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2 ENGROSSED

3 **Senate Bill No. 328**

4 (By Senators Beach, Klempa and Plymale)

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6 [Introduced January 27, 2011; referred to the Committee on
7 Transportation and Infrastructure; then to the Committee on the
8 Judiciary; and then to the Committee on Finance.]

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13 A BILL to amend and reenact §17E-1-3, §17E-1-6, §17E-1-9, §17E-1-
14 10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-17 and §17E-1-20
15 of the Code of West Virginia, 1931, as amended; and to amend
16 said code by adding thereto a new section, designated §17E-1-
17 14a, all relating to the issuance, disqualification,
18 suspension and revocation of driver's licenses and privilege
19 to operate a commercial motor vehicle; adding definitions;
20 creating the offense of operating a commercial motor vehicle
21 while texting; providing penalties and exceptions; providing
22 civil penalties for motor carriers who require or allow a
23 driver to operate a commercial motor vehicle while texting;
24 providing that a driver is disqualified from operating a

1 commercial motor vehicle upon conviction for operating a
2 commercial motor vehicle when texting; clarifying that out-of-
3 service orders may pertain to a driver, commercial motor
4 vehicle or a motor carrier operation; providing that the
5 licensed driver accompanying a driver holding an instruction
6 permit must be alert and unimpaired; adding additional
7 certifications to the application and the face of a commercial
8 driver's license; providing for additional requirements
9 related to maintenance and verification of medical
10 certification status; and prohibiting the division from
11 issuing or renewing a commercial driver's license to a person
12 who does not possess a valid medical certification status.

13 *Be it enacted by the Legislature of West Virginia:*

14 That §17E-1-3, §17E-1-6, §17E-1-9, §17E-1-10, §17E-1-11, §17E-
15 1-12, §17E-1-13, §17E-1-17 and §17E-1-20 of the Code of West
16 Virginia, 1931, as amended, be amended and reenacted; and that said
17 code be amended by adding thereto a new section, designated §17E-1-
18 14a, all to read as follows:

19 **ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.**

20 **§17E-1-3. Definitions.**

21 Notwithstanding any other provision of this code, the
22 following definitions apply to this article:

23 (1) "Alcohol" means:

24 (A) Any substance containing any form of alcohol, including,

1 but not limited to, ethanol, methanol, propenyl and isopropanol;

2 (B) Beer, ale, port or stout and other similar fermented
3 beverages, including sake or similar products, of any name or
4 description containing one half of one percent or more of alcohol
5 by volume, brewed or produced from malt, wholly or in part, or from
6 any substitute for malt;

7 (C) Distilled spirits or that substance known as ethyl
8 alcohol, ethanol or spirits of wine in any form including all
9 dilutions and mixtures thereof from whatever source or by whatever
10 process produced; or

11 (D) Wine of not less than one half of one percent of alcohol
12 by volume.

13 (2) "Alcohol concentration" means:

14 (A) The number of grams of alcohol per one hundred milliliters
15 of blood;

16 (B) The number of grams of alcohol per two hundred ten liters
17 of breath; ~~or~~

18 (C) The number of grams of alcohol per sixty-seven milliliters
19 of urine; or

20 (D) The number of grams of alcohol per eighty-six milliliters
21 of serum.

22 (3) "At fault traffic accident" means, for the purposes of
23 waiving the road test, a determination of fault by the official
24 filing the accident report ~~of fault~~ as evidenced by an indication

1 of contributing circumstances in the accident report.

2 (4) "Commercial driver's license" means a license or an
3 instruction permit issued in accordance with the requirements of
4 this article to an individual which authorizes the individual to
5 drive a class of commercial motor vehicle.

6 (5) "Commercial driver's license information system" is the
7 information system established pursuant to the Federal Commercial
8 Motor Vehicle Safety Act to serve as a clearinghouse for locating
9 information related to the licensing and identification of
10 commercial motor vehicle drivers.

11 (6) "Commercial driver instruction permit" means a permit
12 issued pursuant to subsection (d), section nine of this article.

13 (7) "Commercial motor vehicle" means a motor vehicle designed
14 or used to transport passengers or property:

15 (A) If the vehicle has a gross combination vehicle weight
16 rating of twenty-six thousand one pounds or more inclusive of a
17 towed unit(s) with a gross vehicle weight rating of more than ten
18 thousand pounds;

19 (B) If the vehicle has a gross vehicle weight rating of ~~more~~
20 ~~than~~ twenty-six thousand one pounds or more;

21 (C) If the vehicle is designed to transport sixteen or more
22 passengers, including the driver; or

23 (D) If the vehicle is of any size and transporting hazardous
24 materials as defined in this section.

1 (8) "Commissioner" means the Commissioner of Motor Vehicles of
2 this state.

3 (9) "Controlled substance" means any substance classified
4 under the provisions of chapter sixty-a of this code, the Uniform
5 Controlled Substances Act, and includes all substances listed on
6 Schedules I through V, inclusive, of article two of said chapter,
7 ~~sixty-a, as they are~~ as revised. The term "controlled substance"
8 also has the meaning such term has under 21 U.S.C. §802.6 and
9 includes all substances listed on Schedules I through V of 21
10 C.F.R. §1308 as they may be amended by the United States
11 Department of Justice.

12 (10) "Conviction" means an unvacated adjudication of guilt; a
13 determination that a person has violated or failed to comply with
14 the law in a court of original jurisdiction or by an authorized
15 administrative tribunal or proceeding; an unvacated forfeiture of
16 bail or collateral deposited to secure the persons appearance in
17 court; a plea of guilty or nolo contendere accepted by the court or
18 the payment of a fine or court cost or violation of a condition of
19 release without bail regardless of whether or not the penalty is
20 rebated, suspended, or probated.

21 (11) "Division" means the Division of Motor Vehicles.

22 (12) "Disqualification" means any of the following three
23 actions:

24 (A) The suspension, revocation, or cancellation of a driver's

1 license by the state or jurisdiction of issuance.

2 (B) Any withdrawal of a person's privilege to drive a
3 commercial motor vehicle by a state or other jurisdiction as the
4 result of a violation of state or local law relating to motor
5 vehicle traffic control other than parking or vehicle weight except
6 as to violations committed by a special permittee on the coal
7 resource transportation system or vehicle defect violations.

8 (C) A determination by the Federal Motor Carrier Safety
9 Administration that a person is not qualified to operate a
10 commercial motor vehicle under 49 C.F.R. Part §391 (2004).

11 (13) "Drive" means to drive, operate or be in physical control
12 of a motor vehicle in any place open to the general public for
13 purposes of vehicular traffic. For the purposes of sections
14 twelve, thirteen and fourteen of this article, "drive" includes
15 operation or physical control of a motor vehicle anywhere in this
16 state.

17 (14) "Driver" means ~~any~~ a person who drives, operates or is in
18 physical control of a commercial motor vehicle in any place open to
19 the general public for purposes of vehicular traffic or who is
20 required to hold a commercial driver's license.

21 (15) "Driver's license" means a license issued by a state to
22 an individual which authorizes the individual to drive a motor
23 vehicle of a specific class.

24 (16) "Electronic device" includes, but is not limited to, a

1 cellular telephone, personal digital assistant, pager or any other
2 device used to input, write, send, receive, or read text.

3 ~~(16)~~ (17) "Employee" means ~~any~~ an operator of a commercial
4 motor vehicle, including full time, regularly employed drivers,
5 casual, intermittent or occasional drivers, leased drivers and
6 independent, owner-operator contractors ~~(while in the course of~~
7 when operating a commercial motor vehicle, who are either directly
8 employed by or under lease to drive a commercial motor vehicle for
9 an employer.

10 ~~(17)~~ (18) "Employer" means ~~any~~ a person, including the United
11 States, a state or a political subdivision of a state, who owns or
12 leases a commercial motor vehicle or assigns a person to drive a
13 commercial motor vehicle.

