

1 **ENROLLED**

2 **Senate Bill No. 328**

3 (BY SENATORS BEACH, KLEMPA AND PLYMALE)

4 _____
5 [Passed March 11, 2011; in effect ninety days from passage.]
6 _____

7
8
9
10 AN ACT to amend and reenact §17E-1-3, §17E-1-6, §17E-1-9, §17E-1-
11 10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-17 and §17E-1-20
12 of the Code of West Virginia, 1931, as amended; and to amend
13 said code by adding thereto a new section, designated §17E-1-
14 14a, all relating to the issuance, disqualification,
15 suspension and revocation of driver's licenses and privilege
16 to operate a commercial motor vehicle; adding definitions;
17 creating the offense of operating a commercial motor vehicle
18 while texting; providing penalties and exceptions;
19 establishing disqualification penalties for 2nd, 3rd or
20 subsequent offenses; providing civil penalties for motor
21 carriers who require or allow a driver to operate a commercial
22 motor vehicle while texting; providing that a driver is
23 disqualified from operating a commercial motor vehicle upon
24 conviction for operating a commercial motor vehicle when

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

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

15 That §17E-1-3, §17E-1-6, §17E-1-9, §17E-1-10, §17E-1-11, §17E-
16 1-12, §17E-1-13, §17E-1-17 and §17E-1-20 of the Code of West
17 Virginia, 1931, as amended, be amended and reenacted; and that said
18 code be amended by adding thereto a new section, designated §17E-1-
19 14a, all to read as follows:

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

21 **§17E-1-3. Definitions.**

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

24 (1) "Alcohol" means:

1 (A) Any substance containing any form of alcohol, including,
2 but not limited to, ethanol, methanol, propenyl and isopropanol;

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

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

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

14 (2) "Alcohol concentration" means:

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

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

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

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

23 (3) "At fault traffic accident" means, for the purposes of
24 waiving the road test, a determination of fault by the official

1 filing the accident report as evidenced by an indication of
2 contributing circumstances in the accident report.

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

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

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

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

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

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

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

24 (D) If the vehicle is of any size and transporting hazardous

1 materials as defined in this section.

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

4 (9) "Controlled substance" means any substance classified
5 under the provisions of chapter sixty-a of this code, the Uniform
6 Controlled Substances Act, and includes all substances listed on
7 Schedules I through V, inclusive, of article two of said chapter,
8 as revised. The term "controlled substance" also has the meaning
9 such term has under 21 U.S.C. §802.6 and includes all substances
10 listed on Schedules I through V of 21 C.F.R. §1308 as they may be
11 amended by the United States 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 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 (17) "Employee" means an operator of a commercial motor
4 vehicle, including full time, regularly employed drivers, casual,
5 intermittent or occasional drivers, leased drivers and independent,
6 owner-operator contractors when operating a commercial motor
7 vehicle, who are either directly employed by or under lease to
8 drive a commercial motor vehicle for an employer.

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

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

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

24 (21) "Farmer" includes an owner, tenant, lessee, occupant or

1 person in control of the premises used substantially for
2 agricultural or horticultural pursuits who is at least eighteen
3 years of age with two years licensed driving experience.

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

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

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

18 (25) "Gross vehicle weight rating (GVWR)" means the value
19 specified by the manufacturer as the loaded weight of a single
20 vehicle. In the absence of a value specified by the manufacturer,
21 the GVWR will be determined by the total weight of the vehicle and
22 load, if any.

23 (26) "Hazardous materials" means any material that has been
24 designated as hazardous under 49 U.S.C. §5103 and is required to

1 be placarded under subpart F of 49 C.F.R., Part §172 or any quantity
2 of a material listed as a select agent or toxin in 42 C.F.R., Part
3 §73.

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

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

22 (29) "Motor vehicle" means every vehicle which is self-
23 propelled and every vehicle which is propelled by electric power
24 obtained from overhead trolley wires but not operated upon rails.

