

# Senate Bill No. 328

(By Senators Beach, Klempa and Plymale)

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

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

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

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

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

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

**§17E-1-3. Definitions.**

- 1 Notwithstanding any other provision of this code, the
- 2 following definitions apply to this article:

3 (1) "Alcohol" means:

4 (A) Any substance containing any form of alcohol, includ-  
5 ing, but not limited to, ethanol, methanol, propenyl and  
6 isopropanol;

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

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

16 (D) Wine of not less than one half of one percent of alcohol  
17 by volume.

18 (2) "Alcohol concentration" means:

19 (A) The number of grams of alcohol per one hundred  
20 milliliters of blood;

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

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

25 (D) The number of grams of alcohol per eighty-six millili-  
26 ters of serum.

27 (3) “At fault traffic accident” means, for the purposes of  
28 waiving the road test, a determination of fault by the official  
29 filing the accident report ~~of fault~~ as evidenced by an indica-  
30 tion of contributing circumstances in the accident report.

31 (4) “Commercial driver’s license” means a license or an  
32 instruction permit issued in accordance with the require-  
33 ments of this article to an individual which authorizes the  
34 individual to drive a class of commercial motor vehicle.

35 (5) “Commercial driver’s license information system” is the  
36 information system established pursuant to the Federal  
37 Commercial Motor Vehicle Safety Act to serve as a clearing-  
38 house for locating information related to the licensing and  
39 identification of commercial motor vehicle drivers.

40 (6) “Commercial driver instruction permit” means a permit  
41 issued pursuant to subsection (d), section nine of this article.

42 (7) “Commercial motor vehicle” means a motor vehicle  
43 designed or used to transport passengers or property:

44 (A) If the vehicle has a gross combination vehicle weight  
45 rating of twenty-six thousand one pounds or more inclusive

46 of a towed unit(s) with a gross vehicle weight rating of more  
47 than ten thousand pounds;

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

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

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

54 (8) "Commissioner" means the Commissioner of Motor  
55 Vehicles of this state.

56 (9) "Controlled substance" means any substance classified  
57 under the provisions of chapter sixty-a of this code, the  
58 Uniform Controlled Substances Act, and includes all  
59 substances listed on Schedules I through V, inclusive, of  
60 article two of said chapter, ~~sixty-a, as they are~~ as revised.

61 The term "controlled substance" also has the meaning such  
62 term has under 21 U.S.C. §802.6 and includes all substances  
63 listed on Schedules I through V of 21 C.F.R. §1308 as they  
64 may be amended by the United States Department of Justice.

65 (10) "Conviction" means an unvacated adjudication of  
66 guilt; a determination that a person has violated or failed to  
67 comply with the law in a court of original jurisdiction or by

68 an authorized administrative tribunal or proceeding; an  
69 unvacated forfeiture of bail or collateral deposited to secure  
70 the persons appearance in court; a plea of guilty or nolo  
71 contendere accepted by the court or the payment of a fine or  
72 court cost or violation of a condition of release without bail  
73 regardless of whether or not the penalty is rebated, sus-  
74 pended, or probated.

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

76 (12) "Disqualification" means any of the following three  
77 actions:

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

80 (B) Any withdrawal of a person's privilege to drive a  
81 commercial motor vehicle by a state or other jurisdiction as  
82 the result of a violation of state or local law relating to motor  
83 vehicle traffic control other than parking or vehicle weight  
84 except as to violations committed by a special permittee on  
85 the coal resource transportation system or vehicle defect  
86 violations.

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

90 (13) "Drive" means to drive, operate or be in physical  
91 control of a motor vehicle in any place open to the general  
92 public for purposes of vehicular traffic. For the purposes of  
93 sections twelve, thirteen and fourteen of this article, "drive"  
94 includes operation or physical control of a motor vehicle  
95 anywhere in this state.