14 ~~(18)~~ (19) "Endorsement" means an authorization to a person to
15 operate certain types of commercial motor vehicles.

16 ~~(19)~~ (20) "Farm vehicle" includes a motor vehicle or
17 combination vehicle registered to ~~the~~ a farm owner or entity
18 operating the farm and used exclusively in the transportation of
19 agricultural or horticultural products, livestock, poultry and
20 dairy products from the farm or orchard on which they are raised or
21 produced to markets, processing plants, packing houses, canneries,
22 railway shipping points and cold storage plants and in the
23 transportation of agricultural or horticultural supplies and
24 machinery to the farms or orchards to be used on the farms or

1 orchards.

2 ~~(20)~~ (21) "Farmer" includes an owner, tenant, lessee, occupant
3 or person in control of the premises used substantially for
4 agricultural or horticultural pursuits who is at least eighteen
5 years of age with two years licensed driving experience.

6 ~~(21)~~ (22) "Farmer vehicle driver" means the person employed
7 and designated by the "farmer" to drive a "farm vehicle" as long as
8 driving is not his or her sole or principal function on the farm
9 and who is at least eighteen years of age with two years licensed
10 driving experience.

11 ~~(22)~~ (23) "Felony" means an offense under state or federal law
12 that is punishable by death or imprisonment for a term exceeding
13 one year.

14 ~~(23)~~ (24) "Gross combination weight rating (GCWR)" means the
15 value specified by the manufacturer as the loaded weight of a
16 combination, articulated vehicle. In the absence of a value
17 specified by the manufacturer, GCWR will be determined by adding
18 the ~~GVWR~~ gross vehicle weight rating (GVWR) of the power unit and
19 the total weight of the towed unit and ~~any load thereon.~~ load, if
20 any.

21 ~~(24)~~ (25) "Gross vehicle weight rating (GVWR)" means the value
22 specified by the manufacturer as the loaded weight of a single
23 vehicle. In the absence of a value specified by the manufacturer,
24 the GVWR will be determined by the total weight of the vehicle and

1 ~~any load thereon.~~ load, if any.

2 ~~(25)~~ (26) "Hazardous materials" means any material that has
3 been designated as hazardous under 49 U.S.C. §5103 and is required
4 to be placarded under subpart F of 49 C.F.R., Part §172 or any
5 quantity of a material listed as a select agent or toxin in 42
6 C.F.R., Part §73.

7 ~~(26)~~ (27) "Imminent hazard" means existence of a condition
8 that presents a substantial likelihood that death, serious illness,
9 severe personal injury or a substantial endangerment to health,
10 property or the environment may occur before the reasonably
11 foreseeable completion date of a formal proceeding begun to lessen
12 the risk of that death, illness, injury or endangerment.

13 ~~(27)~~ (28) "Issuance of a license" means the completion of a
14 transaction signifying that the applicant has met all the
15 requirements ~~incumbent in qualifying~~ to qualify for, including, but
16 not limited to: The initial issuance of a driver's license, the
17 renewal of a driver's license, the issuance of a duplicate license
18 as a replacement to a lost or stolen driver's license, the transfer
19 of any level of driving privileges including the privilege of
20 operating a commercial motor vehicle from another state or
21 jurisdiction, the changing of driver's license class, restrictions
22 or endorsements or the change of any other information pertaining
23 to an applicant either appearing on the face of a driver's license
24 or within the driver record of the licensee maintained by the

1 division.

2 ~~(28)~~ (29) "Motor vehicle" means every vehicle which is self-
3 propelled and every vehicle which is propelled by electric power
4 obtained from overhead trolley wires but not operated upon rails.

5 ~~(29)~~ (30) "Noncommercial motor vehicle" means a motor vehicle
6 or combination of motor vehicles not defined by the term
7 "commercial motor vehicle".

8 ~~(30)~~ (31) "Out-of-service order" means a ~~temporary prohibition~~
9 ~~against driving a commercial motor vehicle as a result of a~~
10 ~~determination by a law-enforcement officer,~~ a declaration by an
11 authorized enforcement officer of a federal, state, Canadian,
12 Mexican, county or local jurisdiction including any special agent
13 of the Federal Motor Carrier Safety Administration that a driver,
14 a commercial motor vehicle, or a motor carrier operation is out of
15 service pursuant to 49 C.F.R. §§386.72, 392.5, 395.13, 396.9 or
16 compatible laws or the North American uniform out-of-service
17 criteria that an imminent hazard exists.

18 ~~(31)~~ (32) "Violation of an out-of-service order" means:

19 (A) The operation of a commercial motor vehicle during the
20 period the driver was placed out-of-service; ~~or~~

21 (B) The operation of a commercial motor vehicle by a driver
22 after the vehicle was placed out-of-service and before the required
23 repairs are made; or

24 (C) The operation of any commercial vehicle by a motor carrier

1 operation after the carrier has been placed out of service.

2 ~~(32)~~ (33) "School bus" means a commercial motor vehicle used to
3 transport ~~preprimary,~~ preprimary, primary or secondary school
4 students from home-to-school, from school-to-home or to and from
5 school sponsored events. School bus does not include a bus used as
6 a common carrier.

7 ~~(33)~~ (34) "Serious traffic violation" means conviction for any
8 of the following offenses when operating a commercial motor
9 vehicle:

10 (A) Excessive speeding involving any single offense for any
11 speed of fifteen miles per hour or more above the posted limits;

12 (B) Reckless driving as defined in section three, article
13 five, chapter seventeen-c of this code and careless or negligent
14 driving, including, but not limited to, the offenses of driving a
15 commercial motor vehicle in willful or wanton disregard for the
16 safety of persons or property;

17 (C) Erratic or improper traffic lane changes including, but
18 not limited to, passing a school bus when prohibited, improper lane
19 changes and other passing violations;

20 (D) Following the vehicle ahead too closely;

21 (E) Driving a commercial motor vehicle without obtaining a
22 commercial driver's license;

23 (F) Driving a commercial motor vehicle without a commercial
24 driver's license in the driver's possession. However, any person

1 who provides proof to the law-enforcement agency that issued the
2 citation, by the date the person must appear in court or pay any
3 fine for such violation, that the person held a valid commercial
4 driver's license on the date the citation was issued, shall not be
5 guilty of this offense;

6 (G) Driving a commercial motor vehicle without the proper
7 class of commercial driver's license ~~and/~~ or endorsements for the
8 specific vehicle group being operated or for the passengers or type
9 of cargo being transported;

10 (H) A violation of state or local law relating to motor
11 vehicle traffic control, other than a parking violation, arising in
12 connection with a fatal traffic accident; or

13 (I) Any other serious violations determined by the United
14 States Secretary of Transportation.

15 (J) Vehicle defects are excluded as serious traffic violations
16 except as to violations committed by a special permittee on the
17 coal resource transportation road system.

18 ~~(34)~~ (35) "State" means a state of the United States and the
19 District of Columbia or a province or territory of Canada or a
20 state or federal agency of the United Mexican States.

21 ~~(35)~~ (36) "State of domicile" means the state where a person
22 has his or her true, fixed and permanent home and principle
23 residence and to which he or she has the intention of returning
24 whenever absent in accordance with chapter seventeen-a, article

1 three, section one-a.

2 ~~(36)~~ (37) "Suspension, revocation or cancellation" of a
3 driver's license or a commercial driver's license means the
4 privilege to operate any type of motor vehicle on the roads and
5 highways of this state is withdrawn.

6 ~~(37)~~ (38) "Tank vehicle" means any commercial motor vehicle
7 that is designed to transport any liquid or gaseous materials
8 within a tank that is either permanently or temporarily attached to
9 the vehicle or the chassis. These vehicles include, but are not
10 limited to, cargo tanks and portable tanks as defined in 49 C. F.
11 R. Part 171 (1998). ~~However,~~ This definition does not include
12 portable tanks having a rated capacity under one thousand gallons.

