

1 **Senate Bill No. 328**

2 (By Senators Beach, Klempa and Plymale)

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4 [Introduced January 27, 2011; referred to the Committee on  
5 Transportation and Infrastructure; then to the Committee on the  
6 Judiciary; and then to the Committee on Finance.]  
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11 A BILL to amend and reenact §17E-1-3, §17E-1-6, §17E-1-9, §17E-1-  
12 10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-17 and §17E-1-20  
13 of the Code of West Virginia, 1931, as amended; and to amend  
14 said code by adding thereto a new section, designated §17E-1-  
15 14a, all relating to the issuance, disqualification,  
16 suspension and revocation of driver's licenses and privilege  
17 to operate a commercial motor vehicle; adding definitions;  
18 creating the offense of operating a commercial motor vehicle  
19 while texting; providing penalties and exceptions; providing  
20 civil penalties for motor carriers who require or allow a  
21 driver to operate a commercial motor vehicle while texting;  
22 providing that a driver is disqualified from operating a  
23 commercial motor vehicle upon conviction for operating a  
24 commercial motor vehicle when texting; clarifying that out-of-

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

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

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

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

18 **§17E-1-3. Definitions.**

19 Notwithstanding any other provision of this code, the  
20 following definitions apply to this article:

21 (1) "Alcohol" means:

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

24 (B) Beer, ale, port or stout and other similar fermented

1 beverages, including sake or similar products, of any name or  
2 description containing one half of one percent or more of alcohol  
3 by volume, brewed or produced from malt, wholly or in part, or from  
4 any substitute for malt;

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

9 (D) Wine of not less than one half of one percent of alcohol  
10 by volume.

11 (2) "Alcohol concentration" means:

12 (A) The number of grams of alcohol per one hundred milliliters  
13 of blood;

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

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

18 (D) The number of grams of alcohol per eighty-six milliliters  
19 of serum.

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

24 (4) "Commercial driver's license" means a license or an

1 instruction permit issued in accordance with the requirements of  
2 this article to an individual which authorizes the individual to  
3 drive a class of commercial motor vehicle.

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

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

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

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

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

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

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

23 (8) "Commissioner" means the Commissioner of Motor Vehicles of  
24 this state.

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

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

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

20           (12) "Disqualification" means any of the following three  
21 actions:

22           (A) The suspension, revocation, or cancellation of a driver's  
23 license by the state or jurisdiction of issuance.

24           (B) Any withdrawal of a person's privilege to drive a

1 commercial motor vehicle by a state or other jurisdiction as the  
2 result of a violation of state or local law relating to motor  
3 vehicle traffic control other than parking or vehicle weight except  
4 as to violations committed by a special permittee on the coal  
5 resource transportation system or vehicle defect violations.

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

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

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

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

22 (16) "Electronic device" includes, but is not limited to, a  
23 cellular telephone, personal digital assistant, pager or any other  
24 device used to input, write, send, receive, or read text.

1       ~~(16)~~ (17) "Employee" means ~~any~~ an operator of a commercial  
2 motor vehicle, including full time, regularly employed drivers,  
3 casual, intermittent or occasional drivers, leased drivers and  
4 independent, owner-operator contractors ~~(while in the course of~~  
5 when operating a commercial motor vehicle, who are either directly  
6 employed by or under lease to drive a commercial motor vehicle for  
7 an employer.

8       ~~(17)~~ (18) "Employer" means ~~any~~ a person, including the United  
9 States, a state or a political subdivision of a state, who owns or  
10 leases a commercial motor vehicle or assigns a person to drive a  
11 commercial motor vehicle.

12       ~~(18)~~ (19) "Endorsement" means an authorization to a person to  
13 operate certain types of commercial motor vehicles.

14       ~~(19)~~ (20) "Farm vehicle" includes a motor vehicle or  
15 combination vehicle registered to ~~the~~ a farm owner or entity  
16 operating the farm and used exclusively in the transportation of  
17 agricultural or horticultural products, livestock, poultry and  
18 dairy products from the farm or orchard on which they are raised or  
19 produced to markets, processing plants, packing houses, canneries,  
20 railway shipping points and cold storage plants and in the  
21 transportation of agricultural or horticultural supplies and  
22 machinery to the farms or orchards to be used on the farms or  
23 orchards.

