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HOUSE BILL NO. 2048

Offered January 11, 2017

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A *BILL to amend and reenact §§ 46.2-320.1, 46.2-395, and 63.2-1937 of the Code of Virginia, relating to nonpayment of child support and fines; suspension of license; ability to pay; written findings.*

Patrons—LaRock, Boysko, Fariss, Krizek, Lindsey and Lingamfelter

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-320.1, 46.2-395, and 63.2-1937 of the Code of Virginia are amended and reenacted as follows:

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

A. 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. *The notice of intent shall inform the obligor (a) that he is delinquent in the payment of child support by 90 days or more or in an amount of \$5,000 or more or has failed to comply with a subpoena, summons, or warrant relating to paternity or child support proceedings; (b) that the Department intends to suspend or refuse to renew the obligor's driver's license; (c) that the obligor has the right to attend a hearing scheduled as to whether such delinquency or failure was willful; (d) of the date, time, and location of such hearing; and (e) that at the hearing the court will make a finding as to whether the obligor has the ability to pay.* A suspension or refusal to renew authorized pursuant to this section shall not be effective until after such hearing is held and in no case sooner than 30 days after service on the delinquent obligor of notice of intent to suspend or refusal to renew. The notice of intent shall be served on the obligor by the Department of Social Services ~~(a)~~ (1) by certified mail, return receipt requested, or by electronic means, sent to the obligor's last known addresses as shown in the records of the Department or the Department of Social Services or ~~(b)~~ (2) pursuant to § 8.01-296, or 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, and 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. *The court shall not authorize the suspension or refusal to renew if it finds that the obligor's noncompliance with the child support order was due to his inability to pay.* 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 *written* determination is made by the court.

B. 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.

C. 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

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59 pursuant to the agreement; (iii) complied with a subpoena, summons, or warrant relating to a paternity
60 or child support proceeding; or (iv) completed or is successfully participating in an intensive case
61 monitoring program for child support as ordered by a juvenile and domestic relations district court or as
62 administered by the Department of Social Services. Certification by the Department of Social Services
63 shall be made by electronic or telephonic communication and shall be made on the same work day that
64 payment required by clause (i) or (ii) is made.

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

85 **§ 46.2-395. Suspension of license for failure or refusal to pay fines or costs.**

86 A. Any person, whether licensed by Virginia or not, who drives a motor vehicle on the highways in
87 the Commonwealth shall thereby, as a ~~condition of such driving~~, consent to pay all lawful fines, court
88 costs, forfeitures, restitution, and penalties assessed against him for violations of the laws of the
89 Commonwealth; of any county, city, or town; or of the United States. For the purpose of this section,
90 such fines and costs shall be deemed to include any fee assessed by the court under the provisions of
91 § 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
92 safety action program.

93 B. In addition to any penalty provided by law and subject to the limitations on collection under
94 §§ 19.2-340 and 19.2-341, when any person is convicted of any violation of the law of the
95 Commonwealth or of the United States or of any valid local ordinance and fails or refuses to provide
96 for immediate payment in full of any fine, costs, forfeitures, restitution, or penalty lawfully assessed
97 against him, or fails to make deferred payments or installment payments as ordered by the court, the
98 court ~~shall~~ *may* forthwith suspend the person's privilege to drive a motor vehicle on the highways in the
99 Commonwealth. *Prior to such suspension, the court shall serve on such person a notice of intent. The*
100 *notice of intent shall inform such person (i) that payment is overdue; (ii) that the court intends to*
101 *suspend his driver's license; (iii) that he has the right to attend a hearing scheduled to determine*
102 *whether such failure or refusal to pay was willful; (iv) of the date, time, and location of such hearing;*
103 *and (v) that at the hearing the court will make a finding as to whether he has the ability to pay. The*
104 *court may enter an order (a) allowing such person additional time for payment; (b) reducing the total*
105 *amount due; (c) reducing the amount due under each installment payment; or (d) to remit the unpaid*
106 *portion in whole or in part. The court shall order suspension only if it finds that such person's failure*
107 *or refusal to pay was willful and shall not authorize such suspension if it finds that such person's failure*
108 *or refusal to pay was due to his inability to pay. If such person does not appear at the hearing, a*
109 *finding of willfulness and such person's ability to pay may be made without such person present, but no*
110 *further penalties beyond license suspension shall result based on such person's failure to appear or*
111 *failure to pay.*

