's circumstances. A court shall require a down payment to enter into a subsequent payment agreement, provided that the down payment required to enter into a subsequent payment agreement shall not exceed (i) if the fines and costs owed are \$500 or less, 10 percent of such amount or (ii) if the fines and costs owed are more than \$500, five percent of such amount or \$50, whichever is greater. When a defendant enters into a subsequent payment agreement, a court shall not require a defendant to establish a payment history on the subsequent payment agreement before restoring the defendant's driver's license.

§ 46.2-301. Driving while license, permit, or privilege to drive suspended or revoked.

A. In addition to any other penalty provided by this section, any motor vehicle administratively impounded or immobilized under the provisions of § 46.2-301.1 may, in the discretion of the court, be impounded or immobilized for an additional period of up to 90 days upon conviction of an offender for driving while his driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked for (i) a violation of § 18.2-36.1, 18.2-51.4, 18.2-266, 18.2-272, or 46.2-341.24 or a substantially similar ordinance or law in any other jurisdiction or (ii) driving after adjudication as an habitual offender, where such adjudication was based in whole or in part on an alcohol-related offense, or where such person's license has been administratively suspended under the provisions of § 46.2-391.2. However, if, at the time of the violation, the offender was driving a motor vehicle owned by another person, the court shall have no jurisdiction over such motor vehicle but may order the impoundment or immobilization of a motor vehicle owned solely by the offender at the time of arrest. All costs of impoundment or immobilization, including removal or storage expenses, shall be paid by the offender prior to the release of his motor vehicle.

B. Except as provided in §§ 46.2-304 and 46.2-357, no resident or nonresident (i) whose driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked or (ii) who has been directed not to drive by any court or by the Commissioner, or (iii) who has been forbidden, as prescribed by operation of any statute of the Commonwealth or a substantially similar ordinance of any county, city or town, to operate a motor vehicle in the Commonwealth shall thereafter drive any motor vehicle or any self-propelled machinery or equipment on any highway in the Commonwealth until the period of such suspension or revocation has terminated or the privilege has been reinstated or a restricted license is issued pursuant to subsection E. A clerk's notice of suspension of license for failure to pay fines or costs ~~given in accordance with~~ *pursuant to a court order as provided in* § 46.2-395 shall be sufficient notice for the purpose of maintaining a conviction under this section. For the purposes of this section, the phrase "motor vehicle or any self-propelled machinery or equipment" shall not include mopeds.

C. A violation of subsection B is a Class 1 misdemeanor. A third or subsequent offense occurring within a 10-year period shall include a mandatory minimum term of confinement in jail of 10 days. However, the court shall not be required to impose a mandatory minimum term of confinement in any case where a motor vehicle is operated in violation of this section in a situation of apparent extreme emergency which requires such operation to save life or limb.

D. Upon a violation of subsection B, the court shall suspend the person's license or privilege to drive a motor vehicle for the same period for which it had been previously suspended or revoked. In the event the person violated subsection B by driving during a period of suspension or revocation which was not for a definite period of time, the court shall suspend the person's license, permit or privilege to drive for an additional period not to exceed 90 days, to commence upon the expiration of the previous suspension or revocation or to commence immediately if the previous suspension or revocation has expired; however, in the event that the person violated subsection B by driving during a period of suspension imposed pursuant to § 46.2-395, the additional 90-day suspension imposed pursuant to this subsection shall run concurrently with the suspension imposed pursuant to § 46.2-395 in accordance with subsection E of § 46.2-395.

E. Any person who is otherwise eligible for a restricted license may petition each court that suspended his license pursuant to subsection D for authorization for a restricted license, provided that

the period of time for which the license was suspended by the court pursuant to subsection D, if measured from the date of conviction, has expired, even though the suspension itself has not expired. A court may, for good cause shown, authorize the Department of Motor Vehicles to issue a restricted license for any of the purposes set forth in subsection E of § 18.2-271.1. No restricted license shall be issued unless each court that issued a suspension of the person's license pursuant to subsection D authorizes the Department to issue a restricted license. Any restricted license issued pursuant to this subsection shall be in effect until the expiration of any and all suspensions issued pursuant to subsection D, except that it shall automatically terminate upon the expiration, cancellation, suspension, or revocation of the person's license or privilege to drive for any other cause. 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 subsection, 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.

F. Any person who operates a motor vehicle or any self-propelled machinery or equipment in violation of the terms of a restricted license issued pursuant to subsection E of § 18.2-271.1 is not guilty of a violation of this section but is guilty of a violation of § 18.2-272.