24       ~~(20)~~ (21) "Farmer" includes an owner, tenant, lessee, occupant

1 or 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 ~~(21)~~ (22) "Farmer vehicle driver" means the person employed  
5 and 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 ~~(22)~~ (23) "Felony" means an offense under state or federal law  
10 that is punishable by death or imprisonment for a term exceeding  
11 one year.

12 ~~(23)~~ (24) "Gross combination weight rating (GCWR)" means the  
13 value 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 ~~GVWR~~ gross vehicle weight rating (GVWR) of the power unit and  
17 the total weight of the towed unit and ~~any load thereon.~~ load, if  
18 any.

19 ~~(24)~~ (25) "Gross vehicle weight rating (GVWR)" means the value  
20 specified by the manufacturer as the loaded weight of a single  
21 vehicle. In the absence of a value specified by the manufacturer,  
22 the GVWR will be determined by the total weight of the vehicle and  
23 ~~any load thereon.~~ load, if any.

24 ~~(25)~~ (26) "Hazardous materials" means any material that has



1 been designated as hazardous under 49 U.S.C. §5103 and is required  
2 to be placarded under subpart F of 49 C.F.R.,Part §172 or any  
3 quantity of a material listed as a select agent or toxin in 42  
4 C.F.R.,Part §73.

5 ~~(26)~~ (27) "Imminent hazard" means existence of a condition  
6 that presents a substantial likelihood that death, serious illness,  
7 severe personal injury or a substantial endangerment to health,  
8 property or the environment may occur before the reasonably  
9 foreseeable completion date of a formal proceeding begun to lessen  
10 the risk of that death, illness, injury or endangerment.

11 ~~(27)~~ (28) "Issuance of a license" means the completion of a  
12 transaction signifying that the applicant has met all the  
13 requirements ~~incumbent in qualifying~~ to qualify for, including, but  
14 not limited to: The initial issuance of a driver's license, the  
15 renewal of a driver's license, the issuance of a duplicate license  
16 as a replacement to a lost or stolen driver's license, the transfer  
17 of any level of driving privileges including the privilege of  
18 operating a commercial motor vehicle from another state or  
19 jurisdiction, the changing of driver's license class, restrictions  
20 or endorsements or the change of any other information pertaining  
21 to an applicant either appearing on the face of a driver's license  
22 or within the driver record of the licensee maintained by the  
23 division.

24 ~~(28)~~ (29) "Motor vehicle" means every vehicle which is self-

1 propelled and every vehicle which is propelled by electric power  
2 obtained from overhead trolley wires but not operated upon rails.

3 ~~(29)~~ (30) "Noncommercial motor vehicle" means a motor vehicle  
4 or combination of motor vehicles not defined by the term  
5 "commercial motor vehicle".

6 ~~(30)~~ (31) "Out-of-service order" means a ~~temporary prohibition~~  
7 ~~against driving a commercial motor vehicle as a result of a~~  
8 ~~determination by a law-enforcement officer,~~ a declaration by an  
9 authorized enforcement officer of a federal, state, Canadian,  
10 Mexican, county or local jurisdiction including any special agent  
11 of the Federal Motor Carrier Safety Administration that a driver,  
12 a commercial motor vehicle, or a motor carrier operation is out of  
13 service pursuant to 49 C.F.R. §§386.72, 392.5, 395.13, 396.9 or  
14 compatible laws or the North American uniform out-of-service  
15 criteria that an imminent hazard exists.

16 ~~(31)~~ (32) "Violation of an out-of-service order" means:

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

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

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

24 ~~(32)~~ (33) "School bus" means a commercial motor vehicle used to

1 transport ~~preprimary,~~ preprimary, primary or secondary school  
2 students from home-to-school, from school-to-home or to and from  
3 school sponsored events. School bus does not include a bus used as  
4 a common carrier.

5 ~~(33)~~ (34) "Serious traffic violation" means conviction for any  
6 of the following offenses when operating a commercial motor  
7 vehicle:

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

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

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

18 (D) Following the vehicle ahead too closely;

19 (E) Driving a commercial motor vehicle without obtaining a  
20 commercial driver's license;

21 (F) Driving a commercial motor vehicle without a commercial  
22 driver's license in the driver's possession. However, any person  
23 who provides proof to the law-enforcement agency that issued the  
24 citation, by the date the person must appear in court or pay any

1 fine for such violation, that the person held a valid commercial  
2 driver's license on the date the citation was issued, shall not be  
3 guilty of this offense;

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

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

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

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

16 ~~(34)~~ (35) "State" means a state of the United States and the  
17 District of Columbia or a province or territory of Canada or a  
18 state or federal agency of the United Mexican States.