1 (30) "Noncommercial motor vehicle" means a motor vehicle or
2 combination of motor vehicles not defined by the term "commercial
3 motor vehicle".

4 (31) "Out-of-service order" means a a declaration by an
5 authorized enforcement officer of a federal, state, Canadian,
6 Mexican, county or local jurisdiction including any special agent
7 of the Federal Motor Carrier Safety Administration that a driver,
8 a commercial motor vehicle, or a motor carrier operation is out of
9 service pursuant to 49 C.F.R. §§386.72, 392.5, 395.13, 396.9 or
10 compatible laws or the North American uniform out-of-service
11 criteria that an imminent hazard exists.

12) (32) "Violation of an out-of-service order" means:

13 (A) The operation of a commercial motor vehicle during the
14 period the driver was placed out-of-service;

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

18 (C) The operation of any commercial vehicle by a motor carrier
19 operation after the carrier has been placed out of service.

20 (33) "School bus" means a commercial motor vehicle used to
21 transport preprimary, primary or secondary school students from
22 home-to-school, from school-to-home or to and from school sponsored
23 events. School bus does not include a bus used as a common
24 carrier.

1 (34) "Serious traffic violation" means conviction for any of
2 the following offenses when operating a commercial motor vehicle:

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

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

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

13 (D) Following the vehicle ahead too closely;

14 (E) Driving a commercial motor vehicle without obtaining a
15 commercial driver's license;

16 (F) Driving a commercial motor vehicle without a commercial
17 driver's license in the driver's possession. However, any person
18 who provides proof to the law-enforcement agency that issued the
19 citation, by the date the person must appear in court or pay any
20 fine for such violation, that the person held a valid commercial
21 driver's license on the date the citation was issued, shall not be
22 guilty of this offense;

23 (G) Driving a commercial motor vehicle without the proper
24 class of commercial driver's license or endorsements for the

1 specific vehicle group being operated or for the passengers or type
2 of cargo being transported;

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

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

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

11 (35) "State" means a state of the United States and the
12 District of Columbia or a province or territory of Canada or a
13 state or federal agency of the United Mexican States.

14 (36) "State of domicile" means the state where a person has his
15 or her true, fixed and permanent home and principle residence and
16 to which he or she has the intention of returning whenever absent
17 in accordance with chapter seventeen-a, article three, section one-
18 a.

19 (37) "Suspension, revocation or cancellation" of a driver's
20 license or a commercial driver's license means the privilege to
21 operate any type of motor vehicle on the roads and highways of this
22 state is withdrawn.

23 (38) "Tank vehicle" means any commercial motor vehicle that is
24 designed to transport any liquid or gaseous materials within a tank

1 that is either permanently or temporarily attached to the vehicle
2 or the chassis. These vehicles include, but are not limited to,
3 cargo tanks and portable tanks as defined in 49 C. F. R. Part
4 171 (1998). This definition does not include portable tanks having
5 a rated capacity under one thousand gallons.

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

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

13 (B) Texting does not include:

14 (i) Reading, selecting or entering a telephone number, an
15 extension number or voicemail retrieval codes and commands into an
16 electronic device for the purpose of initiating or receiving a
17 phone call or using voice commands to initiate or receive a
18 telephone call;

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

21 (iii) Using a device capable of performing multiple functions
22 including, but not limited to, fleet management systems,
23 dispatching devices, smart phones, citizen band radios or music
24 players for a purpose that is not otherwise prohibited by this

1 section

2 (40) "Transportation Security Administration" means the United
3 States Department of Homeland Security Transportation Security
4 Administration.

5 (41) "United States" means the fifty states and the District
6 of Columbia.

7 (42) "Valid or Certified Medical Certification Status" means
8 that an applicant or driver has a current medical evaluation or
9 determination by a licensed physician that the applicant or driver
10 meets the minimum federal motor carrier safety administration
11 physical qualifications within the prescribed time frames pursuant
12 49 CFR Part §391. Not-certified means that an applicant or driver
13 does not have a current medical evaluation or has not been
14 certified by a licensed physician as meeting the minimum federal
15 motor carrier safety administration physical qualifications
16 pursuant 49 CFR Part §391.

