

2019 Regular Session

HOUSE BILL NO. 611 (Substitute for House Bill No. 255 by Representative Magee)

BY REPRESENTATIVE MAGEE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/PROCEDURE: Provides relative to the payment of fines, fees, costs, restitution, and other monetary obligations related to an offender's conviction

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AN ACT

To amend and reenact Code of Criminal Procedure Article 885.1 and Section 3 of Act No. 260 of the 2017 Regular Session of the Legislature as amended by Act Nos. 137 and 668 of the 2018 Regular Session of the Legislature, relative to the financial obligations for criminal offenders; to provide relative to the court's authority to suspend the driver's license of a defendant for failure to pay a criminal fine; to authorize the court to grant an extension of time to pay the fine; to authorize the court to order the performance of community service in lieu of payment of the fine; to provide relative to the effectiveness of changes made to Code of Criminal Procedure Article 885.1 by Act No. 260 of the 2017 Regular Session of the Legislature; to delay the effective date of certain provisions in Act No. 260 of the 2017 Regular Session of the Legislature which provided relative to the financial obligations for criminal offenders; to provide relative to the payment of fines, fees, costs, restitution, and other monetary obligations related to an offender's conviction; to require the court to determine the offender's ability to pay the financial obligations imposed; to authorize the court to waive, modify, or create a payment plan for the offender's financial obligations; to provide relative to the court's authority to extend probation under certain circumstances; to provide relative to the recovery of uncollected monetary obligations at the end of a probation period; to provide for legislative intent; to provide relative to the disbursement of collected payments; to authorize the court to impose certain conditions in lieu of payment in certain

1 situations; to provide relative to the penalties imposed when an offender fails to  
2 make certain payments or fails to appear for a hearing relative to missed payments;  
3 to require notice to an offender upon his failure to make certain payments; and to  
4 provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. Code of Criminal Procedure Article 885.1 is hereby amended and  
7 reenacted to read as follows:

8 Art. 885.1. Suspension of driving privileges; failure to pay criminal fines

9 A. When a fine is levied against a person convicted of any criminal offense,  
10 including any violation of the Louisiana Highway Regulatory Act or any municipal  
11 or parish ordinance regulating traffic, ~~in any municipality or in any parish~~ and the  
12 court grants the defendant is granted an extension of time to pay the fine, if at the  
13 expiration of the extended period granted by the court, the defendant shows that he  
14 is financially unable to pay the fine, the judge of the court having jurisdiction ~~may~~  
15 ~~order~~ shall grant the person an extension of time, not to exceed one hundred eighty  
16 days, in which to pay the fine, or offer the person, in lieu of paying the fine, the  
17 alternative of performing community service as set by the judge.

18 B. If, at the expiration of the one-hundred-eighty-day period granted by the  
19 judge pursuant to Paragraph A of this Article, the judge determines that the  
20 defendant has either willfully not paid the fine or has not performed the community  
21 service, the judge may do either of the following:

22 (1) Order the person's driver's license to be surrendered to the sheriff or  
23 official of the court collecting fines, and for a period of time not to exceed one  
24 hundred eighty days. If, after expiration of one hundred eighty days, the defendant  
25 has not paid the fine, the sheriff or official of the court designated to collect fines  
26 shall forward the license to the Department of Public Safety and Corrections.

27 (2) Grant the person an extension of time to either pay the fine or perform  
28 the community service.

1           B. ~~Upon receipt of a surrendered driver's license, the sheriff or court official~~  
 2           ~~responsible for collection of such fines shall issue a temporary permit for a period~~  
 3           ~~not to exceed one hundred eighty days or for a period of time set forth by the judge~~  
 4           ~~having jurisdiction. The temporary permits, the procedure for distributing such~~  
 5           ~~permits, and the rules and regulations associated with such permits shall be the same~~  
 6           ~~as devised by the Department of Public Safety and Corrections as required by R.S.~~  
 7           ~~32:411.1.~~