19 ~~(35)~~ (36) "State of domicile" means the state where a person  
20 has his or her true, fixed and permanent home and principle  
21 residence and to which he or she has the intention of returning  
22 whenever absent in accordance with chapter seventeen-a, article  
23 three, section one-a.

24 ~~(36)~~ (37) "Suspension, revocation or cancellation" of a

1 driver's license or a commercial driver's license means the  
2 privilege to operate any type of motor vehicle on the roads and  
3 highways of this state is withdrawn.

4 ~~(37)~~ (38) "Tank vehicle" means any commercial motor vehicle  
5 that is designed to transport any liquid or gaseous materials  
6 within a tank that is either permanently or temporarily attached to  
7 the vehicle or the chassis. These vehicles include, but are not  
8 limited to, cargo tanks and portable tanks as defined in 49 C. F.  
9 R. Part 171 (1998). ~~However,~~ This definition does not include  
10 portable tanks having a rated capacity under one thousand gallons.

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

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

18 (B) Texting does not include:

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

24 (ii) Inputting, selecting or reading information on a global

1 positioning system or navigation system; or

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

7 ~~(38)~~ (40) "Transportation Security Administration" means the  
8 United States Department of Homeland Security Transportation  
9 Security Administration.

10 ~~(39)~~ (41) "United States" means the fifty states and the  
11 District of Columbia.

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

22 ~~(40)~~ (43) "Vehicle Group" means a class or type of vehicle with  
23 certain operating characteristics.

24 **§17E-1-6. Employer responsibilities.**

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

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

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

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

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

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

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

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

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

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

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

6 **§17E-1-9. Commercial driver's license qualification standards.**

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

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

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

22 (2) The party has entered into an agreement with the state  
23 ~~which~~ that complies with the requirements of 49 C.F.R., part §  
24 383.75.



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

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

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

22 (f) Commercial driver's instruction permit may be issued as  
23 follows:

24 (1) ~~A commercial driver's instruction permit may be issued To~~

1 an individual who holds a valid Class E or Class D driver's license  
2 ~~who~~ and has passed the vision and written tests required for  
3 issuance of a commercial driver's license.

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

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

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

20 **§17E-1-10. Application for commercial driver's license.**

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

24 (1) The full name and current mailing and residential address

1 of the person;

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

4 (3) Date of birth;

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

6 (5) The person's signature;

7 (6) The person's color photograph;

8 (7) Certifications including those required by 49 C.F.R. Part  
9 § 383.71(a) (2004);

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

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

12 (10) Certification stating that the applicant is:

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

14 Part §391 standards;

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

16 Part §391 standards;

17 (C) Engaged in intrastate commerce and subject to state  
18 medical standards; or

19 (D) Engaged in intrastate commerce but not subject to state  
20 medical standards.

21 (b) When a licensee changes his or her name, mailing address  
22 or residence, or when a licensee's classifications, endorsements,  
23 or restrictions or medical certification status changes; the  
24 licensee shall submit an application for a duplicate license and

1 obtain a duplicate driver's license displaying the updated  
2 information.

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

7 **§17E-1-11. Commercial driver's license.**

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

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

13 (b) The person's color photograph;

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

16 (d) Date of birth;

17 (e) The person's signature;

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

21 (g) The name of this state; ~~and~~

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

23 (i) Any information required by the Federal Motor Carrier  
24 Safety Administration concerning the driver's valid or current

1 medical certification status.