17 (43) "Vehicle Group" means a class or type of vehicle with
18 certain operating characteristics.

19 **§17E-1-6. Employer responsibilities.**

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

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

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

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

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

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

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

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

14 (d) The division shall impose a civil penalty in addition to
15 any penalty required under the provisions of section twenty-five of
16 this article on any employer who knowingly allows, permits,
17 requires or authorizes a driver to drive a commercial motor vehicle
18 in violation of subdivision (3) or (4) of subsection (b) or
19 subsection (c) of this section.

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

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

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

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

10 (b) Third party testing. The commissioner may authorize a
11 person, including an agency of this or another state, an employer,
12 private individual or institution, department, agency or
13 instrumentality of local government, to administer the skills test
14 specified by this section so long as:

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

17 (2) The party has entered into an agreement with the state
18 that complies with the requirements of 49 C.F.R., part § 383.75.

19 (c) Indemnification of driver examiners. No person who has
20 been officially trained and certified by the state as a driver
21 examiner, who administers a driving test, and no other person, firm
22 or corporation by whom or with which that person is employed or is
23 in any way associated, may be criminally liable for the
24 administration of the tests or civilly liable in damages to the

1 person tested or other persons or property unless for gross
2 negligence or willful or wanton injury.

3 (d) The commissioner may waive the skills test specified in
4 this section for a commercial driver license applicant who meets
5 the requirements of 49 C.F.R. part § 383.77 and the requirements
6 specified by the commissioner.

7 (e) A commercial driver's license or commercial driver's
8 instruction permit may not be issued to a person while the person
9 is subject to a disqualification from driving a commercial motor
10 vehicle, when the person does not possess a valid or current
11 medical certification status or while the person's driver's license
12 is suspended, revoked or canceled in any state. A commercial
13 driver's license may not be issued by any other state unless the
14 person first surrenders all such licenses to the division.

15 (f) Commercial driver's instruction permit may be issued as
16 follows:

17 (1) To an individual who holds a valid Class E or Class D
18 driver's license and has passed the vision and written tests
19 required for issuance of a commercial driver's license.

20 (2) The commercial instruction permit may not be issued for a
21 period to exceed six months. Only one renewal or reissuance may be
22 granted within a two-year period. The holder of a commercial
23 driver's instruction permit may drive a commercial motor vehicle on
24 a highway only when accompanied by the holder of a commercial

1 driver's license valid for the type of vehicle driven, who is
2 twenty-one years of age or older, who is alert and unimpaired and
3 who occupies a seat beside the individual for the purpose of giving
4 instruction or testing.

5 (3) Only to a person who is at least eighteen years of age and
6 has held a graduated Class E, Class E or Class D license for at
7 least two years.

8 (4) The applicant for a commercial driver's instruction permit
9 shall also be otherwise qualified to hold a commercial driver's
10 license.

11 **§17E-1-10. Application for commercial driver's license.**

12 (a) The application for a commercial driver's license or
13 commercial driver's instruction permit must include at least the
14 following:

15 (1) The full name and current mailing and residential address
16 of the person;

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

19 (3) Date of birth;

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

21 (5) The person's signature;

22 (6) The person's color photograph;

23 (7) Certifications including those required by 49 C.F.R. Part
24 § 383.71(a) (2004);

1 (8) Any other information required by the commissioner;

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

3 (10) Certification stating that the applicant is:

4 (A) Engaged in interstate commerce and subject to 49 C.F.R.

5 Part §391 standards;

6 (B) Engaged in interstate commerce but excepted from 49 C.F.R.

7 Part §391 standards;

8 (C) Engaged in intrastate commerce and subject to state
9 medical standards; or

10 (D) Engaged in intrastate commerce but not subject to state
11 medical standards.

