

# VIRGINIA ACTS OF ASSEMBLY -- 1998 RECONVENED SESSION

## CHAPTER 831

*An Act to amend and reenact §§ 19.2-354 and 46.2-395 of the Code of Virginia, relating to failure to pay fines and costs; license suspension.*

[H 530]

Approved April 22, 1998

**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 ten 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 may authorize the clerk to establish and approve the conditions of all deferred or installment payment agreements, pursuant to guidelines established by the court. *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 ten 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. 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 or costs. The court shall have such other authority as is reasonably necessary for or incidental to carrying out this program.

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

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

penalties.

§ 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, 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, 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. If the person has not obtained a license as required by 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 send or provide the person written notice of the suspension of his license or privilege to drive a motor vehicle in Virginia, effective ten days from the date of conviction, if the fine ~~and~~ costs ~~are~~, *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 two *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 ~~and~~ 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 send 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 ten 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 by 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 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. If the court has suspended or revoked the driver's license for any lawful reason other than this section, or the conviction is one for which revocation or suspension is required under any provision of this title, except for this section, then the suspension permitted under this section shall be in addition to, and run consecutively with, the revocation or suspension. The period of suspension shall be calculated from the date of the assessment of the fine, costs, forfeiture, restitution, or penalty until the date it has been paid.