13 (39) "Texting" means manually entering alphanumeric text into
14 or reading text from an electronic device.

15 (A) This action includes, but is not limited to, short
16 messaging service, e-mailing, instant messaging and a command or
17 request to access a World Wide Web page or engaging in any other
18 form of electronic text retrieval or entry for present or future
19 communication.

20 (B) Texting does not include:

21 (i) Reading, selecting or entering a telephone number, an
22 extension number or voicemail retrieval codes and commands into an
23 electronic device for the purpose of initiating or receiving a
24 phone call or using voice commands to initiate or receive a

1 telephone call;

2 (ii) Inputting, selecting or reading information on a global
3 positioning system or navigation system; or

4 (iii) Using a device capable of performing multiple functions
5 including, but not limited to, fleet management systems,
6 dispatching devices, smart phones, citizen band radios or music
7 players for a purpose that is not otherwise prohibited by this
8 section

9 ~~(38)~~ (40) "Transportation Security Administration" means the
10 United States Department of Homeland Security Transportation
11 Security Administration.

12 ~~(39)~~ (41) "United States" means the fifty states and the
13 District of Columbia.

14 (42) "Valid or Certified Medical Certification Status" means
15 that an applicant or driver has a current medical evaluation or
16 determination by a licensed physician that the applicant or driver
17 meets the minimum federal motor carrier safety administration
18 physical qualifications within the prescribed time frames pursuant
19 49 CFR Part §391. Not-certified means that an applicant or driver
20 does not have a current medical evaluation or has not been
21 certified by a licensed physician as meeting the minimum federal
22 motor carrier safety administration physical qualifications
23 pursuant 49 CFR Part §391.

24 ~~(40)~~ (43) "Vehicle Group" means a class or type of vehicle with

1 certain operating characteristics.

2 **§17E-1-6. Employer responsibilities.**

3 (a) Each employer shall require the applicant to provide the
4 information specified in section five of this article.

5 (b) No employer may knowingly allow, permit, require or
6 authorize a driver to drive a commercial motor vehicle during any
7 period in which the driver:

8 (1) Has a driver's license suspended, revoked or canceled by
9 a state; has lost the privilege to drive a commercial motor vehicle
10 in a state or has been disqualified from driving a commercial motor
11 vehicle;

12 (2) Has more than one driver's license at one time;

13 (3) ~~Or~~ The commercial motor vehicle he or she is driving or
14 the motor carrier operation is subject to an out-of-service order;

15 (4) Is in violation of federal, state or local law or
16 regulation pertaining to railroad highway grade crossings; or

17 (5) Is in violation of any provision of 49 C.F.R., Part § 382
18 related to controlled substances and alcohol use and testing.

19 (c) No employer may require or allow a driver to operate a
20 commercial motor vehicle while texting.

21 ~~(c)~~ (d) The division shall impose a civil penalty in addition
22 to any penalty required under the provisions of section twenty-five
23 of this article on any employer who knowingly allows, permits,
24 requires or authorizes a driver to drive a commercial motor vehicle

1 in violation of subdivision (3) or (4) of subsection (b) or
2 subsection (c) of this section.

3 (1) If the conviction is for a violation of subdivision (3),
4 of subsection (b) of this section, the penalty is \$2,750.

5 (2) If the conviction is for a violation of subdivision (4),
6 of subsection (b)or (c) of this section, the penalty shall be no
7 more than \$25,000.

8 **§17E-1-9. Commercial driver's license qualification standards.**

9 (a) No person may be issued a commercial driver's license
10 unless that person is a resident of this state and has passed a
11 knowledge and skills test for driving a commercial motor vehicle
12 which complies with minimum federal standards established by
13 federal regulations enumerated in 49 C.F.R. Part § 383, Subparts G
14 and H (2004) and has satisfied all other requirements of the
15 Federal Motor Carrier Safety Improvement Act of 1999 in addition to
16 other requirements imposed by state law or federal regulations.

17 (b) Third party testing. The commissioner may authorize a
18 person, including an agency of this or another state, an employer,
19 private individual or institution, department, agency or
20 instrumentality of local government, to administer the skills test
21 specified by this section ~~Provided, That:~~ so long as:

22 (1) The test is the same which would otherwise be administered
23 by the state; and

24 (2) The party has entered into an agreement with the state

1 ~~which~~ that complies with the requirements of 49 C.F.R., part §
2 383.75.

3 (c) Indemnification of driver examiners. No person who has
4 been officially trained and certified by the state as a driver
5 examiner, who administers a driving test, and no other person, firm
6 or corporation by whom or with which that person is employed or is
7 in any way associated, may be criminally liable for the
8 administration of the tests or civilly liable in damages to the
9 person tested or other persons or property unless for gross
10 negligence or willful or wanton injury.

11 (d) The commissioner may waive the skills test specified in
12 this section for a commercial driver license applicant who meets
13 the requirements of 49 C.F.R. part § 383.77 and ~~those~~ the
14 requirements specified by the commissioner.

15 (e) A commercial driver's license or commercial driver's
16 instruction permit may not be issued to a person while the person
17 is subject to a disqualification from driving a commercial motor
18 vehicle, when the person does not possess a valid or current
19 medical certification status or while the person's driver's license
20 is suspended, revoked or canceled in any state. ~~nor may~~ A
21 commercial driver's license may not be issued by any other state
22 unless the person first surrenders all such licenses to the
23 division.

24 (f) Commercial driver's instruction permit may be issued as

1 follows:

2 (1) ~~A commercial driver's instruction permit may be issued~~ To
3 an individual who holds a valid Class E or Class D driver's license
4 ~~who~~ and has passed the vision and written tests required for
5 issuance of a commercial driver's license.

6 (2) The commercial instruction permit may not be issued for a
7 period to exceed six months. Only one renewal or reissuance may be
8 granted within a two-year period. The holder of a commercial
9 driver's instruction permit may drive a commercial motor vehicle on
10 a highway only when accompanied by the holder of a commercial
11 driver's license valid for the type of vehicle driven, who is
12 twenty-one years of age or older, who is alert and unimpaired and
13 who occupies a seat beside the individual for the purpose of giving
14 instruction or testing.

15 (3) ~~A commercial driver's instruction permit may only be~~
16 ~~issued~~ Only to a person who is at least eighteen years of age and
17 has held a graduated Class E, Class E or Class D license for at
18 least two years.

19 (4) The applicant for a commercial driver's instruction permit
20 shall also be otherwise qualified to hold a commercial driver's
21 license.

22 **§17E-1-10. Application for commercial driver's license.**

23 (a) The application for a commercial driver's license or
24 commercial driver's instruction permit must include at least the

1 following:

2 (1) The full name and current mailing and residential address
3 of the person;

4 (2) A physical description of the person including sex,
5 height, weight and eye color;

6 (3) Date of birth;

7 (4) The applicant's social security number;

8 (5) The person's signature;

9 (6) The person's color photograph;

10 (7) Certifications including those required by 49 C.F.R. Part
11 § 383.71(a) (2004);

12 (8) Any other information required by the commissioner; ~~and~~

13 (9) A consent to release driving record information; and

14 (10) Certification stating that the applicant is:

15 (A) Engaged in interstate commerce and subject to 49 C.F.R.
16 Part §391 standards;

17 (B) Engaged in interstate commerce but excepted from 49 C.F.R.
18 Part §391 standards;

19 (C) Engaged in intrastate commerce and subject to state
20 medical standards; or

21 (D) Engaged in intrastate commerce but not subject to state
22 medical standards.