8           C. ~~If, after expiration of one hundred eighty days, the defendant has not paid~~  
 9           ~~the fine, the sheriff or official of the court designated to collect fines shall forward~~  
 10           ~~the license to the Department of Public Safety and Corrections. Upon If the person's~~  
 11           ~~license is surrendered pursuant to Paragraph (B)(1) of this Article, upon receipt of~~  
 12           ~~the defendant's surrendered driver's license, the department shall suspend the driver's~~  
 13           ~~license of the defendant. The suspension shall begin when the department receives~~  
 14           ~~written notification from the court, and the department shall send immediate written~~  
 15           ~~notification to the defendant informing him of the suspension of driving privileges.~~

16           D. The department shall not reinstate, return, reissue, or renew a driver's  
 17           license in its possession pursuant to this Article until payment of the fine and any  
 18           additional administrative cost, fee, or penalty required by the judge having the  
 19           jurisdiction and any other cost, fee, or penalty required by the department in  
 20           accordance with R.S. 32:414(H) or other applicable cost, fee, or penalty provision.

21           Section 2. Section 3 of Act No. 260 of the 2017 Regular Session of the Legislature  
 22           as amended by Act Nos. 137 and 668 of the 2018 Regular Session of the Legislature is  
 23           hereby amended and reenacted to read as follows:

24           Section 3. The provisions of this Act shall become effective on August 1,  
 25           ~~2019~~ 2021.

26           Section 3. The provisions of this Act shall become effective on August 1, 2019.

27           Section 4. It is the intent of the legislature that the changes made to Code of  
 28           Criminal Procedure Article 885.1 by Act No. 260 of the 2017 Regular Session of the

- 1 Legislature, as amended by Act Nos. 137 and 668 of the 2018 Regular Session of the  
2 Legislature, shall never go into effect and that the provisions of this Act shall control.
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## DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 611 Reengrossed

2019 Regular Session

Magee

**Abstract:** Provides relative to the court's authority to suspend a defendant's driver's license for failure to pay a criminal fine and delays the effective date of certain provisions of Act No. 260 of the 2017 R.S., relative to the financial obligations for criminal offenders, to August 1, 2021.

Act No. 260 of the 2017 R.S. makes changes to present law relative to the financial obligations of criminal offenders, including but not limited to the following:

- (1) Provides that notwithstanding any provision of present law, prior to ordering the imposition of any financial obligation, the court shall determine whether payment in full of the aggregate amount of all the financial obligations imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents. This determination cannot be waived by the defendant.
- (2) Provides that "substantial financial hardship" has the same meaning as defined by present law (R.S. 15:175) relative to determinations of indigence for purposes of appointment of counsel and defines "financial obligation" as any fine, fee, cost, restitution, or other monetary obligation authorized by present law and imposed upon the defendant as part of a criminal sentence, incarceration, or as a condition of the defendant's release on probation or parole.
- (3) If the court determines that payment in full of the aggregate amount of all financial obligations imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents, requires the court to either waive all or any portion of the financial obligations or order a payment plan that requires the defendant to make a monthly payment to fulfill the financial obligations.
- (4) In cases where restitution has been ordered, provides that half of the defendant's monthly payment shall be distributed toward the defendant's restitution obligation.
- (5) Provides that during any periods of unemployment, homelessness, or other circumstances in which the defendant is unable to make the monthly payment, the court or the defendant's probation and parole officer is authorized to impose a payment alternative, including but not limited to any of the following: substance abuse treatment, education, job training, or community service.
- (6) If the defendant's circumstances and ability to pay change, authorizes the court, upon motion of the defendant or his attorney, to reevaluate the defendant's ability to continue the monthly payments and either waive or modify the defendant's financial obligation, or recalculate the amount of the monthly payment.
- (7) Provides that the defendant's outstanding financial obligations may be forgiven and considered paid-in-full if the defendant makes consistent monthly payments for either 12 consecutive months or consistent monthly payments for half of the defendant's term of supervision, whichever is longer.