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

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

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

107 ~~(16)~~ (17) "Employee" means ~~any~~ an operator of a commer-  
108 cial motor vehicle, including full time, regularly employed  
109 drivers, casual, intermittent or occasional drivers, leased  
110 drivers and independent, owner-operator contractors ~~(while~~  
111 ~~in the course of~~ when operating a commercial motor vehicle,

112 who are either directly employed by or under lease to drive  
113 a commercial motor vehicle for an employer.

114 ~~(17)~~ (18) “Employer” means ~~any~~ a person, including the  
115 United States, a state or a political subdivision of a state,  
116 who owns or leases a commercial motor vehicle or assigns a  
117 person to drive a commercial motor vehicle.

118 ~~(18)~~ (19) “Endorsement” means an authorization to a  
119 person to operate certain types of commercial motor vehicles.

120 ~~(19)~~ (20) “Farm vehicle” includes a motor vehicle or  
121 combination vehicle registered to ~~the~~ a farm owner or entity  
122 operating the farm and used exclusively in the transportation  
123 of agricultural or horticultural products, livestock, poultry  
124 and dairy products from the farm or orchard on which they  
125 are raised or produced to markets, processing plants, packing  
126 houses, canneries, railway shipping points and cold storage  
127 plants and in the transportation of agricultural or horticultural  
128 supplies and machinery to the farms or orchards to be  
129 used on the farms or orchards.

130 ~~(20)~~ (21) “Farmer” includes an owner, tenant, lessee,  
131 occupant or person in control of the premises used substan-  
132 tially for agricultural or horticultural pursuits who is at least



133 eighteen years of age with two years licensed driving  
134 experience.

135 ~~(21)~~ (22) “Farmer vehicle driver” means the person em-  
136 ployed and designated by the “farmer” to drive a “farm  
137 vehicle” as long as driving is not his or her sole or principal  
138 function on the farm and who is at least eighteen years of age  
139 with two years licensed driving experience.

140 ~~(22)~~ (23) “Felony” means an offense under state or federal  
141 law that is punishable by death or imprisonment for a term  
142 exceeding one year.

143 ~~(23)~~ (24) “Gross combination weight rating (GCWR)”  
144 means the value specified by the manufacturer as the loaded  
145 weight of a combination, articulated vehicle. In the absence  
146 of a value specified by the manufacturer, GCWR will be  
147 determined by adding the ~~GVWR~~ gross vehicle weight rating  
148 (GVWR) of the power unit and the total weight of the towed  
149 unit and ~~any load thereon.~~ load, if any.

150 ~~(24)~~ (25) “Gross vehicle weight rating (GVWR)” means the  
151 value specified by the manufacturer as the loaded weight of  
152 a single vehicle. In the absence of a value specified by the  
153 manufacturer, the GVWR will be determined by the total  
154 weight of the vehicle and ~~any load thereon.~~ load, if any.

155     ~~(25)~~ (26) “Hazardous materials” means any material that  
156 has been designated as hazardous under 49 U.S.C. §5103 and  
157 is required to be placarded under subpart F of 49 C.F.R.,Part  
158 §172 or any quantity of a material listed as a select agent or  
159 toxin in 42 C.F.R.,Part §73.

160     ~~(26)~~ (27) “Imminent hazard” means existence of a condition  
161 that presents a substantial likelihood that death, serious  
162 illness, severe personal injury or a substantial endangerment  
163 to health, property or the environment may occur before the  
164 reasonably foreseeable completion date of a formal proceed-  
165 ing begun to lessen the risk of that death, illness, injury or  
166 endangerment.

167     ~~(27)~~ (28) “Issuance of a license” means the completion of a  
168 transaction signifying that the applicant has met all the  
169 requirements ~~incumbent in qualifying to qualify~~ to qualify for, includ-  
170 ing, but not limited to: The initial issuance of a driver’s  
171 license, the renewal of a driver’s license, the issuance of a  
172 duplicate license as a replacement to a lost or stolen driver’s  
173 license, the transfer of any level of driving privileges includ-  
174 ing the privilege of operating a commercial motor vehicle  
175 from another state or jurisdiction, the changing of driver’s  
176 license class, restrictions or endorsements or the change of

177 any other information pertaining to an applicant either  
178 appearing on the face of a driver's license or within the  
179 driver record of the licensee maintained by the division.