12 (b) When a licensee changes his or her name, mailing address
13 or residence, or when a licensee's classifications, endorsements,
14 or restrictions or medical certification status changes; the
15 licensee shall submit an application for a duplicate license and
16 obtain a duplicate driver's license displaying the updated
17 information.

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

22 **§17E-1-11. Commercial driver's license.**

23 The commercial driver's license shall be marked "commercial
24 driver's license" or "CDL" and, to the maximum extent practicable,

1 tamper proof. It must include, but not be limited to, the
2 following information:

3 (a) The name and residential address of the person;

4 (b) The person's color photograph;

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

7 (d) Date of birth;

8 (e) The person's signature;

9 (f) The class or type of commercial motor vehicle or vehicles
10 which the person is authorized to drive together with any
11 endorsement(s) and or restriction(s);

12 (g) The name of this state;

13 (h) The dates between which the license is valid; and

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

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

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

20 (1) *Class A combination vehicle.* -- Any combination of
21 vehicles with a gross combined vehicle weight rating of twenty-six
22 thousand one pounds or more, provided the gross vehicle weight
23 rating of the vehicle being towed is in excess of ten thousand
24 pounds.

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

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

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

10 (B) Vehicles used in the transportation of hazardous materials
11 which requires the vehicle to be placarded under 49 C.F.R. Part
12 §172, Subpart F (2004).

13 (4) Each applicant who desires to operate a vehicle in a
14 classification different from the class in which the applicant is
15 authorized is required to retake and pass all related tests except
16 the following:

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

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

24 (b) *Endorsements and restrictions.* -- The commissioner upon

1 issuing a commercial driver's license may impose endorsements and
2 restrictions determined by the commissioner to be appropriate to
3 assure the safe operation of a specific class, type or category of
4 motor vehicle or a specifically equipped motor vehicle and to
5 comply with 49 U.S.C., et seq., and 49 C.F.R. §383.93 (2004)
6 including, but not limited to, endorsements or restrictions to
7 operate:

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

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

12 (3) Tank vehicles which requires successful completion of a
13 knowledge test;

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

18 (5) School buses which requires successful completion of a
19 knowledge and skills test unless the applicant meets the criteria
20 for waiver of the skills test in accordance with 49 C.F.R.
21 §383.123(b) (2004); or

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

24 (c) *Applicant record check.* -- Before issuing a commercial

1 driver's license, the commissioner shall obtain driving record and
2 medical certification status information through the commercial
3 driver's license information system, the national driver register
4 and from each state in which the person has been licensed.

5 (d) *Notification of license issuance.* -- Within ten days
6 after issuing a commercial driver's license, the commissioner shall
7 notify the commercial driver's license information system of the
8 issuance and provide all information required to ensure
9 identification of the person.

10 (e) *Expiration of license.* -

11 (1) Every commercial driver's license issued to persons who
12 have attained their twenty-first birthday expires on the
13 applicant's birthday in those years in which the applicant's age is
14 evenly divisible by five. Except as provided in subdivision (2) of
15 this subsection, no commercial driver's license may be issued for
16 less than three years nor more than seven years. The commercial
17 driver's license shall be renewed by the applicant's birthday and
18 is valid for a period of five years, expiring on the applicant's
19 birthday and in a year in which the applicant's age is evenly
20 divisible by five. No commercial driver's license with a hazardous
21 materials endorsement may be issued for more than five years.

22 (2) Every commercial driver's license issued to persons who
23 have not attained their twenty-first birthday expires thirty days
24 after the applicant's birthday in the year in which the applicant

1 attains the age of twenty-one years.

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

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

10 (5) Any commercial driver's license held by a person who does
11 not possess a valid or current medical certification status is no
12 longer valid for the operation of a commercial motor vehicle and is
13 downgraded to the appropriate licensure level commensurate with the
14 licensee's qualifications regardless of the expiration date or
15 indicated class on the face of the license within the time frames
16 prescribed by 49 CFR §383.73(j).

