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SENATE BILL NO. 603

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on March 2, 2012)

(Patron Prior to Substitute—Senator McWaters)

A *BILL to amend and reenact §§ 46.2-320 and 63.2-1941 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 46.2-320.1 and 46.2-320.2 and by adding in Article 6 of Chapter 3 of Title 53.1 sections numbered 53.1-127.3, 53.1-127.4, and 53.1-127.5, relating to fees owed by prisoners; suspension of driver's license.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-320 and 63.2-1941 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 46.2-320.1 and 46.2-320.2 and by adding in Article 6 of Chapter 3 of Title 53.1 sections numbered 53.1-127.3, 53.1-127.4, and 53.1-127.5 as follows:

§ 46.2-320. Other grounds for refusal or suspension.

A. The Department may refuse to grant an application for a driver's license in any of the circumstances set forth in § 46.2-608 as circumstances justifying the refusal of an application for the registration of a motor vehicle. The Department may refuse to issue or reissue a driver's license for the willful failure or refusal to pay any taxes or fees required to be collected or authorized to be collected by the Department.

B. The Commissioner may enter into an agreement with the Department of Social Services whereby the Department may suspend or refuse to renew the driver's license of any person upon receipt of notice from the Department of Social Services that the person (i) is delinquent in the payment of child support by 90 days or more or in an amount of \$5,000 or more or (ii) has failed to comply with a subpoena, summons or warrant relating to paternity or child support proceedings. A suspension or refusal to renew authorized pursuant to this section shall not be effective until 30 days after service on the delinquent obligor of notice of intent to suspend or refuse to renew. The notice of intent shall be served on the obligor by the Department of Social Services (a) by certified mail, return receipt requested, sent to the obligor's last known addresses as shown in the records of the Department or the Department of Social Services or (b) pursuant to § 8.01-296, or (c) service may be waived by the obligor in accordance with procedures established by the Department of Social Services. The obligor shall be entitled to a judicial hearing if a request for a hearing is made, in writing, to the Department of Social Services within 10 days from service of the notice of intent. Upon receipt of the request for a hearing, the Department of Social Services shall petition the court that entered or is enforcing the order, requesting a hearing on the proposed suspension or refusal to renew. The court shall authorize the suspension or refusal to renew only if it finds that the obligor's noncompliance with the child support order was willful. Upon a showing by the Department of Social Services that the obligor is delinquent in the payment of child support by 90 days or more or in an amount of \$5,000 or more, the burden of proving that the delinquency was not willful shall rest upon the obligor. The Department shall not suspend or refuse to renew the driver's license until a final determination is made by the court.

C. At any time after service of a notice of intent, the person may petition the juvenile and domestic relations district court in the jurisdiction where he resides for the issuance of a restricted license to be used if the suspension or refusal to renew becomes effective. Upon such petition and a finding of good cause, the court may provide that such person be issued a restricted permit to operate a motor vehicle for any of the purposes set forth in subsection E of § 18.2-271.1. A restricted license issued pursuant to this subsection shall not permit any person to operate a commercial motor vehicle as defined in § 46.2-341.4. The court shall order the surrender of the person's license to operate a motor vehicle, to be disposed of in accordance with the provisions of § 46.2-398, and shall forward to the Commissioner a copy of its order entered pursuant to this subsection. The order shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify him.

D. The Department shall not renew a driver's license or terminate a license suspension imposed pursuant to this section until it has received from the Department of Social Services a certification that the person has (i) paid the delinquency in full; (ii) reached an agreement with the Department of Social Services to satisfy the delinquency within a period not to exceed 10 years and at least one payment, representing at least five percent of the total delinquency or \$600, whichever is greater, has been made pursuant to the agreement; (iii) complied with a subpoena, summons or warrant relating to a paternity or child support proceeding; or (iv) completed or is successfully participating in an intensive case monitoring program for child support ordered by a juvenile and domestic relations district court for

60 noncustodial parents, as determined by the court. Certification by the Department of Social Services
61 shall be made by electronic or telephonic communication and shall be made on the same work day that
62 payment required by clause (i) or (ii) is made.

63 E. If a person who has entered into an agreement with the Department of Social Services pursuant to
64 clause (ii) of subsection D fails to comply with the requirements of the agreement, the Department of
65 Social Services shall notify the Department of the person's noncompliance and the Department shall
66 suspend or refuse to renew the driver's license of the person until it has received from the Department
67 of Social Services a certification that the person has paid the delinquency in full or has entered into a
68 subsequent agreement with the Department of Social Services to satisfy the delinquency within a period
69 not to exceed 7 years and has made at least one payment of \$1,200 or five percent of the total
70 delinquency, whichever is greater, pursuant to the agreement. If the person fails to comply with the
71 terms of a subsequent agreement reached with the Department of Social Services pursuant to this
72 section, without further notice to the person as provided in the subsequent agreement, the Department of
73 Social Services shall notify the Department of the person's noncompliance and the Department shall
74 suspend or refuse to renew the driver's license of the person. A person who has failed to comply with
75 the terms of a second or subsequent agreement pursuant to this subsection may be granted a new
76 agreement with the Department of Social Services if the person has made at least one payment of
77 \$1,800 or five percent of the total delinquency, whichever is greater, and agrees to a repayment schedule
78 of not more than 7 years. Upon receipt of certification from the Department of Social Services of the
79 person's satisfaction of these conditions, the Department shall issue a driver's license to the person or
80 reinstate the person's driver's license. Certification by the Department of Social Services shall be made
81 by electronic or telephonic communication and shall be made on the same work day that payment
82 required by this subsection is made.