- (8) Amends present law to provide that if it is determined, pursuant to proposed law, that payment in full of the aggregate amount of all financial obligations imposed upon the defendant would cause substantial financial hardship to the defendant or his dependents, the defendant cannot be imprisoned for failure to pay fines or costs imposed as part of the sentence.
- (9) Prohibits the court from extending a defendant's probation for the purpose of collecting any unpaid monetary obligation but allows the court to refer the unpaid monetary obligation to the office of debt recovery pursuant to present law (R.S. 47:1676). Further amends the present law definition of "agency" to include courts solely for the purpose of recovering unpaid monetary obligations that remain at the end of the defendant's probation period.
- (10) If a court authorizes a payment plan pursuant to proposed law and the defendant fails to make a payment, requires the court to serve the defendant with a citation for a rule to show cause why the defendant should not be found in contempt of court and provides the information that must be included in the notice.

Act No. 260 of the 2017 R.S. further provided that these changes to present law shall be effective Aug. 1, 2018.

In the 2018 R.S., Act Nos. 137 and 668 delayed the effective date of these changes from Aug. 1, 2018, to Aug. 1, 2019.

Proposed law delays the effective date of these provisions for two additional years from Aug. 1, 2019, to Aug. 1, 2021, except for certain changes made to present law (C.Cr.P. Art. 885.1) provisions regarding to the court's authority to suspend the driver's license of the defendant which shall be effective, pursuant to proposed law, on Aug. 1, 2019.

Present law (C.Cr.P. Art. 885.1) provides that when a fine is levied against a person convicted of any criminal offense, including any violation of the La. Highway Regulatory Act or any municipal or parish ordinance regulating traffic and the defendant is granted an extension of time to pay the fine, the judge of the court having jurisdiction may order the driver's license to be surrendered to the sheriff or official of the court collecting fines for a period of time not to exceed 180 days.

In this regard, present law (C.Cr.P. Art. 885.1) does the following:

- (1) Provides that if, after expiration of 180 days, the defendant has not paid the fine, the sheriff or official of the court designated to collect fines shall forward the license to the Dept. of Public Safety and Corrections and shall issue a temporary permit for a period not to exceed 180 days or for a period of time set forth by the judge having jurisdiction.
- (2) Provides that upon receipt of the defendant's surrendered driver's license, the Dept. of Public Safety and Corrections shall suspend the driver's license of the defendant, and further provides that the department shall not reinstate, return, reissue, or renew a driver's license in its possession until payment of the fine and other applicable costs, fees, or penalties.

Proposed law does all of the following:

- (1) Amends present law to provide that upon a showing by the defendant that he is financially unable to pay at the expiration of the extended period granted by the court under present law, the court shall grant the person an extension of time, not to exceed 180 days, in which to pay the fine, or offer the person, in lieu of paying the fine, the alternative of performing community service as set by the judge.

- (2) Amends present law to provide that if, at the expiration of the 180-day period granted by the judge, the judge determines that the defendant has either willfully not paid the fine or has not performed the community service, the judge may do either of the following:
- (a) Order the person's driver's license to be surrendered to the sheriff or official of the court collecting fines.
  - (b) Grant the person an extension of time to either pay the fine or perform the community service.
- (3) Retains the present law provisions regarding the duties of the Dept. of Public Safety and Corrections, the sheriff, and the official of the court designated to collect fines.

(Amends C.Cr.P. Art. 885.1 and Act No. 260 of the 2017 R.S., §3, as amended by Act Nos. 137 and 668 of the 2018 R.S.)

#### Summary of Amendments Adopted by House

##### The House Floor Amendments to the engrossed bill:

1. Provide that the court's authority to suspend the driver's license of the defendant or to grant an extension of time to pay the fine is dependent upon a showing by the defendant of his financial ability to pay, regardless of whether the defendant was convicted of a criminal offense or of a violation of a traffic law or ordinance.
2. Authorize the court to grant a defendant who is financially unable pay an extension of time to pay the fine or offer the defendant the alternative of performing community service.
3. At the expiration of the extended period of time to pay the fine or perform the community service, authorize the judge to grant additional time or order the defendant's driver's license to be surrendered if the judge determines that the defendant has either willfully not paid the fine or has not performed the community service.