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

20 (g) If the applicant wishes to obtain or retain a hazardous
21 materials endorsement, the applicant shall comply with a background
22 check in accordance with 49 U.S.C. §5103a and 49 C.F.R. Part
23 §1572 (2004) and subject to the following:

24 (1) The applicant is a citizen of the United States or a

1 lawful permanent resident of the United States;

2 (2) The applicant completes the application prescribed by the
3 division and submits fingerprints in a form and manner prescribed
4 by the division and the United States Department of Homeland
5 Security Transportation Security Administration at the time of
6 application or at any other time in accordance with 49
7 C.F.R. §1572.5(2004);

8 (3) The applicant pays all fees prescribed by the
9 Transportation Security Administration or its agent and the
10 division;

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

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

16 (6) The applicant has passed the Transportation Security
17 Administration security threat assessment and the division has
18 received a final notification of threat assessment or notification
19 of no security threat from the Transportation Security
20 Administration. An appeal of a decision, determination or ruling
21 of the Federal Bureau of Investigation or the Transportation
22 Security Agency shall be directed to that agency; and

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

1 **§17E-1-13. Disqualification.**

2 (a) A person may not operate a commercial motor vehicle if his
3 or her privilege to operate a commercial motor vehicle is
4 disqualified under the provisions of the Federal Motor Carrier
5 Safety Improvement Act of 1999, 49 C.F.R. Part §383, Subpart D
6 (2004) or in accordance with the provisions of this section.

7 (1) For the purposes of determining first and subsequent
8 violations of the offenses listed in this section, each conviction
9 resulting from a separate incident includes convictions for
10 offenses committed in a commercial motor vehicle or a noncommercial
11 motor vehicle.

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

23 (3) Any disqualification imposed by this section is in
24 addition to any action to suspend, revoke or cancel the driver's

1 license or driving privileges if suspension, revocation or
2 cancellation is required under another provision of this code.

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

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

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

11 (A) For a first conviction or for refusal to submit to any
12 designated secondary chemical test while operating a commercial
13 motor vehicle, a driver is disqualified from operating a commercial
14 motor vehicle for a period of one year.

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

19 (C) For a first conviction or for refusal to submit to any
20 designated secondary chemical test while operating a commercial
21 motor vehicle transporting hazardous materials required to be
22 placarded under 49 C.F.R. Part §172, Subpart F, a driver is
23 disqualified from operating a commercial motor vehicle for a period
24 of three years.

1 (D) For a second conviction or for refusal to submit to any
2 designated secondary chemical test in a separate incident of any
3 combination of offenses in this subsection while operating a
4 commercial motor vehicle, a driver is disqualified from operating
5 a commercial motor vehicle for life.

6 (E) For a second conviction or refusal to submit to any
7 designated secondary chemical test in a separate incident of any
8 combination of offenses in this subsection while operating a
9 noncommercial motor vehicle, a commercial motor vehicle license
10 holder is disqualified from operating a commercial motor vehicle
11 for life.

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

15 (A) For a first conviction or for refusal to submit to any
16 designated secondary chemical test while operating a commercial
17 motor vehicle, a driver is disqualified from operating a commercial
18 motor vehicle for one year.

19 (B) For a first conviction or for refusal to submit to any
20 designated secondary chemical test while operating a commercial
21 motor vehicle transporting hazardous materials required to be
22 placarded under 49 C.F.R. Part §172, Subpart F, a driver is
23 disqualified from operating a commercial motor vehicle for three
24 years.

1 (C) For a second conviction or refusal to submit to any
2 designated secondary chemical test in a separate incident of any
3 combination of offenses in this subsection while operating a
4 commercial motor vehicle, a driver is disqualified from operating
5 a commercial motor vehicle for life.

6 (3) Refusing to submit to any designated secondary chemical
7 test required by the provisions of this code or the provisions of
8 49 C.F.R. §383.72 (2004);

9 (A) For the first conviction or refusal to submit to any
10 designated secondary chemical test while operating a commercial
11 motor vehicle, a driver is disqualified from operating a commercial
12 motor vehicle for one year.