23 (b) When a licensee changes his or her name, mailing address
24 or residence, or when a licensee's classifications, endorsements,

1 or restrictions or medical certification status changes; the
2 licensee shall submit an application for a duplicate license and
3 obtain a duplicate driver's license displaying the updated
4 information.

5 (c) No person who has been a resident of this state for thirty
6 days or more may drive a commercial motor vehicle under the
7 authority of a commercial driver's license issued by another
8 jurisdiction.

9 **§17E-1-11. Commercial driver's license.**

10 The commercial driver's license shall be marked "commercial
11 driver's license" or "CDL" and, ~~shall be,~~ to the maximum extent
12 practicable, tamper proof. It must include, but not be limited to,
13 the following information:

- 14 (a) The name and residential address of the person;
- 15 (b) The person's color photograph;
- 16 (c) A physical description of the person including sex,
17 height, weight, and eye color;
- 18 (d) Date of birth;
- 19 (e) The person's signature;
- 20 (f) The class or type of commercial motor vehicle or vehicles
21 which the person is authorized to drive together with any
22 endorsement(s) and or restriction(s);
- 23 (g) The name of this state; ~~and~~
- 24 (h) The dates between which the license is valid; and

1 (i) Any information required by the Federal Motor Carrier
2 Safety Administration concerning the driver's valid or current
3 medical certification status.

4 **§17E-1-12. Classifications, endorsements and restrictions.**

5 (a) Commercial driver's licenses may be issued with the
6 following classifications:

7 (1) *Class A combination vehicle.* -- Any combination of
8 vehicles with a gross combined vehicle weight rating of twenty-six
9 thousand one pounds or more, provided the gross vehicle weight
10 rating of the vehicle being towed is in excess of ten thousand
11 pounds.

12 (2) *Class B heavy straight vehicle.* -- Any single vehicle with
13 a gross vehicle weight rating of twenty-six thousand one pounds or
14 more and any vehicle towing a vehicle not in excess of ten thousand
15 pounds.

16 (3) *Class C small vehicle.* -- Any single vehicle or
17 combination vehicle that does not fall under either Class A or
18 Class B but are:

19 (A) Vehicles designed to transport sixteen or more passengers,
20 including the driver; and

21 (B) Vehicles used in the transportation of hazardous materials
22 which requires the vehicle to be placarded under 49 C.F.R. Part
23 §172, Subpart F (2004).

24 (4) Each applicant who desires to operate a vehicle in a

1 classification different from the class in which the applicant is
2 authorized is required to retake and pass all related tests except
3 the following:

4 (A) A driver who has passed the knowledge and skills test for
5 a combination vehicle in Class A may operate a heavy straight
6 vehicle in Class B or a small vehicle in Class C provided he or she
7 possesses the required endorsements; and

8 (B) A driver who has passed the knowledge and skills test for
9 a vehicle in Class B may operate any small vehicle in Class C
10 provided he or she possesses the required endorsements.

11 (b) *Endorsements and restrictions.* -- The commissioner upon
12 issuing a commercial driver's license may impose endorsements and
13 ~~or~~ restrictions determined by the commissioner to be appropriate to
14 assure the safe operation of a specific class, type or category of
15 motor vehicle or a specifically equipped motor vehicle and to
16 comply with 49 U.S.C., et seq., and 49 C.F.R. §383.93 (2004)
17 including, but not limited to, endorsements or restrictions to
18 operate:

19 (1) Double or triple trailers which requires successful
20 completion of a knowledge test;

21 (2) Passenger vehicles which requires successful completion of
22 a knowledge and skills test;

23 (3) Tank vehicles which requires successful completion of a
24 knowledge test;

1 (4) Vehicles used for the transportation of hazardous
2 materials as defined in section three of this article which
3 requires the completion of a knowledge test and a background
4 security risk check in accordance with 49 C.F.R. §1572.5(2004);

5 (5) School buses which requires successful completion of a
6 knowledge and skills test unless the applicant meets the criteria
7 for waiver of the skills test in accordance with 49 C.F.R.
8 §383.123(b) (2004); or

9 (6) Vehicles equipped with air brakes which requires the
10 completion of a skills test.

11 (c) *Applicant record check.* -- Before issuing a commercial
12 driver's license, the commissioner shall obtain driving record and
13 medical certification status information through the commercial
14 driver's license information system, the national driver register
15 and from each state in which the person has been licensed.

16 (d) *Notification of license issuance.* -- Within ten days
17 after issuing a commercial driver's license, the commissioner shall
18 notify the commercial driver's license information system of ~~that~~
19 ~~fact,~~ providing the issuance and provide all information required
20 to ensure identification of the person.

21 (e) *Expiration of license.* -

22 (1) Every commercial driver's license issued to persons who
23 have attained their twenty-first birthday expires on the
24 applicant's birthday in those years in which the applicant's age is

1 evenly divisible by five. Except as provided in subdivision (2) of
2 this subsection, no commercial driver's license may be issued for
3 less than three years nor more than seven years. ~~and~~ The commercial
4 driver's license shall be renewed by the applicant's birthday and
5 is valid for a period of five years, expiring on the applicant's
6 birthday and in a year in which the applicant's age is evenly
7 divisible by five. No commercial driver's license with a hazardous
8 materials endorsement may be issued for more than five years.

9 (2) Every commercial driver's license issued to persons who
10 have not attained their twenty-first birthday expires thirty days
11 after the applicant's birthday in the year in which the applicant
12 attains the age of twenty-one years.

13 (3) Commercial driver's licenses held by any person in the
14 Armed Forces which expire while that person is on active duty
15 remains valid for thirty days from the date on which that person
16 reestablishes residence in West Virginia.

17 (4) Any person applying to renew a commercial driver's license
18 which has been expired for six months or more shall follow the
19 procedures for an initial issuance of a commercial driver's
20 license, including the testing provisions.

21 (5) Any commercial driver's license held by a person who does
22 not possess a valid or current medical certification status is no
23 longer valid for the operation of a commercial motor vehicle and is
24 downgraded to the appropriate licensure level commensurate with the

1 licensees qualifications regardless of the expiration date or
2 indicated class on the face of the license within the time frames
3 prescribed by 49 CFR §383.73(j).

4 (f) When applying for renewal of a commercial driver's
5 license, the applicant shall complete the application form and
6 provide updated information and required certifications.

7 (g) If the applicant wishes to obtain or retain a hazardous
8 materials endorsement, the applicant shall comply with a background
9 check in accordance with 49 U.S.C. §5103a and 49 C.F.R. Part §1572
10 (2004) and subject to the following:

11 (1) The applicant is a citizen of the United States or a
12 lawful permanent resident of the United States;

13 (2) The applicant completes the application prescribed by the
14 division and submits fingerprints in a form and manner prescribed
15 by the division and the United States Department of Homeland
16 Security Transportation Security Administration at the time of
17 application or at any other time in accordance with 49
18 C.F.R. §1572.5(2004);

19 (3) The applicant pays all fees prescribed by the
20 Transportation Security Administration or its agent and the
21 division;

22 (4) The applicant has not been adjudicated as a mental
23 defective or committed to a mental institution as prescribed in 49
24 C.F.R. §1572.109(2004);

1 (5) The applicant has not committed a disqualifying criminal
2 offense as described in 49 C.F.R. §1572.103(2004);

3 (6) The applicant has passed the Transportation Security
4 Administration security threat assessment and the division has
5 received a final notification of threat assessment or notification
6 of no security threat from the Transportation Security
7 Administration. ~~Provided, That any~~ An appeal of ~~any~~ a decision,
8 determination or ruling of the Federal Bureau of Investigation or
9 the Transportation Security Agency shall be directed to that
10 agency; and

11 (7) The applicant has successfully passed the written test for
12 the issuance or renewal of a hazardous material endorsement.

