

SENATE PROPOSAL OF AMENDMENT

H. 875

An act relating to the elimination of a defendant's right to a trial by jury in traffic appeals and fines for driving with license suspended

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

Sec. 1. 4 V.S.A. § 1109 is amended to read:

§ 1109. REMEDIES FOR FAILURE TO PAY

(a) As used in this section:

(1) "Amount due" means all financial assessments contained in a ~~judicial bureau~~ Judicial Bureau judgment, including penalties, fines, surcharges, court costs, and any other assessment authorized by law.

(2) "Designated collection agency" means a collection agency designated by the ~~court administrator~~ Court Administrator.

(3) "~~Designated credit bureau~~" means a credit bureau designated by the ~~court administrator or the court administrator's designee~~. [Repealed.]

(b) A ~~judicial bureau~~ Judicial Bureau judgment shall provide notice that a \$30.00 fee shall be assessed for failure to pay within 30 days. If the defendant fails to pay the amount due within 30 days, the fee shall be added to the judgment amount and deposited in the ~~court technology special fund~~ Court Technology Special Fund established pursuant to section 27 of this title.

(c) Civil contempt proceedings. If an amount due remains unpaid for 75 days after the ~~judicial bureau~~ Judicial Bureau provides the defendant with a notice of judgment, the ~~judicial bureau~~ Judicial Bureau may initiate civil contempt proceedings pursuant to this subsection.

(1) Notice of hearing. The ~~judicial bureau~~ Judicial Bureau shall provide notice by first class mail sent to the defendant's last known address that a contempt hearing will be held pursuant to this subsection, and that failure to appear at the contempt hearing may result in the sanctions listed in subdivision (2) of this subsection.

(2) Failure to appear. If the defendant fails to appear at the contempt hearing, the hearing officer may direct the clerk of the ~~judicial bureau~~ Judicial Bureau to do one or more of the following:

(A) cause the matter to be reported to one or more designated ~~credit bureaus~~ collection agencies; ~~or~~

(B) refer the matter to ~~criminal division of the superior court~~ the Criminal Division of the Superior Court for contempt proceedings; ~~or~~

(C) provide electronic notice thereof to the Commissioner of Motor Vehicles who shall suspend the person's operator's license or privilege to operate. However, the person shall become eligible for reinstatement if the amount due is paid or otherwise satisfied.

(3) Hearing. The hearing shall be conducted in a summary manner. The hearing officer shall examine the defendant and any other witnesses and may require the defendant to produce documents relevant to the defendant's ability to pay the amount due. The ~~state~~ State or municipality shall not be a party except with the permission of the hearing officer. The defendant may be represented by counsel at the defendant's own expense.

(4) Contempt.

(A) The hearing officer may conclude that the defendant is in contempt if the hearing officer states in written findings a factual basis for concluding that:

(i) the defendant knew or reasonably should have known that he or she owed an amount due on a ~~judicial bureau~~ Judicial Bureau judgment;

(ii) the defendant had the ability to pay all or any portion of the amount due; and

(iii) the defendant failed to pay all or any portion of the amount due.

(B) In the contempt order, the hearing officer may do one or more of the following:

(i) Set a date by which the defendant shall pay the amount due.

(ii) Assess an additional penalty not to exceed ten percent of the amount due.

~~(iii) Direct the clerk of the judicial bureau to cause the matter to be reported to one or more designated credit bureaus. The court administrator or the court administrator's designee is authorized to contract with one or more credit bureaus for the purpose of reporting information about unpaid judicial bureau judgments~~ Order that the Commissioner of Motor Vehicles suspend the person's operator's license or privilege to operate. However, the person shall become eligible for reinstatement if the amount due is paid or otherwise satisfied.

(iv) ~~Recommend that the criminal division of the superior court~~ Criminal Division of the Superior Court incarcerate the defendant until the amount due is paid. If incarceration is recommended pursuant to this subdivision (4), the ~~judicial bureau~~ Judicial Bureau shall notify the ~~criminal division of the superior court~~ Criminal Division of the Superior Court that contempt proceedings should be commenced against the defendant. The

~~criminal division of the superior court~~ Criminal Division of the Superior Court proceedings shall be de novo. If the defendant cannot afford counsel for the contempt proceedings in ~~criminal division of the superior court~~ the Criminal Division of the Superior Court, the ~~defender general~~ Defender General shall assign counsel at the ~~defender general's~~ Defender General's expense.

(d) Collections.

(1) If an amount due remains unpaid after the issuance of a notice of judgment, the ~~court administrator~~ Court Administrator may authorize the clerk of the ~~judicial bureau~~ Judicial Bureau to refer the matter to a designated collection agency.

(2) The ~~court administrator~~ Court Administrator or the ~~court administrator's~~ Court Administrator's designee is authorized to contract with one or more collection agencies for the purpose of collecting unpaid ~~judicial bureau~~ Judicial Bureau judgments pursuant to 13 V.S.A. § 7171.