2 **§17E-1-12. Classifications, endorsements and restrictions.**

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

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

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

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

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

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

22 (4) Each applicant who desires to operate a vehicle in a  
23 classification different from the class in which the applicant is  
24 authorized is required to retake and pass all related tests except

1 the following:

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

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

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

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

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

21 (3) Tank vehicles which requires successful completion of a  
22 knowledge test;

23 (4) Vehicles used for the transportation of hazardous  
24 materials as defined in section three of this article which

1 requires the completion of a knowledge test and a background  
2 security risk check in accordance with 49 C.F.R. §1572.5(2004);

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

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

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

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

19 (e) *Expiration of license.* -

20 (1) Every commercial driver's license issued to persons who  
21 have attained their twenty-first birthday expires on the  
22 applicant's birthday in those years in which the applicant's age is  
23 evenly divisible by five. Except as provided in subdivision (2) of  
24 this subsection, no commercial driver's license may be issued for

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

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

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

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

19 (5) Any commercial driver's license held by a person who does  
20 not possess a valid or current medical certification status is no  
21 longer valid for the operation of a commercial motor vehicle and is  
22 downgraded to the appropriate licensure level commensurate with the  
23 licensees qualifications regardless of the expiration date or  
24 indicated class on the face of the license within the time frames



1 prescribed by 49 CFR §383.73(j).

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

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

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

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

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

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

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

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

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

11 **§17E-1-13. Disqualification.**

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

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

23 (2) Any person disqualified from operating a commercial motor  
24 vehicle for life under the provisions of this chapter for offenses

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

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

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

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

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

22 (A) For a first conviction or for 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 a period of one year.

2 (B) For a first conviction or for 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 a period of one year.

6 (C) For a 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, 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 for 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 motor vehicle license  
21 holder is disqualified from operating a commercial motor vehicle  
22 for life.

23 (2) Driving a commercial motor vehicle while the person's  
24 alcohol concentration of the person's blood, breath or urine is

1 four hundredths of one percent or more, by weight;

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

6 (B) For a 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, a driver is  
10 disqualified from operating a commercial motor vehicle for three  
11 years.

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

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

24 (B) For the first conviction or refusal to submit to any

1 designated secondary chemical test while operating a noncommercial  
2 motor vehicle, a commercial driver's license holder is disqualified  
3 from operating a commercial motor vehicle for one year.

4 (C) For the first conviction or for refusal to submit to any  
5 designated secondary chemical test 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 or refusal to submit to any  
11 designated secondary chemical test in a separate incident of any  
12 combination of offenses in this subsection while operating a  
13 commercial motor vehicle, a driver is disqualified from operating  
14 a commercial motor vehicle for life.

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

20 (4) Leaving the scene of an accident;

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

24 (B) For the first conviction while operating a noncommercial

1 motor vehicle, a commercial driver's license holder is disqualified  
2 for one year.

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

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

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

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

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 from operating a commercial motor vehicle 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 motor vehicle license  
17 holder is disqualified from operating a commercial motor vehicle  
18 for life.

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

24 (A) For the first conviction while operating a commercial



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

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

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

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

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

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

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

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

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

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

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 driver  
18 is disqualified from operating a commercial motor vehicle for a  
19 period of sixty days.

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

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

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

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

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

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

1 of sixty days.

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

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

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

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

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  
2 is disqualified from operating a commercial motor vehicle for a  
3 period 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 (4) Following the vehicle ahead too closely;

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 is  
16 disqualified from operating a commercial motor vehicle for a period  
17 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 (5) Violating any law relating to traffic control arising in  
3 connection with a fatal accident, other than a parking violation;

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 is  
7 disqualified from operating a commercial motor vehicle for a period  
8 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 motor vehicle license holder  
3 is disqualified from operating a commercial motor vehicle for a  
4 period of one hundred twenty days.

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

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

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

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

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 commercial driver's  
2 license holder is disqualified from operating a commercial motor  
3 vehicle for a period of sixty days.

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

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

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

18 (B) 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  
21 commercial driver's license holder is disqualified from operating  
22 a commercial motor vehicle for a period of one hundred twenty days.

23 (9) Driving a commercial motor vehicle while engaged in  
24 texting and convicted pursuant to section fourteen-a of this

1 article or similar law of this or any other jurisdiction or 49 CFR  
2 §392.80;

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 commercial driver's  
6 license holder is disqualified from operating a commercial motor  
7 vehicle for a period of sixty days.

