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HOUSE BILL NO. 572

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 3, 2016)

(Patron Prior to Substitute—Delegate Albo)

A BILL to amend and reenact §§ 19.2-353.5, 19.2-354, and 46.2-395 of the Code of Virginia, relating to fines and costs; interest; statutes of limitation on collection; minimum payments.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-353.5, 19.2-354, and 46.2-395 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-353.5. Interest on fines and costs.

No interest shall accrue on any fine or costs imposed in a criminal case or in a case involving a traffic infraction for a period of ~~forty~~ 40 days from the date of the final judgment imposing such fine or costs or during any period the defendant is incarcerated as a result of that case. A person who owes fines and costs on which interest has accrued during a period of incarceration may move any court in which he owes fines and costs to waive the interest that accrued on such fines and costs during such period of incarceration. Upon certification of the superintendent, warden, or other official in charge of a correctional facility on a form developed by the Office of the Executive Secretary of the Supreme Court, such interest shall be waived. In no event shall interest accrue in such cases during any period in which a fine, costs, or both a fine and costs are being paid in deferred or installment payments pursuant to an order of the court. Whenever interest on any unpaid fine or costs accrues, it shall accrue at the judgment rate of interest set forth in § 6.2-302.

§ 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 the conditions of all individual deferred or installment payment agreements, pursuant to guidelines established by the court, and such guidelines shall be reduced to writing as well as. Any payment agreement authorized under this section shall be consistent with the Rules of Supreme Court of Virginia, including any required minimum payments or other required conditions. The requirements established by the Rules of Supreme Court of Virginia 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 30 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;

60 2. Pay any fines, restitution or costs as ordered by the court;

61 3. Pay travel and other such expenses made necessary by his work release employment or
62 participation in an education or rehabilitative program, including the sums specified in § 53.1-150; and

63 4. Defray the offender's keep.

64 The balance shall be credited to the offender's account or sent to his family in an amount the
65 offender so chooses.

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

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

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

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

82 **§ 46.2-395. Suspension of license for failure or refusal to pay fines or costs.**

83 A. Any person, whether licensed by Virginia or not, who drives a motor vehicle on the highways in
84 the Commonwealth shall thereby, as a condition of such driving, consent to pay all lawful fines, court
85 costs, forfeitures, restitution, and penalties assessed against him for violations of the laws of the
86 Commonwealth; of any county, city, or town; or of the United States. For the purpose of this section,
87 such fines and costs shall be deemed to include any fee assessed by the court under the provisions of
88 § 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
89 safety action program.

90 B. In addition to any penalty provided by law *and subject to the limitations on collection under*
91 *§§ 19.2-340 and 19.2-341*, when any person is convicted of any violation of the law of the
92 Commonwealth or of the United States or of any valid local ordinance and fails or refuses to provide
93 for immediate payment in full of any fine, costs, forfeitures, restitution, or penalty lawfully assessed
94 against him, or fails to make deferred payments or installment payments as ordered by the court, the
95 court shall forthwith suspend the person's privilege to drive a motor vehicle on the highways in the
96 Commonwealth. The driver's license of the person shall continue suspended until the fine, costs,
97 forfeiture, restitution, or penalty has been paid in full. However, if the defendant, after having his license
98 suspended, pays the reinstatement fee to the Department of Motor Vehicles and enters into an agreement
99 under § 19.2-354 that is acceptable to the court to make deferred payments or installment payments of
100 unpaid fines, costs, forfeitures, restitution, or penalties as ordered by the court, the defendant's driver's
101 license shall thereby be restored. If the person has not obtained a license as provided in this chapter, or
102 is a nonresident, the court may direct in the judgment of conviction that the person shall not drive any
103 motor vehicle in Virginia for a period to coincide with the nonpayment of the amounts due.

104 C. Before transmitting to the Commissioner a record of the person's failure or refusal to pay all or
105 part of any fine, costs, forfeiture, restitution, or penalty or a failure to comply with an order issued
106 pursuant to § 19.2-354, the clerk of the court that convicted the person shall provide or cause to be sent
107 to the person written notice of the suspension of his license or privilege to drive a motor vehicle in
108 Virginia, effective 30 days from the date of conviction, if the fine, costs, forfeiture, restitution, or
109 penalty is not paid prior to the effective date of the suspension as stated on the notice. Notice shall be
110 provided to the person at the time of trial or shall be mailed by first-class mail to the address certified
111 on the summons or bail recognizance document as the person's current mailing address, or to such
112 mailing address as the person has subsequently provided to the court as a change of address. If so
113 mailed on the date of conviction or within five business days thereof, or if delivered to the person at the
114 time of trial, such notice shall be adequate notice of the license suspension and of the person's ability to
115 avoid suspension by paying the fine, costs, forfeiture, restitution, or penalty prior to the effective date.
116 No other notice shall be required to make the suspension effective. A record of the person's failure or
117 refusal and of the license suspension shall be sent to the Commissioner if the fine, costs, forfeiture,
118 restitution, or penalty remains unpaid on the effective date of the suspension specified in the notice or
119 on the failure to make a scheduled payment.

120 C1. Whenever a person provides for payment of a fine, costs, forfeiture, restitution or penalty other
121 than by cash and such provision for payment fails, the clerk of the court that convicted the person shall

122 cause to be sent to the person written notice of the failure and of the suspension of his license or
123 privilege to drive in Virginia. The license suspension shall be effective 10 days from the date of the
124 notice. The notice shall be effective notice of the suspension and of the person's ability to avoid the
125 suspension by paying the full amount owed by cash, cashier's check or certified check prior to the
126 effective date of the suspension if the notice is mailed by first class mail to the address provided by the
127 person to the court pursuant to subsection C or § 19.2-354. Upon such a failure of payment and notice,
128 the fine, costs, forfeiture, restitution or penalty due shall be paid only in cash, cashier's check or
129 certified check, unless otherwise ordered by the court, for good cause shown.

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

135 E. Any person otherwise eligible for a restricted license may petition each court that suspended his
136 license pursuant to this section for authorization for a restricted license. A court may, upon written
137 verification of employment and for good cause shown, authorize the Department of Motor Vehicles to
138 issue a restricted license to operate a motor vehicle for any of the purposes set forth in subsection E of
139 § 18.2-271.1. No restricted license may be issued unless each court which suspended the person's license
140 pursuant to this section provides authorization for a restricted license. Such restricted license shall not be
141 issued for more than a six-month period. No restricted license issued pursuant to this subsection shall
142 permit a person to operate a commercial motor vehicle as defined in the Commercial Driver's License
143 Act (§ 46.2-341.1 et seq.).

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