(e) For purposes of civil contempt proceedings, venue shall be statewide.

(f) Notwithstanding 32 V.S.A. § 502, the ~~court administrator~~ Court Administrator is authorized to contract with a third party to collect fines, penalties, and fees by credit card, debit card, charge card, prepaid card, stored value card, and direct bank account withdrawals or transfers, as authorized by 32 V.S.A. § 583, and to add on and collect, or charge against collections, a processing charge in an amount approved by the ~~court administrator~~ Court Administrator.

Sec. 2. 23 V.S.A. § 674 is amended to read:

§ 674. OPERATING AFTER SUSPENSION OR REVOCATION OF LICENSE; PENALTY; REMOVAL OF REGISTRATION PLATES; TOWING

(a)(1) Except as provided in section 676 of this title, a person whose license or privilege to operate a motor vehicle has been suspended or revoked for a violation of this section or ~~subsections~~ subsection 1091(b), 1094(b), or 1128(b) or (c) of this title and who operates or attempts to operate a motor vehicle upon a public highway before the suspension period imposed for the violation has expired shall be imprisoned not more than two years or fined not more than \$5,000.00, or both.

(2) A person who violates section 676 of this title for the sixth or subsequent time shall, if the five prior offenses occurred after July 1, 2003, be imprisoned not more than two years or fined not more than \$5,000.00, or both.

(3) Violations of section 676 of this title that occurred prior to the date a person successfully completes the driving with license suspended diversion program or prior to the date that a person pays the amount due to the Judicial

Bureau in accordance with subsection 2307(b) of this chapter shall not be counted as prior offenses under subdivision (2) of this subsection.

(b) Except as authorized in section 1213 of this title, a person whose license or privilege to operate a motor vehicle has been suspended or revoked for a violation of section 1201 of this title or has been suspended under section 1205 of this title and who operates or attempts to operate a motor vehicle upon a public highway before reinstatement of the license shall be imprisoned not more than two years or fined not more than \$5,000.00, or both. The sentence shall be subject to the following mandatory minimum terms:

* * *

Sec. 3. 23 V.S.A. § 2307 is amended to read:

§ 2307. REMEDIES FOR FAILURE TO PAY TRAFFIC VIOLATIONS

~~As used in this section,~~

(a) ~~“Amount due”~~ Definition. ~~As used in this section, “amount due”~~ means all financial assessments contained in a Judicial Bureau judgment, including penalties, fines, surcharges, court costs, and any other assessment authorized by law.

(b) Notice of risk of suspension. A judgment for a traffic violation shall contain a notice that failure to pay or otherwise satisfy the amount due within 30 days of the notice will result in suspension of the person’s operator’s license or privilege to operate, and the denial, if the person is the sole registrant, of the person’s application for renewal of a motor vehicle registration, until the amount due is paid or otherwise satisfied. If the defendant fails to pay the amount due within 30 days of the notice, or by a later date as determined by a judicial officer, and the case is not pending on appeal, the Judicial Bureau shall provide electronic notice thereof to the Commissioner of Motor Vehicles ~~who,~~ after. After 20 days from the date of receiving the electronic notice, the Commissioner shall:

(1) ~~suspend~~ Suspend the person’s operator’s license or privilege to operate for a period of 120 days. However, the person shall become eligible for reinstatement prior to expiration of the 120 days if the amount due is paid or otherwise satisfied.

(2) ~~and deny, if the person is the sole registrant,~~ Deny the person’s application for renewal of a motor vehicle registration, if the person is the sole registrant, until the amount due is paid or otherwise satisfied.

(c) During proceedings conducted pursuant to 4 V.S.A. § 1109, the hearing officer may apply the following mitigation remedies when the judgment is based upon a traffic violation. The hearing officer also may apply the remedies with or without a hearing when acting on a motion to approve a proposed DLS Diversion Program contract and related payment plan pursuant

to 2012 Acts and Resolves No. 147, Sec. 2. Notwithstanding any other law, no entry fee shall be required and venue shall be statewide for motions to approve.

(1) The hearing officer may waive the reinstatement fee required by section 675 of this title or reduce the amount due on the basis of:

(A) the defendant's driving history, ability to pay, or service to the community;

(B) the collateral consequences of the violation; or

(C) the interests of justice.

(2) The hearing officer may specify a date by which the defendant shall pay the amount due and may notify the Commissioner of Motor Vehicles to reinstate the defendant's operator's license or privilege subject to payment of the amount due by the specified date. If the defendant fails to pay the amount due by the specified date, the Judicial Bureau may notify the Commissioner to suspend the defendant's operator's license or privilege. A license may be reinstated under this subdivision only if the defendant's license is suspended solely for failure to pay a judgment of the Judicial Bureau.

(3) The judicial officer shall have sole discretion to determine mitigation remedies pursuant to this subdivision, and the judicial officer's determination shall not be subject to review or appeal in any court, tribunal, or administrative office.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2014.

And that after passage the title of the bill be amended to read: "An act relating to fines for driving with license suspended".