83 § 46.2-320.1. Other grounds for suspension; nonpayment of child support.

84 A. The Commissioner may enter into an agreement with the Department of Social Services whereby
85 the Department may suspend or refuse to renew the driver's license of any person upon receipt of notice
86 from the Department of Social Services that the person (i) is delinquent in the payment of child support
87 by 90 days or more or in an amount of \$5,000 or more or (ii) has failed to comply with a subpoena,
88 summons, or warrant relating to paternity or child support proceedings. A suspension or refusal to
89 renew authorized pursuant to this section shall not be effective until 30 days after service on the
90 delinquent obligor of notice of intent to suspend or refusal to renew. The notice of intent shall be served
91 on the obligor by the Department of Social Services (a) by certified mail, return receipt requested, sent
92 to the obligor's last known addresses as shown in the records of the Department or the Department of
93 Social Services or (b) pursuant to § 8.01-296, or service may be waived by the obligor in accordance
94 with procedures established by the Department of Social Services. The obligor shall be entitled to a
95 judicial hearing if a request for a hearing is made, in writing, to the Department of Social Services
96 within 10 days from service of the notice of intent. Upon receipt of the request for a hearing, the
97 Department of Social Services shall petition the court that entered or is enforcing the order, requesting
98 a hearing on the proposed suspension or refusal to renew. The court shall authorize the suspension or
99 refusal to renew only if it finds that the obligor's noncompliance with the child support order was
100 willful. Upon a showing by the Department of Social Services that the obligor is delinquent in the
101 payment of child support by 90 days or more or in an amount of \$5,000 or more, the burden of proving
102 that the delinquency was not willful shall rest upon the obligor. The Department shall not suspend or
103 refuse to renew the driver's license until a final determination is made by the court.

104 B. At any time after service of a notice of intent, the person may petition the juvenile and domestic
105 relations district court in the jurisdiction where he resides for the issuance of a restricted license to be
106 used if the suspension or refusal to renew becomes effective. Upon such petition and a finding of good
107 cause, the court may provide that such person be issued a restricted permit to operate a motor vehicle
108 for any of the purposes set forth in subsection E of § 18.2-271.1. A restricted license issued pursuant to
109 this subsection shall not permit any person to operate a commercial motor vehicle as defined in
110 § 46.2-341.4. The court shall order the surrender of the person's license to operate a motor vehicle, to
111 be disposed of in accordance with the provisions of § 46.2-398, and shall forward to the Commissioner
112 a copy of its order entered pursuant to this subsection. The order shall specifically enumerate the
113 restrictions imposed and contain such information regarding the person to whom such a permit is issued
114 as is reasonably necessary to identify him.

115 C. The Department shall not renew a driver's license or terminate a license suspension imposed
116 pursuant to this section until it has received from the Department of Social Services a certification that
117 the person has (i) paid the delinquency in full; (ii) reached an agreement with the Department of Social
118 Services to satisfy the delinquency within a period not to exceed 10 years, and at least one payment
119 representing at least five percent of the total delinquency or \$600, whichever is greater, has been made
120 pursuant to the agreement; (iii) complied with a subpoena, summons, or warrant relating to a paternity
121 or child support proceeding; or (iv) completed or is successfully participating in an intensive case

monitoring program for child support ordered by a juvenile and domestic relations district court for noncustodial parents, as determined by the court. Certification by the Department of Social Services shall be made by electronic or telephonic communication and shall be made on the same work day that payment required by clause (i) or (ii) is made.

D. If a person who has entered into an agreement with the Department of Social Services pursuant to clause (ii) of subsection C fails to comply with the requirements of the agreement, the Department of Social Services shall notify the Department of the person's noncompliance and the Department shall suspend or refuse to renew the driver's license of the person until it has received from the Department of Social Services a certification that the person has paid the delinquency in full or has entered into a subsequent agreement with the Department of Social Services to satisfy the delinquency within a period not to exceed seven years and has made at least one payment of \$1,200 or five percent of the total delinquency, whichever is greater, pursuant to the agreement. If the person fails to comply with the terms of a subsequent agreement reached with the Department of Social Services pursuant to this section, without further notice to the person as provided in the subsequent agreement, the Department of Social Services shall notify the Department of the person's noncompliance, and the Department shall suspend or refuse to renew the driver's license of the person. A person who has failed to comply with the terms of a second or subsequent agreement pursuant to this subsection may be granted a new agreement with the Department of Social Services if the person has made at least one payment of \$1,800 or five percent of the total delinquency, whichever is greater, and agrees to a repayment schedule of not more than seven years. Upon receipt of certification from the Department of Social Services of the person's satisfaction of these conditions, the Department shall issue a driver's license to the person or reinstate the person's driver's license. Certification by the Department of Social Services shall be made by electronic or telephonic communication and shall be made on the same work day that payment required by this subsection is made.