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

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

23 (D) For a second conviction or refusal to submit to any
24 designated secondary chemical test in a separate incident of any

1 combination of offenses in this subsection while operating a
2 commercial motor vehicle, a driver is disqualified from operating
3 a commercial motor vehicle for life.

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

9 (4) Leaving the scene of an accident;

10 (A) For the first conviction while operating a commercial
11 motor vehicle, a driver is disqualified from operating a commercial
12 motor vehicle for one year.

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

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

21 (D) For a second conviction in a separate incident of any
22 combination of offenses in this subsection while operating a
23 commercial motor vehicle, a driver is disqualified from operating
24 a commercial motor vehicle for life.

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

5 (5) Using a motor vehicle in the commission of any felony as
6 defined in section three, article one of this chapter except that
7 the commission of any felony involving the manufacture,
8 distribution or dispensing of a controlled substance or possession
9 with intent to manufacture, distribute or dispense a controlled
10 substance falls under the provisions of subdivision eight of this
11 subsection;

12 (A) For the first conviction while operating a commercial
13 motor vehicle, a driver is disqualified from operating a commercial
14 motor vehicle for one year.

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

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

23 (D) For a second conviction in a separate incident of any
24 combination of offenses in this subsection while operating a

1 commercial motor vehicle, a driver is disqualified from operating
2 a commercial motor vehicle for life.

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

8 (6) Operating a commercial motor vehicle when, as a result of
9 prior violations committed operating a commercial motor vehicle,
10 the driver's privilege to operate a motor vehicle has been
11 suspended, revoked or canceled or the driver's privilege to operate
12 a commercial motor vehicle has been disqualified.

13 (A) For the first conviction while operating a commercial
14 motor vehicle, a driver is disqualified from operating a commercial
15 motor vehicle for one year.

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

21 (C) For a second conviction in a separate incident of any
22 combination of offenses in this subsection while operating a
23 commercial motor vehicle, a driver is disqualified from operating
24 a commercial motor vehicle for life.

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

6 (A) For the first conviction while operating a commercial
7 motor vehicle, a driver is disqualified from operating a commercial
8 motor vehicle for one year.

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

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

18 (8) Using a motor vehicle in the commission of any felony
19 involving the manufacture, distribution or dispensing of a
20 controlled substance or possession with intent to manufacture,
21 distribute or dispense a controlled substance, a driver is
22 disqualified from operating a commercial motor vehicle for life and
23 is not eligible for reinstatement.

24 (c) Any person is disqualified from driving a commercial motor

1 vehicle if convicted of;

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

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

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

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

21 (D) For a third or subsequent conviction of any combination of
22 offenses in this subsection in a separate incident within a three-
23 year period while operating a noncommercial motor vehicle, if the
24 conviction results in the suspension, revocation or cancellation of

1 the commercial driver's license holder's privilege to operate any
2 motor vehicle, a commercial driver's license holder shall be
3 disqualified from operating a commercial motor vehicle for a period
4 of one hundred twenty days.

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

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

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

22 (C) For a third or subsequent conviction of any combination of
23 the offenses in this subsection in a separate incident in a three-
24 year period while operating a commercial motor vehicle, a driver

1 is disqualified from operating a commercial motor vehicle for a
2 period of one hundred twenty days.

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

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

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

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

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

1 the offenses in this subsection in a separate incident in a three-
2 year period while operating a commercial motor vehicle, a driver
3 is disqualified from operating a commercial motor vehicle for a
4 period of one hundred twenty days.

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

13 (4) Following the vehicle ahead too closely;

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

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

1 operating a commercial motor vehicle for a period of sixty days.

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

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

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

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 is
20 disqualified from operating a commercial motor vehicle for a period
21 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 motor vehicle license holder
16 is disqualified from operating a commercial motor vehicle for a
17 period of one hundred twenty days.