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

B. In addition to any penalty provided by law and subject to the limitations on collection under §§ 19.2-340 and 19.2-341, 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 *within 90 days of such fine, costs, forfeitures, restitution, or penalty being lawfully assessed against him*, or fails to make deferred payments or installment payments as ordered by the court, 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 ~~§ 19.2-354~~ that is acceptable to the court to make deferred payments or installment payments of unpaid fines, costs, forfeitures, restitution, or penalties as ordered by the court, the defendant's driver's license shall thereby be restored *may, upon its own motion, require such person to show cause why his driver's license shall not be suspended. Upon a finding that the defendant's default was not due to an intentional refusal of the defendant to obey the sentence of the court, nor attributable to a failure on the defendant's part to make a good faith effort to obtain the necessary funds for payment, the court shall not suspend the defendant's driver's license but may enter an order authorizing a payment agreement pursuant to § 19.2-354. Upon a finding that the defendant intentionally refused to obey the sentence of the court or failed to make a good faith effort to obtain the necessary funds for payment, the court may suspend the defendant's driver's license until such time as the defendant pays in full or enters into a payment agreement pursuant to § 19.2-354.* 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 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 30 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 shall be mailed by first-class mail to the address certified on the summons or bail recognizance document as the person's current mailing address, or to such mailing address as the person has subsequently provided to the court 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, 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 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 than by cash and such provision for payment fails, the clerk of the court that convicted the person 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 mail to the address provided by the person to the court pursuant to subsection C or § 19.2-354. 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. D. 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.

F. E. Notwithstanding any other provision of law imposing a license suspension, revocation, or forfeiture against a person whose license is suspended pursuant to this section, the period of suspension imposed under this section shall run concurrently with any other license suspension, revocation, or forfeiture imposed.

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

A. Whenever it is provided in this title that a driver's license may or shall be suspended or revoked either by the Commissioner or by a court, notice of the suspension or revocation or any certified copy of the decision or order of the Commissioner may be sent by the Department by certified mail to the driver at the most recent address of the driver on file at the Department. If the driver has previously been notified by mail or in person of the suspension or revocation or of an impending suspension for failure to pay fines and costs pursuant to § 46.2-395, whether notice is given by the court or law-enforcement officials as provided by law, and the Department has been notified by the court that notice was so given and the fines and costs were not paid within 30 days, no notice of suspension shall be sent by the Department to the driver. If the certificate of the Commissioner or someone designated by him for that purpose shows that the notice or copy has been so sent or provided, it shall be deemed prima facie evidence that the notice or copy has been sent and delivered or otherwise provided to the driver for all purposes involving the application of the provisions of this title. In the discretion of the Commissioner, service may be made as provided in § 8.01-296, which service on the driver shall be made by delivery in writing to the driver in person in accordance with subdivision 1 of § 8.01-296 by a sheriff or deputy sheriff in the county or city in which the address is located, who shall, as directed by the Commissioner, take possession of any suspended or revoked license, registration card, or set of license plates or decals and return them to the office of the Commissioner. No such service shall be made if, prior to service, the driver has complied with the requirement which caused the issuance of the decision or order. In any such case, return shall be made to the Commissioner.

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

309 C. The Department may contract with the United States Postal Service or an authorized agent to use
310 the National Change of Address System for the purpose of obtaining current address information for a
311 person whose name appears in customer records maintained by the Department. If the Department
312 receives information from the National Change of Address System indicating that a person whose name
313 appears in a Department record has submitted a permanent change of address to the Postal Service, the
314 Department may then update its records with the mailing address obtained from the National Change of
315 Address System.

316 **§ 46.2-1200.1. Abandoning motor vehicles prohibited; penalty.**

317 No person shall cause any motor vehicle to become an abandoned motor vehicle as defined in
318 § 46.2-1200. In any prosecution for a violation of this section, proof that the defendant was, at the time
319 that the vehicle was found abandoned, the owner of the vehicle shall constitute in evidence a rebuttable
320 presumption that the owner was the person who committed the violation. Such presumption, however,
321 shall not arise if the owner of the vehicle provided notice to the Department, as provided in § 46.2-604,
322 that he had sold or otherwise transferred the ownership of the vehicle.

323 A summons for a violation of this section shall be executed by mailing a copy of the summons by
324 first-class mail to the address of the owner of the vehicle as shown on the records of the Department of
325 Motor Vehicles. If the person fails to appear on the date of return set out in the summons, a new
326 summons shall be issued and delivered to the sheriff of the county, city, or town for service on the
327 accused personally. If the person so served then fails to appear on the date of return set out in the
328 summons, proceedings for contempt shall be instituted.

329 Any person convicted of a violation of this section shall be subject to a civil penalty of no more than
330 \$500. ~~If any person fails to pay any such penalty, his privilege to drive a motor vehicle on the highways~~
331 ~~of the Commonwealth shall be suspended as provided in § 46.2-395.~~

332 All penalties collected under this section shall be paid into the state treasury to be credited to the
333 Literary Fund as provided in § 46.2-114.