§ 46.2-320.2. Other grounds for suspension; nonpayment of fees owed to local correctional facilities or regional jails.

A. The Commissioner may enter into an agreement with a local correctional facility or regional jail providing for suspension of a person's driver's license by the Department upon receipt of written notice from the local correctional facility or regional jail that (i) the person is delinquent in payment of fees imposed under § 53.1-131.3 and (ii) a judgment for such fees has been issued by a court of competent jurisdiction. If the Department suspends a person's driver's license pursuant to such agreement, it shall give notice of suspension to such person by first-class mail.

B. Any person whose license is suspended pursuant to subsection A may petition the district court of the jurisdiction where he resides or wherein the jail or correctional facility is located for the issuance of a restricted driver's license for a period not to exceed one year for any of the purposes set forth in subsection E of § 18.2-271.1. The district court may, for good cause shown, issue such a restricted permit.

C. The Department shall rescind any license suspension imposed pursuant to this section upon receipt of notice from the local correctional facility or regional jail that the person has (i) paid the delinquency in full or (ii) reached an agreement with the local correctional facility or regional jail to satisfy the delinquency. Such notice shall be given by the local correctional facility or regional jail promptly upon the occurrence of payment of the delinquency in full or upon such further agreement.

§ 53.1-127.3. Deferred or installment payment agreement for unpaid fees; suspension of privilege to operate a motor vehicle.

The sheriff or jail superintendent may enter into a written deferred or installment payment plan with the prisoner pursuant to guidelines established by the State Board of Corrections for fees owed pursuant to § 53.1-131.3. Every such plan shall include a provision that requires the prisoner to promptly inform the sheriff or jail superintendent of any change of his mailing address until the plan is fulfilled. If the sheriff or jail superintendent has reached an agreement with the Commissioner pursuant to § 46.2-320.2, the plan shall include a provision stating that noncompliance shall result in suspension of the prisoner's privilege to operate a motor vehicle in accordance with the provisions of § 53.1-127.4.

§ 53.1-127.4. Suspension of privilege to operate motor vehicle for failure to pay fees.

No suspension of driving privileges shall be issued by the Department of Motor Vehicles for failure or refusal to provide for immediate payment in full of fees imposed under § 53.1-131.3 or for failure to make payments under a deferred or installment payment agreement unless the sheriff or jail superintendent has (i) entered into an agreement with the Department of Motor Vehicles pursuant to § 46.2-320.2, (ii) has obtained a judgment issued by a court of competent jurisdiction, and (iii) has provided to the Commissioner of Motor Vehicles notice of such judgment and the prisoner's most current mailing address.

The provisions of this section shall apply to all unpaid fees imposed under § 53.1-131.3 provided the sheriff or jail administrator or other entity under a contract pursuant to § 53.1-127.5 informs the

183 prisoner and receives signed certification of understanding at the time the deferred or installment
184 payment agreement is entered into that upon failure or refusal to pay in accordance with the payment
185 agreement the prisoner's privilege to operate a motor vehicle shall be suspended pursuant to the
186 provisions of § 46.2-320.2.

187 § 53.1-127.5. Collection of fees owed by prisoner; contract for collection; duties of Department of
188 Taxation.

189 The sheriff or jail superintendent may (i) contract with private attorneys or private collection
190 agencies, (ii) enter into an agreement with a local governing body, or (iii) enter into an agreement with
191 the county or city treasurer, upon such terms and conditions as may be established by guidelines
192 promulgated by the Board. As part of such contract, private attorneys or collection agencies shall be
193 given access to the social security number of the prisoner in order to assist in the collection effort. Any
194 such private attorney or collection agency shall be subject to the penalties and provisions of
195 § 18.2-186.3.

196 The fees of any private attorney or collection agency shall be paid on a contingency fee basis out of
197 the proceeds of the amounts collected. However, in no event shall such attorney or collection agency
198 receive a fee for amounts collected by the Department of Taxation under the Setoff Debt Collection Act
199 (§ 58.1-520 et seq.). A local treasurer undertaking collection pursuant to an agreement with the sheriff
200 or jail superintendent may collect the administrative fee authorized by § 58.1-3958.

201 § 63.2-1941. Additional enforcement remedies.

202 In addition to its other enforcement remedies, the Division of Child Support Enforcement is
203 authorized to:

204 1. Attach unemployment benefits through the Virginia Employment Commission pursuant to
205 § 60.2-608 and workers' compensation benefits through the Workers' Compensation Commission
206 pursuant to § 65.2-531; and

207 2. Suspend an individual's driver's license pursuant to § ~~46.2-320~~ 46.2-320.1.