180 ~~(28)~~ (29) "Motor vehicle" means every vehicle which is self-  
181 propelled and every vehicle which is propelled by electric  
182 power obtained from overhead trolley wires but not operated  
183 upon rails.

184 ~~(29)~~ (30) "Noncommercial motor vehicle" means a motor  
185 vehicle or combination of motor vehicles not defined by the  
186 term "commercial motor vehicle".

187 ~~(30)~~ (31) "Out-of-service order" means a ~~temporary~~  
188 ~~prohibition against driving a commercial motor vehicle as a~~  
189 ~~result of a determination by a law-enforcement officer, a~~  
190 declaration by an authorized enforcement officer of a  
191 federal, state, Canadian, Mexican, county or local jurisdic-  
192 tion including any special agent of the Federal Motor Carrier  
193 Safety Administration that a driver, a commercial motor  
194 vehicle, or a motor carrier operation is out of service pursu-  
195 ant to 49 C.F.R. §§386.72, 392.5, 395.13, 396.9 or compatible  
196 laws or the North American uniform out-of-service criteria  
197 that an imminent hazard exists.

198 ~~(31)~~ (32) "Violation of an out-of-service order" means:

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

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

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

207 ~~(32)~~(33) “School bus” means a commercial motor vehicle  
208 used to transport ~~preprimary~~, preprimary, primary or  
209 secondary school students from home-to-school, from school-  
210 to-home or to and from school sponsored events. School bus  
211 does not include a bus used as a common carrier.

212 ~~(33)~~ (34) “Serious traffic violation” means conviction for  
213 any of the following offenses when operating a commercial  
214 motor vehicle:

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

218 (B) Reckless driving as defined in section three, article five,  
219 chapter seventeen-c of this code and careless or negligent  
220 driving, including, but not limited to, the offenses of driving

221 a commercial motor vehicle in willful or wanton disregard  
222 for the safety of persons or property;

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

226 (D) Following the vehicle ahead too closely;

227 (E) Driving a commercial motor vehicle without obtaining  
228 a commercial driver's license;

229 (F) Driving a commercial motor vehicle without a commer-  
230 cial driver's license in the driver's possession. However, any  
231 person who provides proof to the law-enforcement agency  
232 that issued the citation, by the date the person must appear  
233 in court or pay any fine for such violation, that the person  
234 held a valid commercial driver's license on the date the  
235 citation was issued, shall not be guilty of this offense;

236 (G) Driving a commercial motor vehicle without the proper  
237 class of commercial driver's license ~~and~~ or endorsements for  
238 the specific vehicle group being operated or for the passen-  
239 gers or type of cargo being transported;

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

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

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

248 ~~(34)~~ (35) “State” means a state of the United States and the  
249 District of Columbia or a province or territory of Canada or  
250 a state or federal agency of the United Mexican States.

251 ~~(35)~~ (36) “State of domicile” means the state where a person  
252 has his or her true, fixed and permanent home and principle  
253 residence and to which he or she has the intention of return-  
254 ing whenever absent in accordance with chapter seventeen-  
255 a, article three, section one-a.

256 ~~(36)~~ (37) “Suspension, revocation or cancellation” of a  
257 driver’s license or a commercial driver’s license means the  
258 privilege to operate any type of motor vehicle on the roads  
259 and highways of this state is withdrawn.

260 ~~(37)~~ (38) “Tank vehicle” means any commercial motor  
261 vehicle that is designed to transport any liquid or gaseous  
262 materials within a tank that is either permanently or  
263 temporarily attached to the vehicle or the chassis. These  
264 vehicles include, but are not limited to, cargo tanks and

265 portable tanks as defined in 49 C. F. R. Part 171 (1998).  
266 ~~However~~, This definition does not include portable tanks  
267 having a rated capacity under one thousand gallons.