13 **§17E-1-13. Disqualification.**

14 (a) A person may not operate a commercial motor vehicle if his
15 or her privilege to operate a commercial motor vehicle is
16 disqualified under the provisions of the Federal Motor Carrier
17 Safety Improvement Act of 1999, ~~(public law 106-159 §1748)~~, 49
18 C.F.R. Part §383, Subpart D (2004) or in accordance with the
19 provisions of this section.

20 (1) For the purposes of determining first and subsequent
21 violations of the offenses listed in this section, each conviction
22 ~~for any offense listed in this section~~ resulting from a separate
23 incident includes convictions for offenses committed in a
24 commercial motor vehicle or a noncommercial motor vehicle.

1 (2) Any person disqualified from operating a commercial motor
2 vehicle for life under the provisions of this chapter for offenses
3 described in subsection (b,) subdivisions (4) and (6) of this
4 section is eligible for reinstatement of privileges to operate a
5 commercial motor vehicle after ten years and after completion of
6 the Safety and Treatment Program or other appropriate program
7 prescribed by the division. Any person whose lifetime
8 disqualification has been amended under the provisions of this
9 subdivision and who is subsequently convicted of a disqualifying
10 offense described in subsection (b), subdivisions (1) through (8)
11 of this section, is not eligible for reinstatement.

12 (3) Any disqualification imposed by this section is in
13 addition to any action to suspend, revoke or cancel the driver's
14 license or driving privileges if suspension, revocation or
15 cancellation is required under another provision of this code.

16 (4) The provisions of this section apply to any person
17 operating a commercial motor vehicle and to any person holding a
18 commercial driver's license.

19 (b) Any person is disqualified from driving a commercial motor
20 vehicle for the following offenses and time periods if convicted
21 of:

22 (1) Driving a motor vehicle under the influence of alcohol or
23 a controlled substance;

24 (A) For a first conviction or for refusal to submit to any

1 designated secondary chemical test while operating a commercial
2 motor vehicle, a driver is disqualified from operating a commercial
3 motor vehicle for a period of one year.

4 (B) For a first conviction or for refusal to submit to any
5 designated secondary chemical test while operating a noncommercial
6 motor vehicle, a commercial driver's license holder is disqualified
7 from operating a commercial motor vehicle for a period of one year.

8 (C) For a first conviction or for refusal to submit to any
9 designated secondary chemical test while operating a commercial
10 motor vehicle transporting hazardous materials required to be
11 placarded under 49 C.F.R. Part §172, Subpart F, a driver is
12 disqualified from operating a commercial motor vehicle for a period
13 of three years.

14 (D) For a second conviction or for refusal to submit to any
15 designated secondary chemical test in a separate incident of any
16 combination of offenses in this subsection while operating a
17 commercial motor vehicle, a driver is disqualified from operating
18 a commercial motor vehicle for life.

19 (E) For a second conviction or refusal to submit to any
20 designated secondary chemical test in a separate incident of any
21 combination of offenses in this subsection while operating a
22 noncommercial motor vehicle, a commercial motor vehicle license
23 holder is disqualified from operating a commercial motor vehicle
24 for life.

1 (2) Driving a commercial motor vehicle while the person's
2 alcohol concentration of the person's blood, breath or urine is
3 four hundredths of one percent or more, by weight;

4 (A) For a first conviction or for refusal to submit to any
5 designated secondary chemical test while operating a commercial
6 motor vehicle, a driver is disqualified from operating a commercial
7 motor vehicle for one year.

8 (B) For a first conviction or for refusal to submit to any
9 designated secondary chemical test while operating a commercial
10 motor vehicle transporting hazardous materials required to be
11 placarded under 49 C.F.R. Part §172, Subpart F, a driver is
12 disqualified from operating a commercial motor vehicle for three
13 years.

14 (C) For a second conviction or refusal to submit to any
15 designated secondary chemical test in a separate incident of any
16 combination of offenses in this subsection while operating a
17 commercial motor vehicle, a driver is disqualified from operating
18 a commercial motor vehicle for life.

19 (3) Refusing to submit to any designated secondary chemical
20 test required by the provisions of this code or the provisions of
21 49 C.F.R. §383.72 (2004);

22 (A) For the first conviction or refusal to submit to any
23 designated secondary chemical test while operating a commercial
24 motor vehicle, a driver is disqualified from operating a commercial

1 motor vehicle for one year.

2 (B) For the first conviction or refusal to submit to any
3 designated secondary chemical test while operating a noncommercial
4 motor vehicle, a commercial driver's license holder is disqualified
5 from operating a commercial motor vehicle for one year.

6 (C) For the first conviction or for refusal to submit to any
7 designated secondary chemical test while operating a commercial
8 motor vehicle transporting hazardous materials required to be
9 placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver is
10 disqualified from operating a commercial motor vehicle for a period
11 of three years.

12 (D) For a second conviction or refusal to submit to any
13 designated secondary chemical test in a separate incident of any
14 combination of offenses in this subsection while operating a
15 commercial motor vehicle, a driver is disqualified from operating
16 a commercial motor vehicle for life.

17 (E) For a second conviction or refusal to submit to any
18 designated secondary chemical test in a separate incident of any
19 combination of offenses in this subsection while operating a
20 noncommercial motor vehicle, a commercial driver's license holder
21 is disqualified from operating a commercial motor vehicle for life.

22 (4) Leaving the scene of an accident;

23 (A) For the first conviction while operating a commercial
24 motor vehicle, a driver is disqualified from operating a commercial

1 motor vehicle for one year.

2 (B) For the first conviction while operating a noncommercial
3 motor vehicle, a commercial driver's license holder is disqualified
4 for one year.

5 (C) For the first conviction while operating a commercial
6 motor vehicle transporting hazardous materials required to be
7 placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver is
8 disqualified from operating a commercial motor vehicle for a period
9 of three years.

10 (D) For a second conviction in a separate incident of any
11 combination of offenses in this subsection while operating a
12 commercial motor vehicle, a driver is disqualified from operating
13 a commercial motor vehicle for life.

14 (E) For a second conviction in a separate incident of any
15 combination of offenses in this subsection while operating a
16 noncommercial motor vehicle, a commercial driver's license holder
17 is disqualified from operating a commercial motor vehicle for life.

18 (5) Using a motor vehicle in the commission of any felony as
19 defined in section three, article one of this chapter ~~Provided,~~
20 except that the commission of any felony involving the manufacture,
21 distribution or dispensing of a controlled substance or possession
22 with intent to manufacture, distribute or dispense a controlled
23 substance falls under the provisions of subdivision eight of this
24 subsection;

1 (A) For the first conviction while operating a commercial
2 motor vehicle, a driver is disqualified from operating a commercial
3 motor vehicle for one year.

4 (B) For the first conviction while operating a noncommercial
5 motor vehicle, a commercial driver's license holder is disqualified
6 from operating a commercial motor vehicle for one year.

7 (C) For the first conviction while operating a commercial
8 motor vehicle transporting hazardous materials required to be
9 placarded under 49 C.F.R. Part §172, Subpart F, (2004), a driver is
10 disqualified from operating a commercial motor vehicle for a period
11 of three years.

12 (D) For a second conviction in a separate incident of any
13 combination of offenses in this subsection while operating a
14 commercial motor vehicle, a driver is disqualified from operating
15 a commercial motor vehicle for life.

16 (E) For a second conviction in a separate incident of any
17 combination of offenses in this subsection while operating a
18 noncommercial motor vehicle, a commercial motor vehicle license
19 holder is disqualified from operating a commercial motor vehicle
20 for life.

21 (6) Operating a commercial motor vehicle when, as a result of
22 prior violations committed operating a commercial motor vehicle,
23 the driver's privilege to operate a motor vehicle has been
24 suspended, revoked or canceled or the driver's privilege to operate

1 a commercial motor vehicle has been disqualified.

2 (A) For the first conviction while operating a commercial
3 motor vehicle, a driver is disqualified from operating a commercial
4 motor vehicle for one year.