18 (6) Driving a commercial motor vehicle without obtaining a
19 commercial driver's license;

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

1 (B) For a third or subsequent conviction of any combination of
2 the offenses in this subsection in a separate incident in a three-
3 year period while operating a commercial motor vehicle, a driver is
4 disqualified from operating a commercial motor vehicle for a period
5 of one hundred twenty days.

6 (7) Driving a commercial motor vehicle without a commercial
7 driver's license in the driver's possession except that any person
8 who provides proof of possession of a commercial driver's license
9 to the enforcement agency that issued the citation by the court
10 appearance or fine payment deadline is not guilty of this offense;

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

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

21 (8) Driving a commercial motor vehicle without the proper
22 class of commercial driver's license or the proper endorsements for
23 the specific vehicle group being operated or for the passengers or
24 type of cargo being transported;

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 (9) Driving a commercial motor vehicle while engaged in
12 texting and convicted pursuant to section fourteen-a of this
13 article or similar law of this or any other jurisdiction or 49 CFR
14 §392.80;

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 (d) Any person convicted of operating a commercial motor
2 vehicle in violation of any federal, state or local law or
3 ordinance pertaining to railroad crossing violations described in
4 subdivisions (1) through (6) of this subsection, is disqualified
5 from operating a commercial motor vehicle for the period of time
6 specified;

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

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

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

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

21 (2) Failing to stop before reaching the crossing, if the
22 tracks are not clear, if not required to stop, in accordance with
23 the provisions of section one, article twelve, chapter seventeen-c
24 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
9 is disqualified from operating a commercial motor vehicle for one
10 year.

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

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

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

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

24 (4) Failing to have sufficient space to drive completely

1 through the crossing without stopping in accordance with the
2 provisions of section three, article twelve, chapter seventeen-c of
3 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, a 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
12 is disqualified from operating a commercial motor vehicle for one
13 year.

14 (5) Failing to obey a traffic control device or the directions
15 of an enforcement official at the crossing in accordance with the
16 provisions of section one, 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
22 is 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 is
2 disqualified from operating a commercial motor vehicle for one
3 year.

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

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

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

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

17 (e) Any person who is convicted of violating an out-of-service
18 order while operating a commercial motor vehicle is disqualified
19 for the following periods of time:

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

22 (A) For the first conviction of violating an out-of-service
23 order while operating a commercial motor vehicle, a driver is
24 disqualified from operating a commercial motor vehicle for one

1 hundred eighty days.

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

6 (C) For a third or subsequent conviction in a separate
7 incident within a ten-year period for violating an out-of-service
8 order while operating a commercial motor vehicle, a driver is
9 disqualified from operating a commercial motor vehicle for three
10 years.

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

16 (A) For the first conviction of violating an out of service
17 order while operating a commercial motor vehicle, a driver is
18 disqualified from operating a commercial motor vehicle for one
19 hundred eighty days.

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

24 (C) For a third or subsequent conviction in a separate

1 incident within a ten-year period for violating an out-of-service
2 order while operating a commercial motor vehicle, a driver is
3 disqualified from operating a commercial motor vehicle for three
4 years.

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

8 (g) In accordance with the provisions of 49 U.S.C.
9 §313119(a)(19)(2004), and 49 C.F.R §384.226 (2004), notwithstanding
10 the provisions of section twenty-five, article eleven, chapter
11 sixty-one of this code, no record of conviction, revocation,
12 suspension or disqualification related to any type of motor vehicle
13 traffic control offense, other than a parking violation, of a
14 commercial driver's license holder or a person operating a
15 commercial motor vehicle may be masked, expunged, deferred or be
16 subject to any diversion program.

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

23 (i) In accordance with the provisions of 49 C.F.R.
24 §391.15(b), a driver is disqualified from operating a commercial

1 motor vehicle for the duration of any suspension, revocation or
2 cancellation of his or her driver's license or privilege to operate
3 a motor vehicle by this state or by any other state or jurisdiction
4 until the driver complies with the terms and conditions for
5 reinstatement set by this state or by another state or
6 jurisdiction.