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

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

275 (B) Texting does not include:

276 (i) Reading, selecting or entering a telephone number, an  
277 extension number or voicemail retrieval codes and com-  
278 mands into an electronic device for the purpose of initiating  
279 or receiving a phone call or using voice commands to initiate  
280 or receive a telephone call;

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

283 (iii) Using a device capable of performing multiple func-  
284 tions including, but not limited to, fleet management sys-  
285 tems, dispatching devices, smart phones, citizen band radios

286 or music players for a purpose that is not otherwise prohib-  
287 ited by this section

288 ~~(38)~~ (40) “Transportation Security Administration” means  
289 the United States Department of Homeland Security Trans-  
290 portation Security Administration.

291 ~~(39)~~ (41) “United States” means the fifty states and the  
292 District of Columbia.

293 (42) “Valid or Certified Medical Certification Status”  
294 means that an applicant or driver has a current medical  
295 evaluation or determination by a licensed physician that the  
296 applicant or driver meets the minimum federal motor carrier  
297 safety administration physical qualifications within the  
298 prescribed time frames pursuant 49 CFR Part §391. Not-  
299 certified means that an applicant or driver does not have a  
300 current medical evaluation or has not been certified by a  
301 licensed physician as meeting the minimum federal motor  
302 carrier safety administration physical qualifications pursu-  
303 ant 49 CFR Part §391.

304 ~~(40)~~ (43) “Vehicle Group” means a class or type of vehicle  
305 with certain operating characteristics.

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



1 (a) Each employer shall require the applicant to provide  
2 the 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  
5 during any period in which the driver:

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

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

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

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

20 ~~(c)~~ (d) The division shall impose a civil penalty in addition  
21 to any penalty required under the provisions of section  
22 twenty-five of this article on any employer who knowingly

23 allows, permits, requires or authorizes a driver to drive a  
24 commercial motor vehicle in violation of subdivision (3) or  
25 (4) of subsection (b) or subsection (c) of this section.

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

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

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

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

14 the skills test specified by this section ~~Provided, That:~~ so  
15 long as:

16 (1) The test is the same which would otherwise be adminis-  
17 tered by the state; and

18 (2) The party has entered into an agreement with the state  
19 ~~which that~~ that complies with the requirements of 49 C.F.R., part  
20 § 383.75.

21 (c) Indemnification of driver examiners. No person who has  
22 been officially trained and certified by the state as a driver  
23 examiner, who administers a driving test, and no other  
24 person, firm or corporation by whom or with which that  
25 person is employed or is in any way associated, may be  
26 criminally liable for the administration of the tests or civilly  
27 liable in damages to the person tested or other persons or  
28 property unless for gross negligence or willful or wanton  
29 injury.

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

34 (e) A commercial driver's license or commercial driver's  
35 instruction permit may not be issued to a person while the

36 person is subject to a disqualification from driving a com-  
37 mercial motor vehicle, when the person does not possess a  
38 valid or current medical certification status or while the  
39 person's driver's license is suspended, revoked or canceled in  
40 any state. ~~nor may~~ A commercial driver's license may not be  
41 issued by any other state unless the person first surrenders  
42 all such licenses to the division.

43 (f) Commercial driver's instruction permit may be issued as  
44 follows:

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

49 (2) The commercial instruction permit may not be issued  
50 for a period to exceed six months. Only one renewal or  
51 reissuance may be granted within a two-year period. The  
52 holder of a commercial driver's instruction permit may drive  
53 a commercial motor vehicle on a highway only when accom-  
54 panied by the holder of a commercial driver's license valid  
55 for the type of vehicle driven, who is twenty-one years of age  
56 or older, who is alert and unimpaired and who occupies a

57 seat beside the individual for the purpose of giving instruc-  
58 tion or testing.

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

63 (4) The applicant for a commercial driver's instruction  
64 permit shall also be otherwise qualified to hold a commercial  
65 driver's license.