5 (B) For the first conviction while operating a commercial
6 motor vehicle transporting hazardous materials required to be
7 placarded under 49 C.F.R. Part §172, Subpart F, (2004), a driver is
8 disqualified from operating a commercial motor vehicle for a period
9 of three years.

10 (C) For a second conviction in a separate incident of any
11 combination of offenses in this subsection while operating a
12 commercial motor vehicle, a driver is disqualified from operating
13 a commercial motor vehicle for life.

14 (7) Causing a fatality through the negligent operation of a
15 commercial motor vehicle, including, but not limited to, the crimes
16 of motor vehicle manslaughter, homicide and negligent homicide as
17 defined in section five, article three, chapter seventeen-b, and
18 section one, article five, chapter seventeen-c of this code;

19 (A) For the first conviction while operating a commercial
20 motor vehicle, a driver is disqualified from operating a commercial
21 motor vehicle for one year.

22 (B) For the first conviction while operating a commercial
23 motor vehicle transporting hazardous materials required to be
24 placarded under 49 C.F.R. Part §172, Subpart F, (2004), a driver is

1 disqualified from operating a commercial motor vehicle for a period
2 of three years.

3 (C) For a second conviction in a separate incident of any
4 combination of offenses in this subsection while operating a
5 commercial motor vehicle, a driver is disqualified from operating
6 a commercial motor vehicle for life.

7 (8) Using a motor vehicle in the commission of any felony
8 involving the manufacture, distribution or dispensing of a
9 controlled substance or possession with intent to manufacture,
10 distribute or dispense a controlled substance, a driver is
11 disqualified from operating a commercial motor vehicle for life and
12 ~~shall not be~~ is not eligible for reinstatement.

13 (c) Any person is disqualified from driving a commercial motor
14 vehicle if convicted of;

15 (1) Speeding excessively involving any speed of fifteen miles
16 per hour or more above the posted speed limit;

17 (A) For a second conviction of any combination of offenses in
18 this subsection in a separate incident within a three year period
19 while operating a commercial motor vehicle, a driver
20 is disqualified from operating a commercial motor vehicle for a
21 period of sixty days.

22 (B) For a second conviction of any combination of offenses in
23 this section in a separate incident within a three-year period
24 while operating a noncommercial motor vehicle, if the conviction

1 results in the suspension, revocation or cancellation of the
2 commercial driver's license holder's privilege to operate any motor
3 vehicle, a commercial driver's license holder is disqualified from
4 operating a commercial motor vehicle for a period of sixty days.

5 (C) For a third or subsequent conviction of any combination of
6 the offenses in this subsection in a separate incident in a three-
7 year period while operating a commercial motor vehicle, a driver is
8 disqualified from operating a commercial motor vehicle for a period
9 of one hundred twenty days.

10 (D) For a third or subsequent conviction of any combination of
11 offenses in this subsection in a separate incident within a three-
12 year period while operating a noncommercial motor vehicle, if the
13 conviction results in the suspension, revocation or cancellation of
14 the commercial driver's license holder's privilege to operate any
15 motor vehicle, a commercial driver's license holder shall be
16 disqualified from operating a commercial motor vehicle for a period
17 of one hundred twenty days.

18 (2) Reckless driving as defined in section three, article
19 five, chapter seventeen-c of this code, careless, or negligent
20 driving including, but not limited to, the offenses of driving a
21 motor vehicle in willful or wanton disregard for the safety of
22 persons or property;

23 (A) For a second conviction of any combination of offenses in
24 this subsection in a separate incident within a three-year period

1 while operating a commercial motor vehicle, a driver is
2 disqualified from operating a commercial motor vehicle for a period
3 of sixty days.

4 (B) For a second conviction of any combination of offenses in
5 this section in a separate incident within a three-year period
6 while operating a noncommercial motor vehicle, if the conviction
7 results in the suspension, revocation or cancellation of the
8 commercial driver's license holder's privilege to operate any motor
9 vehicle, a commercial driver's license holder is disqualified from
10 operating a commercial motor vehicle for a period of sixty days.

11 (C) For a third or subsequent conviction of any combination of
12 the offenses in this subsection in a separate incident in a three-
13 year period while operating a commercial motor vehicle, a driver
14 is disqualified from operating a commercial motor vehicle for a
15 period of one hundred twenty days.

16 (D) For a third or subsequent conviction of any combination of
17 offenses in this subsection in a separate incident within a three-
18 year period while operating a noncommercial motor vehicle, if the
19 conviction results in the suspension, revocation or cancellation of
20 the commercial driver's license holder's privilege to operate any
21 motor vehicle, a commercial driver's license holder is disqualified
22 from operating a commercial motor vehicle for a period of one
23 hundred twenty days.

24 (3) Making improper or erratic traffic lane changes;

1 (A) For a second conviction of any combination of offenses in
2 this subsection in a separate incident within a three-year period
3 while operating a commercial motor vehicle, a driver
4 is disqualified from operating a commercial motor vehicle for a
5 period of sixty days.

6 (B) For a second conviction of any combination of offenses in
7 this section in a separate incident within a three-year period
8 while operating a noncommercial motor vehicle, if the conviction
9 results in the suspension, revocation, or cancellation of the
10 commercial driver's license holder's privilege to operate any motor
11 vehicle, a commercial driver's license holder is disqualified from
12 operating a commercial motor vehicle for a period of sixty days.

13 (C) For a third or subsequent conviction of any combination of
14 the offenses in this subsection in a separate incident in a three-
15 year period while operating a commercial motor vehicle, a driver
16 is disqualified from operating a commercial motor vehicle for a
17 period of one hundred twenty days.

18 (D) For a third or subsequent conviction of any combination of
19 offenses in this subsection in a separate incident within a three-
20 year period while operating a noncommercial motor vehicle, if the
21 conviction results in the suspension, revocation or cancellation of
22 the commercial driver's license holder's privilege to operate any
23 motor vehicle, a commercial driver's license holder is disqualified
24 from operating a commercial motor vehicle for a period of one

1 hundred twenty days.

2 (4) Following the vehicle ahead too closely;

3 (A) For a second conviction of any combination of offenses in
4 this subsection in a separate incident within a three-year period
5 while operating a commercial motor vehicle, a driver
6 is disqualified from operating a commercial motor vehicle for a
7 period of sixty days.

8 (B) For a second conviction of any combination of offenses in
9 this section in a separate incident within a three-year period
10 while operating a noncommercial motor vehicle, if the conviction
11 results in the suspension, revocation, or cancellation of the
12 commercial driver's license holder's privilege to operate any motor
13 vehicle, a commercial driver's license holder is disqualified from
14 operating a commercial motor vehicle for a period of sixty days.

15 (C) For a third or subsequent conviction of any combination of
16 the offenses in this subsection in a separate incident in a three-
17 year period while operating a commercial motor vehicle, a driver is
18 disqualified from operating a commercial motor vehicle for a period
19 of one hundred twenty days.

20 (D) For a third or subsequent conviction of any combination of
21 offenses in this subsection in a separate incident within a three-
22 year period while operating a noncommercial motor vehicle, if the
23 conviction results in the suspension, revocation or cancellation of
24 the commercial driver's license holder's privilege to operate any

1 motor vehicle, a commercial driver's license holder is disqualified
2 from operating a commercial motor vehicle for a period of one
3 hundred twenty days.

4 (5) Violating any law relating to traffic control arising in
5 connection with a fatal accident, other than a parking violation;

6 (A) For a second conviction of any combination of offenses in
7 this subsection in a separate incident within a three-year period
8 while operating a commercial motor vehicle, a driver is
9 disqualified from operating a commercial motor vehicle for a period
10 of sixty days.