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

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

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

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

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

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

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

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

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

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

23 (3) Failing to stop before driving onto the crossing, if  
24 required to stop in accordance with the provisions of section

1 three, article twelve, chapter seventeen-c of this code;

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

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

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

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

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

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

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

1 year.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (2) If convicted of violating a driver or vehicle out-of-  
24 service order while transporting hazardous materials required to be

1 placarded under 49 C.F.R. Part §172, Subpart F (2004) or while  
2 operating a vehicle designed to transport sixteen or more  
3 passengers including the driver;

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

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

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

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

20 (g) In accordance with the provisions of 49 U.S.C.  
21 §313119(a)(19)(2004), and 49 C.F.R §384.226 (2004), and  
22 notwithstanding the provisions of section twenty-five, article  
23 eleven, chapter sixty-one of this code, no record of conviction,  
24 revocation, suspension or disqualification related to any type of

1 motor vehicle traffic control offense, other than a parking  
2 violation, of a commercial driver's license holder or a person  
3 operating a commercial motor vehicle may be masked, expunged,  
4 deferred or be subject to any diversion program.

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

11 (i) In accordance with the provisions of 49 C.F.R.  
12 §391.15(b), a driver is disqualified from operating a commercial  
13 motor vehicle for the duration of any suspension, revocation or  
14 cancellation of his or her driver's license or privilege to operate  
15 a motor vehicle by this state or by any other state or jurisdiction  
16 until the driver complies with the terms and conditions for  
17 reinstatement set by this state or by another state or  
18 jurisdiction.

19 (j) In accordance with the provisions of 49 C.F.R. 353.52  
20 (2006), the division shall immediately disqualify a driver's  
21 privilege to operate a commercial motor vehicle upon a notice from  
22 the Assistant Administrator of the Federal Motor Carrier Safety  
23 Administration that the driver poses an imminent hazard. Any  
24 disqualification period imposed under the provisions of this



1 subsection shall be served concurrently with any other period of  
2 disqualification if applicable.

3       (k) In accordance with the provisions of 49 C.F.R.  
4 1572.11(a), the division shall immediately disqualify a driver's  
5 privilege to operate a commercial motor vehicle if the driver fails  
6 to surrender his or her driver's license with a hazardous material  
7 endorsement to the division upon proper notice by the division to  
8 the driver that the division received notice from the Department of  
9 Homeland Security Transportation Security Administration of an  
10 initial determination of threat assessment and immediate revocation  
11 that the driver does not meet the standards for security threat  
12 assessment provided in 49 C.F.R. 1572.5. The disqualification  
13 remains in effect until the driver either surrenders the driver's  
14 license to the division or provides the division with an affidavit  
15 attesting to the fact that the driver has lost or is otherwise  
16 unable to surrender the license.

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

21       (m) In accordance with the provisions of 49 C.F.R. §383.73(g),  
22 the division shall disqualify a driver's privilege to operate a  
23 commercial motor vehicle if the division determines that the  
24 licensee has falsified any information or certifications required

1 under the provisions of 49 C.F.R. 383 Subpart J or 49 C.F.R.  
2 §383.71a for sixty days in addition to any other penalty prescribed  
3 by this code.

4 **§17E-1-14a. Commercial Drivers Prohibited From Texting.**

5 (a) No commercial driver may engage in texting while driving  
6 a commercial motor vehicle.

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

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

18 (d) Texting while driving is permissible by drivers of  
19 commercial motor vehicles when necessary to communicate with law-  
20 enforcement officials or other emergency services.

21 **§17E-1-17. Driving record information to be furnished.**

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

1 (a) To the driver license administrator of any other state ~~or~~  
2 ~~province or territory of Canada~~ of the United States and the  
3 District of Columbia or a province or territory of Canada or a  
4 state or federal agency of the United Mexican States requesting  
5 that information;

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

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

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

13 **§17E-1-20. Reciprocity.**

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

24 (b) The commissioner is authorized to suspend, revoke or

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

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(NOTE: The purpose of this bill is to conform West Virginia law concerning the issuance and maintenance of commercial driver's licenses with federal law and rule. The focus of these changes is to codifying requirements that CDL drivers maintain current medical certification and that they meet minimum federal medical standards for operating commercial motor vehicles as well as prohibit drivers from texting when operating a commercial motor vehicle.

§17E-1-14a is new; therefore, strike-throughs and underscoring have been omitted.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.)

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#### TRANSPORTATION AND INFRASTRUCTURE COMMITTEE AMENDMENT

On page sixteen, section six-d, line three, after "(b)" by inserting the words "or subsection (c)".

#### JUDICIARY COMMITTEE AMENDMENT

On page fifty, section fourteen-a, by striking out all of subsection (d).