112 ~~The~~ Any order suspending a license shall contain written findings as to why such license is ordered
113 to be suspended. If the driver's license of the person is ordered to be suspended, the court shall transmit
114 such order to the Department of Motor Vehicles, along with a record of the person's failure or refusal
115 to pay all or part of any fine, costs, forfeiture, restitution, or penalty, and the driver's license of the
116 person shall continue suspended until the fine, costs, forfeiture, restitution, or penalty has been paid in
117 full. However, if the defendant, after having his license suspended, pays the reinstatement fee to the
118 Department of Motor Vehicles and enters into an agreement under § 19.2-354 that is acceptable to the
119 court to make deferred payments or installment payments of unpaid fines, costs, forfeitures, restitution,
120 or penalties as ordered by the court, 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 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 order suspending 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. 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.

§ 63.2-1937. Applications for occupational or other license to include social security or control number; suspension upon delinquency; procedure.

Every initial application for or application for renewal of a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth pursuant to Titles 22.1, 38.2, 46.2 or 54.1 or any other provision of law shall require that the applicant provide his social security number or a control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.

Upon 30 days' notice to an obligor who (i) has failed to comply with a subpoena, summons or warrant relating to paternity or child support proceedings or (ii) is alleged to be delinquent in the payment of child support by a period of 90 days or more or for \$5,000 or more, an obligee or the

182 Department on behalf of an obligee, may petition either the court that entered or the court that is
183 enforcing the order for child support for an order suspending any license, certificate, registration or other
184 authorization to engage in a business, trade, profession or occupation, or recreational activity issued to
185 the obligor by the Commonwealth pursuant to Titles 22.1, 29.1, 38.2, 46.2 or 54.1 or any other
186 provision of law. The notice shall be sent in accordance with the provisions of § 8.01-296, 8.01-327, or
187 8.01-329, by certified mail, with proof of actual receipt, or by electronic means. The notice shall specify
188 that (a) the obligor has 30 days from the date of receipt to comply with the subpoena, summons or
189 warrant or pay the delinquency or to reach an agreement with the obligee or the Department to pay the
190 delinquency and (b) if compliance is not forthcoming or payment is not made or an agreement cannot
191 be reached within that time, a petition will be filed seeking suspension of any license, certificate,
192 registration or other authorization to engage in a business, trade, profession or occupation, or recreational
193 license issued by the Commonwealth to the obligor.

194 The court shall not suspend a license, certificate, registration or authorization upon finding that an
195 alternate remedy is available to the obligee or the Department that is likely to result in collection of the
196 delinquency. Further, the court may refuse to order the suspension upon finding that (1) suspension
197 would result in irreparable harm to the obligor or employees of the obligor or would not result in
198 collection of the delinquency, *including a finding that the obligor's delinquency is due to his inability to*
199 *pay*, or (2) the obligor has made a demonstrated, good faith effort to reach an agreement with the
200 obligee or the Department.

201 If the court finds that the obligor is delinquent in the payment of child support by 90 days or more
202 or in an amount of \$5,000 or more and holds a license, certificate, registration or other authority to
203 engage in a business, trade, profession or occupation or recreational activity issued by the
204 Commonwealth, it shall order suspension *only if it finds that the obligor is able to pay. Such finding*
205 *shall be in writing.* The order shall require the obligor to surrender any license, certificate, registration
206 or other such authorization to the issuing entity within 90 days of the date on which the order is
207 entered. If at any time after entry of the order the obligor (A) pays the delinquency or (B) reaches an
208 agreement with the obligee or the Department to satisfy the delinquency within a period not to exceed
209 10 years and makes at least one payment, representing at least five percent of the total delinquency or
210 \$500, whichever is greater, pursuant to the agreement, or (C) complies with the subpoena, summons or
211 warrant or reaches an agreement with the Department with respect to the subpoena, summons or
212 warrant, upon proof of payment or certification of the compliance or agreement, the court shall order
213 reinstatement. Payment shall be proved by certified copy of the payment record issued by the
214 Department or notarized statement of payment signed by the obligee. No fee shall be charged to a
215 person who obtains reinstatement of a license, certificate, registration or authorization pursuant to this
216 section.