7 (j) In accordance with the provisions of 49 C.F.R. 353.52
8 (2006), the division shall immediately disqualify a driver's
9 privilege to operate a commercial motor vehicle upon a notice from
10 the Assistant Administrator of the Federal Motor Carrier Safety
11 Administration that the driver poses an imminent hazard. Any
12 disqualification period imposed under the provisions of this
13 subsection shall be served concurrently with any other period of
14 disqualification if applicable.

15 (k) In accordance with the provisions of 49 C.F.R.
16 1572.11(a), the division shall immediately disqualify a driver's
17 privilege to operate a commercial motor vehicle if the driver fails
18 to surrender his or her driver's license with a hazardous material
19 endorsement to the division upon proper notice by the division to
20 the driver that the division received notice from the Department of
21 Homeland Security Transportation Security Administration of an
22 initial determination of threat assessment and immediate revocation
23 that the driver does not meet the standards for security threat
24 assessment provided in 49 C.F.R. 1572.5. The disqualification

1 remains in effect until the driver either surrenders the driver's
2 license to the division or provides the division with an affidavit
3 attesting to the fact that the driver has lost or is otherwise
4 unable to surrender the license.

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

9 (m) In accordance with the provisions of 49 C.F.R.
10 §383.73(g), the division shall disqualify a driver's privilege to
11 operate a commercial motor vehicle if the division determines that
12 the licensee has falsified any information or certifications
13 required under the provisions of 49 C.F.R. 383 Subpart J or 49
14 C.F.R. §383.71a for sixty days in addition to any other penalty
15 prescribed by this code.

16 **§17E-1-14a. Commercial Drivers Prohibited From Texting.**

17 (a) No commercial driver may engage in texting while driving
18 a commercial motor vehicle.

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

21 (c) For the purposes of this section only, and unless a more
22 restrictive prohibition is prescribed in this code, driving means
23 operating a commercial motor vehicle with the motor running,
24 including while temporarily stationed because of traffic, a traffic

1 control device or other momentary delays. Driving does not include
2 operating a commercial motor vehicle with or without the motor
3 running when the driver moved the vehicle to the side of or off a
4 highway, as defined in 49 CFR 390.5, and halted in a location where
5 the vehicle can safely remain stationary.

6 **§17E-1-17. Driving record information to be furnished.**

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

10 (a) To the driver license administrator of any other state of
11 the United States and the District of Columbia or a province or
12 territory of Canada or a state or federal agency of the United
13 Mexican States requesting that information;

14 (b) To any motor carrier employer or prospective motor carrier
15 employer;

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

17 (d) To the driver: Nothing in this section prevents an
18 insurer from obtaining a standard driving record issued in
19 accordance with section two, article two, chapter seventeen-d of
20 this code.

21 **§17E-1-20. Reciprocity.**

22 (a) Notwithstanding any law to the contrary, a person may
23 drive a commercial motor vehicle if the person has a commercial
24 driver's license by any state of the United States and the District

1 of Columbia or a province or territory of Canada or a state or
2 federal agency of the United Mexican States in accordance with the
3 minimum federal standards for the issuance of commercial motor
4 vehicle driver licenses if the license is not suspended, revoked or
5 canceled, if the person is not disqualified from driving a
6 commercial motor vehicle or not subject to an "out-of-service"
7 order.

8 (b) The commissioner is authorized to suspend, revoke or
9 cancel the privilege to operate a motor vehicle or disqualify the
10 privilege to operate a commercial motor vehicle of any resident of
11 this state or of a nonresident upon receiving notice of the
12 conviction of such person in another state of an offense which, if
13 committed in this state, would be grounds for the suspension,
14 revocation or cancellation of the privilege to operate a motor
15 vehicle or the disqualification of the privilege to operate a
16 commercial motor vehicle.