11 (B) For a second conviction of any combination of offenses in
12 this section in a separate incident within a three-year period
13 while operating a noncommercial motor vehicle, if the conviction
14 results in the suspension, revocation, or cancellation of the
15 commercial driver's license holder's privilege to operate any motor
16 vehicle, a commercial driver's license holder is disqualified from
17 operating a commercial motor vehicle for a period of sixty days.

18 (C) For a third or subsequent conviction of any combination of
19 the offenses in this subsection in a separate incident in a three-
20 year period while operating a commercial motor vehicle, a driver is
21 disqualified from operating a commercial motor vehicle for a period
22 of one hundred twenty days.

23 (D) For a third or subsequent conviction of any combination of
24 offenses in this subsection in a separate incident within a three-

1 year period while operating a noncommercial motor vehicle, if the
2 conviction results in the suspension, revocation or cancellation of
3 the commercial driver's license holder's privilege to operate any
4 motor vehicle, a commercial motor vehicle license holder
5 is disqualified from operating a commercial motor vehicle for a
6 period of one hundred twenty days.

7 (6) Driving a commercial motor vehicle without obtaining a
8 commercial driver's license;

9 (A) For a second conviction of any combination of offenses in
10 this subsection in a separate incident within a three-year period
11 while operating a commercial motor vehicle, a driver
12 is disqualified from operating a commercial motor vehicle for a
13 period of sixty days.

14 (B) For a third or subsequent conviction of any combination of
15 the offenses in this subsection in a separate incident in a three-
16 year period while operating a commercial motor vehicle, a driver is
17 disqualified from operating a commercial motor vehicle for a period
18 of one hundred twenty days.

19 (7) Driving a commercial motor vehicle without a commercial
20 driver's license in the driver's possession ~~provided~~ except that
21 any person who provides proof of possession of a commercial
22 driver's license to the enforcement agency that issued the citation
23 by the court appearance or fine payment deadline ~~shall not be~~ is
24 not guilty of this offense;

1 (A) For a second conviction of any combination of offenses in
2 this subsection in a separate incident within a three-year period
3 while operating a commercial motor vehicle, a commercial driver's
4 license holder is disqualified from operating a commercial motor
5 vehicle for a period of sixty days.

6 (B) For a third or subsequent conviction of any combination of
7 the offenses in this subsection in a separate incident in a three-
8 year period while operating a commercial motor vehicle, a
9 commercial driver's license holder is disqualified from operating
10 a commercial motor vehicle for a period of one hundred twenty days.

11 (8) Driving a commercial motor vehicle without the proper
12 class of commercial driver's license or the proper endorsements for
13 the specific vehicle group being operated or for the passengers or
14 type of cargo being transported;

15 (A) For a second conviction of any combination of offenses in
16 this subsection in a separate incident within a three-year period
17 while operating a commercial motor vehicle, a commercial driver's
18 license holder is disqualified from operating a commercial motor
19 vehicle for a period of sixty days.

20 (B) For a third or subsequent conviction of any combination of
21 the offenses in this subsection in a separate incident in a three-
22 year period while operating a commercial motor vehicle, a
23 commercial driver's license holder is disqualified from operating
24 a commercial motor vehicle for a period of one hundred twenty days.

1 (9) Driving a commercial motor vehicle while engaged in
2 texting and convicted pursuant to section fourteen-a of this
3 article or similar law of this or any other jurisdiction or 49 CFR
4 §392.80;

5 (A) For a second conviction of any combination of offenses in
6 this subsection in a separate incident within a three-year period
7 while operating a commercial motor vehicle, a commercial driver's
8 license holder is disqualified from operating a commercial motor
9 vehicle for a period of sixty days.

10 (B) For a third or subsequent conviction of any combination of
11 the offenses in this subsection in a separate incident in a three-
12 year period while operating a commercial motor vehicle, a
13 commercial driver's license holder is disqualified from operating
14 a commercial motor vehicle for a period of one hundred twenty days.

15 (d) Any person convicted of operating a commercial motor
16 vehicle in violation of any federal, state or local law or
17 ordinance pertaining to ~~any of the~~ railroad crossing violations
18 described in subdivisions (1) through (6) of this subsection,
19 is disqualified from operating a commercial motor vehicle for the
20 period of time specified;

21 (1) Failing to slow down and check that the tracks are clear
22 of an approaching train, if not required to stop in accordance with
23 the provisions of section three, article twelve, chapter seventeen-
24 c of this code;

1 (A) For the first conviction, a driver is disqualified from
2 operating a commercial motor vehicle for a period of sixty days;

3 (B) For a second conviction of any combination of offenses in
4 this subsection within a three-year period, a driver
5 is disqualified from operating a commercial motor vehicle for one
6 hundred twenty days; and

7 (C) For a third or subsequent conviction of any combination of
8 offenses in this subsection within a three-year period, a driver is
9 disqualified from operating a commercial motor vehicle for one
10 year.

11 (2) Failing to stop before reaching the crossing, if the
12 tracks are not clear, if not required to stop, in accordance with
13 the provisions of section one, article twelve, chapter seventeen-c
14 of this code;

15 (A) For the first conviction, a driver is disqualified from
16 operating a commercial motor vehicle for a period of sixty days;

17 (B) For a second conviction of any combination of offenses in
18 this subsection within a three-year period, a driver
19 is disqualified from operating a commercial motor vehicle for one
20 hundred twenty days; and

21 (C) For a third or subsequent conviction of any combination of
22 offenses in this subsection within a three-year period, a driver
23 is disqualified from operating a commercial motor vehicle for one
24 year.

1 (3) Failing to stop before driving onto the crossing, if
2 required to stop in accordance with the provisions of section
3 three, article twelve, chapter seventeen-c of this code;

4 (A) For the first conviction, a driver is disqualified from
5 operating a commercial motor vehicle for a period of sixty days;

6 (B) For a second conviction of any combination of offenses in
7 this subsection within a three-year period, the driver is
8 disqualified from operating a commercial motor vehicle for one
9 hundred twenty days; and

10 (C) For a third or subsequent conviction of any combination of
11 offenses in this subsection within a three-year period, a driver is
12 disqualified from operating a commercial motor vehicle for one
13 year.

14 (4) Failing to have sufficient space to drive completely
15 through the crossing without stopping in accordance with the
16 provisions of section three, article twelve, chapter seventeen-c of
17 this code;

18 (A) For the first conviction, a driver is disqualified from
19 operating a commercial motor vehicle for a period of sixty days;

20 (B) For a second conviction of any combination of offenses in
21 this subsection within a three-year period, a driver is
22 disqualified from operating a commercial motor vehicle for one
23 hundred twenty days; and

24 (C) For a third or subsequent conviction of any combination of

1 offenses in this subsection within a three-year period, a driver
2 is disqualified from operating a commercial motor vehicle for one
3 year.

4 (5) Failing to obey a traffic control device or the directions
5 of an enforcement official at the crossing in accordance with the
6 provisions of section one, article twelve, chapter seventeen-c of
7 this code; ~~or~~

8 (A) For the first conviction, a driver is disqualified from
9 operating a commercial motor vehicle for a period of sixty days;

10 (B) For a second conviction of any combination of offenses in
11 this subsection within a three-year period, a driver
12 is disqualified from operating a commercial motor vehicle for one
13 hundred twenty days; and

14 (C) For a third or subsequent conviction of any combination of
15 offenses in this subsection within a three-year period, a driver is
16 disqualified from operating a commercial motor vehicle for one
17 year.

18 (6) Failing to negotiate a crossing because of insufficient
19 undercarriage clearance in accordance with the provisions of
20 section three, article twelve, chapter seventeen-c of this code.

21 (A) For the first conviction, a driver is disqualified from
22 operating a commercial motor vehicle for a period of sixty days;

23 (B) For a second conviction of any combination of offenses in
24 this subsection within a three-year period, a driver is

1 disqualified from operating a commercial motor vehicle for one
2 hundred twenty days; and

3 (C) For a third or subsequent conviction of any combination of
4 offenses in this subsection within a three-year period, a driver is
5 disqualified from operating a commercial motor vehicle for one
6 year.