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

1 (a) The application for a commercial driver's license or  
2 commercial driver's instruction permit must include at least  
3 the following:

4 (1) The full name and current mailing and residential  
5 address of the person;

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

8 (3) Date of birth;

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

10 (5) The person's signature;

11 (6) The person's color photograph;

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

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

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

17 (10) Certification stating that the applicant is:

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

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

22 (C) Engaged in intrastate commerce and subject to state  
23 medical standards; or

24 (D) Engaged in intrastate commerce but not subject to state  
25 medical standards.

26 (b) When a licensee changes his or her name, mailing  
27 address or residence, or when a licensee's classifications,  
28 endorsements, or restrictions or medical certification status  
29 changes; the licensee shall submit an application for a  
30 duplicate license and obtain a duplicate driver's license  
31 displaying the updated information.

32 (c) No person who has been a resident of this state for  
33 thirty days or more may drive a commercial motor vehicle

34 under the authority of a commercial driver's license issued  
35 by another jurisdiction.

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

1 The commercial driver's license shall be marked "commer-  
2 cial driver's license" or "CDL" and, ~~shall be~~, to the maxi-  
3 mum extent practicable, tamper proof. It must include, but  
4 not be limited to, the following information:

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

6 (b) The person's color photograph;

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

9 (d) Date of birth;

10 (e) The person's signature;

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

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

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

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

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

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

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

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

12 (3) *Class C small vehicle.* — Any single vehicle or combina-  
13 tion vehicle that does not fall under either Class A or Class  
14 B but are:

15 (A) Vehicles designed to transport sixteen or more passen-  
16 gers, including the driver; and

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

20 (4) Each applicant who desires to operate a vehicle in a  
21 classification different from the class in which the applicant



22 is authorized is required to retake and pass all related tests  
23 except the following:

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

28 (B) A driver who has passed the knowledge and skills test  
29 for a vehicle in Class B may operate any small vehicle in  
30 Class C provided he or she possesses the required endorse-  
31 ments.

32 (b) *Endorsements and restrictions.* — The commissioner  
33 upon issuing a commercial driver's license may impose  
34 endorsements and ~~or~~ restrictions determined by the commis-  
35 sioner to be appropriate to assure the safe operation of a  
36 specific class, type or category of motor vehicle or a specifi-  
37 cally equipped motor vehicle and to comply with 49 U.S.C.,  
38 et seq., and 49 C.F.R. §383.93 (2004) including, but not  
39 limited to, endorsements or restrictions to operate:

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

42 (2) Passenger vehicles which requires successful comple-  
43 tion of a knowledge and skills test;

44 (3) Tank vehicles which requires successful completion of  
45 a knowledge test;

46 (4) Vehicles used for the transportation of hazardous  
47 materials as defined in section three of this article which  
48 requires the completion of a knowledge test and a back-  
49 ground security risk check in accordance with 49 C.F.R.  
50 §1572.5(2004);

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

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

57 (c) *Applicant record check.* — Before issuing a commercial  
58 driver's license, the commissioner shall obtain driving record  
59 and medical certification status information through the  
60 commercial driver's license information system, the national  
61 driver register and from each state in which the person has  
62 been licensed.

63 (d) *Notification of license issuance.* — Within ten days after  
64 issuing a commercial driver's license, the commissioner shall  
65 notify the commercial driver's license information system of

66 ~~that fact, providing the issuance and provide~~ all information  
67 required to ensure identification of the person.

68 (e) *Expiration of license.* –

69 (1) Every commercial driver's license issued to persons who  
70 have attained their twenty-first birthday expires on the  
71 applicant's birthday in those years in which the applicant's  
72 age is evenly divisible by five. Except as provided in subdivi-  
73 sion (2) of this subsection, no commercial driver's license  
74 may be issued for less than three years nor more than seven  
75 years. ~~and~~ The commercial driver's license shall be renewed  
76 by the applicant's birthday and is valid for a period of five  
77 years, expiring on the applicant's birthday and in a year in  
78 which the applicant's age is evenly divisible by five. No  
79 commercial driver's license with a hazardous materials  
80 endorsement may be issued for more than five years.