7 (e) Any person who is convicted of violating an out-of-service
8 order while operating a commercial motor vehicle is disqualified
9 for the following periods of time: ~~if:~~

10 (1) If convicted of violating a driver or vehicle out-of-
11 service order while transporting nonhazardous materials;

12 (A) For the first conviction of violating an out-of-service
13 order while operating a commercial motor vehicle, a driver is
14 disqualified from operating a commercial motor vehicle for one
15 hundred eighty days.

16 (B) For a second conviction in a separate incident within a
17 ten-year period for violating an out of service order while
18 operating a commercial motor vehicle, a driver is disqualified from
19 operating a commercial motor vehicle for two years.

20 (C) For a third or subsequent conviction in a separate
21 incident within a ten-year period for violating an out-of-service
22 order while operating a commercial motor vehicle, a driver is
23 disqualified from operating a commercial motor vehicle for three
24 years.

1 (2) If convicted of violating a driver or vehicle out-of-
2 service order while transporting hazardous materials required to be
3 placarded under 49 C.F.R. Part §172, Subpart F (2004) or while
4 operating a vehicle designed to transport sixteen or more
5 passengers including the driver;

6 (A) For the first conviction of violating an out of service
7 order while operating a commercial motor vehicle, a driver is
8 disqualified from operating a commercial motor vehicle for one
9 hundred eighty days.

10 (B) For a second conviction in a separate incident within a
11 ten-year period for violating an out-of-service order while
12 operating a commercial motor vehicle, a driver is disqualified from
13 operating a commercial motor vehicle for three years.

14 (C) For a third or subsequent conviction in a separate
15 incident within a ten-year period for violating an out-of-service
16 order while operating a commercial motor vehicle, a driver is
17 disqualified from operating a commercial motor vehicle for three
18 years.

19 (f) After disqualifying, suspending, revoking or canceling a
20 commercial driver's license, the division shall update its records
21 to reflect that action within ten days.

22 (g) In accordance with the provisions of 49 U.S.C.
23 §313119(a)(19)(2004), and 49 C.F.R §384.226 (2004), ~~and~~
24 notwithstanding the provisions of section twenty-five, article

1 eleven, chapter sixty-one of this code, no record of conviction,
2 revocation, suspension or disqualification related to any type of
3 motor vehicle traffic control offense, other than a parking
4 violation, of a commercial driver's license holder or a person
5 operating a commercial motor vehicle may be masked, expunged,
6 deferred or be subject to any diversion program.

7 (h) Notwithstanding any provision in this code to the
8 contrary, the division may not issue any temporary driving permit,
9 work-only driving permit or hardship license or permit that
10 authorizes a person to operate a commercial motor vehicle when his
11 or her privilege to operate any motor vehicle has been revoked,
12 suspended, disqualified or otherwise canceled for any reason.

13 (i) In accordance with the provisions of 49 C.F.R.
14 §391.15(b), a driver is disqualified from operating a commercial
15 motor vehicle for the duration of any suspension, revocation or
16 cancellation of his or her driver's license or privilege to operate
17 a motor vehicle by this state or by any other state or jurisdiction
18 until the driver complies with the terms and conditions for
19 reinstatement set by this state or by another state or
20 jurisdiction.

21 (j) In accordance with the provisions of 49 C.F.R. 353.52
22 (2006), the division shall immediately disqualify a driver's
23 privilege to operate a commercial motor vehicle upon a notice from
24 the Assistant Administrator of the Federal Motor Carrier Safety

1 Administration that the driver poses an imminent hazard. Any
2 disqualification period imposed under the provisions of this
3 subsection shall be served concurrently with any other period of
4 disqualification if applicable.

5 (k) In accordance with the provisions of 49 C.F.R.
6 1572.11(a), the division shall immediately disqualify a driver's
7 privilege to operate a commercial motor vehicle if the driver fails
8 to surrender his or her driver's license with a hazardous material
9 endorsement to the division upon proper notice by the division to
10 the driver that the division received notice from the Department of
11 Homeland Security Transportation Security Administration of an
12 initial determination of threat assessment and immediate revocation
13 that the driver does not meet the standards for security threat
14 assessment provided in 49 C.F.R. 1572.5. The disqualification
15 remains in effect until the driver either surrenders the driver's
16 license to the division or provides the division with an affidavit
17 attesting to the fact that the driver has lost or is otherwise
18 unable to surrender the license.

19 (l) In accordance with 49 C.F.R. §391.41, a driver is
20 disqualified from operating a commercial motor vehicle if the
21 driver is not physically qualified to operate a commercial motor
22 vehicle or does not possess a valid medical certification status.

23 (m) In accordance with the provisions of 49 C.F.R. §383.73(g),
24 the division shall disqualify a driver's privilege to operate a

1 commercial motor vehicle if the division determines that the
2 licensee has falsified any information or certifications required
3 under the provisions of 49 C.F.R. 383 Subpart J or 49 C.F.R.
4 §383.71a for sixty days in addition to any other penalty prescribed
5 by this code.

6 **§17E-1-14a. Commercial Drivers Prohibited From Texting.**

7 (a) No commercial driver may engage in texting while driving
8 a commercial motor vehicle.

9 (b) No motor carrier may allow or require its drivers to
10 engage in texting while driving a commercial motor vehicle.

11 (c) For the purposes of this section only, and unless a more
12 restrictive prohibition is prescribed in this code, driving means
13 operating a commercial motor vehicle with the motor running,
14 including while temporarily stationed because of traffic, a traffic
15 control device or other momentary delays. Driving does not include
16 operating a commercial motor vehicle with or without the motor
17 running when the driver moved the vehicle to the side of or off a
18 highway, as defined in 49 CFR 390.5, and halted in a location where
19 the vehicle can safely remain stationary.

20 **§17E-1-17. Driving record information to be furnished.**

21 Subject to the provisions of article two-a, chapter seventeen-
22 a of this code, the commissioner shall furnish full information
23 regarding the driving record of any person:

24 (a) To the driver license administrator of any other state or

1 ~~province or territory of Canada~~ of the United States and the
2 District of Columbia or a province or territory of Canada or a
3 state or federal agency of the United Mexican States requesting
4 that information;

5 (b) To any motor carrier employer or prospective motor carrier
6 employer;

7 (c) To the United States Secretary of Transportation; and

8 (d) To the driver: ~~Provided, That~~ Nothing in this section
9 ~~shall be construed to prevent~~ prevents an insurer from obtaining a
10 standard driving record issued in accordance with section two,
11 article two, chapter seventeen-d of this code.

12 **§17E-1-20. Reciprocity.**

13 (a) Notwithstanding any law to the contrary, a person may
14 drive a commercial motor vehicle if the person has a commercial
15 driver's license by any state of the United States and the District
16 of Columbia or a province or territory of Canada or a state or
17 federal agency of the United Mexican States in accordance with the
18 minimum federal standards for the issuance of commercial motor
19 vehicle driver licenses if the license is not suspended, revoked or
20 canceled, ~~and~~ if the person is not disqualified from driving a
21 commercial motor vehicle or not subject to an "out-of-service"
22 order.

23 (b) The commissioner is authorized to suspend, revoke or
24 cancel the privilege to operate a motor vehicle or disqualify the

1 privilege to operate a commercial motor vehicle of any resident of
2 this state or of a nonresident upon receiving notice of the
3 conviction of such person in another state of an offense ~~therein~~
4 which, if committed in this state, would be grounds for the
5 suspension, revocation or cancellation of the privilege to operate
6 a motor vehicle or the disqualification of the privilege to operate
7 a commercial motor vehicle.