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

85 (3) Commercial driver's licenses held by any person in the  
86 Armed Forces which expire while that person is on active

87 duty remains valid for thirty days from the date on which  
88 that person reestablishes residence in West Virginia.

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

93 (5) Any commercial driver's license held by a person who  
94 does not possess a valid or current medical certification  
95 status is no longer valid for the operation of a commercial  
96 motor vehicle and is downgraded to the appropriate  
97 licensure level commensurate with the licensee's qualifica-  
98 tions regardless of the expiration date or indicated class on  
99 the face of the license within the time frames prescribed by  
100 49 CFR §383.73(j).

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

104 (g) If the applicant wishes to obtain or retain a hazardous  
105 materials endorsement, the applicant shall comply with a  
106 background check in accordance with 49 U.S.C. §5103a and  
107 49 C.F.R. Part §1572 (2004) and subject to the following:

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

110 (2) The applicant completes the application prescribed by  
111 the division and submits fingerprints in a form and manner  
112 prescribed by the division and the United States Department  
113 of Homeland Security Transportation Security Administra-  
114 tion at the time of application or at any other time in  
115 accordance with 49 C.F.R. §1572.5(2004);

116 (3) The applicant pays all fees prescribed by the Transpor-  
117 tation Security Administration or its agent and the division;

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

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

123 (6) The applicant has passed the Transportation Security  
124 Administration security threat assessment and the division  
125 has received a final notification of threat assessment or  
126 notification of no security threat from the Transportation  
127 Security Administration. ~~Provided, That any~~ An appeal of  
128 ~~any~~ a decision, determination or ruling of the Federal Bureau

129 of Investigation or the Transportation Security Agency shall  
130 be directed to that agency; and

131 (7) The applicant has successfully passed the written test  
132 for the issuance or renewal of a hazardous material endorse-  
133 ment.

**§17E-1-13. Disqualification.**

1 (a) A person may not operate a commercial motor vehicle  
2 if his or her privilege to operate a commercial motor vehicle  
3 is disqualified under the provisions of the Federal Motor  
4 Carrier Safety Improvement Act of 1999, (~~public law 106-159~~  
5 ~~§1740~~), 49 C.F.R. Part §383, Subpart D (2004) or in accor-  
6 dance 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 convic-  
9 tion ~~for any offense listed in this section~~ resulting from a  
10 separate incident includes convictions for offenses commit-  
11 ted in a commercial motor vehicle or a noncommercial motor  
12 vehicle.

13 (2) Any person disqualified from operating a commercial  
14 motor vehicle for life under the provisions of this chapter for  
15 offenses described in subsection (b,) subdivisions (4) and (6)  
16 of this section is eligible for reinstatement of privileges to

17 operate a commercial motor vehicle after ten years and after  
18 completion of the Safety and Treatment Program or other  
19 appropriate program prescribed by the division. Any person  
20 whose lifetime disqualification has been amended under the  
21 provisions of this subdivision and who is subsequently  
22 convicted of a disqualifying offense described in subsection  
23 (b), subdivisions (1) through (8) of this section, is not eligible  
24 for reinstatement.

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

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

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

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

38 (A) For a first conviction or for refusal to submit to any  
39 designated secondary chemical test while operating a  
40 commercial motor vehicle, a driver is disqualified from  
41 operating a commercial motor vehicle for a period of one  
42 year.

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

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

54 (D) For a second conviction or for refusal to submit to any  
55 designated secondary chemical test in a separate incident of  
56 any combination of offenses in this subsection while operat-  
57 ing a commercial motor vehicle, a driver is disqualified from  
58 operating a commercial motor vehicle for life.



59 (E) For a second conviction or refusal to submit to any  
60 designated secondary chemical test in a separate incident of  
61 any combination of offenses in this subsection while operat-  
62 ing a noncommercial motor vehicle, a commercial motor  
63 vehicle license holder is disqualified from operating a  
64 commercial motor vehicle for life.

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

68 (A) For a first conviction or for refusal to submit to any  
69 designated secondary chemical test while operating a  
70 commercial motor vehicle, a driver is disqualified from  
71 operating a commercial motor vehicle for one year.

72 (B) For a first conviction or for refusal to submit to any  
73 designated secondary chemical test while operating a  
74 commercial motor vehicle transporting hazardous materials  
75 required to be placarded under 49 C.F.R. Part §172, Subpart  
76 F, a driver is disqualified from operating a commercial motor  
77 vehicle for three years.

78 (C) For a second conviction or refusal to submit to any  
79 designated secondary chemical test in a separate incident of  
80 any combination of offenses in this subsection while operat-

81 ing a commercial motor vehicle, a driver is disqualified from  
82 operating a commercial motor vehicle for life.

83 (3) Refusing to submit to any designated secondary chemi-  
84 cal test required by the provisions of this code or the provi-  
85 sions of 49 C.F.R. §383.72 (2004);

86 (A) For the first conviction or refusal to submit to any  
87 designated secondary chemical test while operating a  
88 commercial motor vehicle, a driver is disqualified from  
89 operating a commercial motor vehicle for one year.

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

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

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

103 any combination of offenses in this subsection while operat-  
104 ing a commercial motor vehicle, a driver is disqualified from  
105 operating a commercial motor vehicle for life.

106 (E) For a second conviction or refusal to submit to any  
107 designated secondary chemical test in a separate incident of  
108 any combination of offenses in this subsection while operat-  
109 ing a noncommercial motor vehicle, a commercial driver's  
110 license holder is disqualified from operating a commercial  
111 motor vehicle for life.

112 (4) Leaving the scene of an accident;

113 (A) For the first conviction while operating a commercial  
114 motor vehicle, a driver is disqualified from operating a  
115 commercial motor vehicle for one year.

116 (B) For the first conviction while operating a noncommer-  
117 cial motor vehicle, a commercial driver's license holder is  
118 disqualified for one year.

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

124 (D) For a second conviction in a separate incident of any  
125 combination of offenses in this subsection while operating a  
126 commercial motor vehicle, a driver is disqualified from  
127 operating a commercial motor vehicle for life.

128 (E) For a second conviction in a separate incident of any  
129 combination of offenses in this subsection while operating a  
130 noncommercial motor vehicle, a commercial driver's license  
131 holder is disqualified from operating a commercial motor  
132 vehicle for life.

133 (5) Using a motor vehicle in the commission of any felony  
134 as defined in section three, article one of this chapter  
135 ~~Provided, except~~ that the commission of any felony involving  
136 the manufacture, distribution or dispensing of a controlled  
137 substance or possession with intent to manufacture, distrib-  
138 ute or dispense a controlled substance falls under the  
139 provisions of subdivision eight of this subsection;

140 (A) For the first conviction while operating a commercial  
141 motor vehicle, a driver is disqualified from operating a  
142 commercial motor vehicle for one year.

143 (B) For the first conviction while operating a noncommer-  
144 cial motor vehicle, a commercial driver's license holder is

145 disqualified from operating a commercial motor vehicle for  
146 one year.

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

152 (D) For a second conviction in a separate incident of any  
153 combination of offenses in this subsection while operating a  
154 commercial motor vehicle, a driver is disqualified from  
155 operating a commercial motor vehicle for life.

156 (E) For a second conviction in a separate incident of any  
157 combination of offenses in this subsection while operating a  
158 noncommercial motor vehicle, a commercial motor vehicle  
159 license holder is disqualified from operating a commercial  
160 motor vehicle for life.

161 (6) Operating a commercial motor vehicle when, as a result  
162 of prior violations committed operating a commercial motor  
163 vehicle, the driver's privilege to operate a motor vehicle has  
164 been suspended, revoked or canceled or the driver's privilege  
165 to operate a commercial motor vehicle has been disqualified.

166 (A) For the first conviction while operating a commercial  
167 motor vehicle, a driver is disqualified from operating a  
168 commercial motor vehicle for one year.

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

174 (C) For a second conviction in a separate incident of any  
175 combination of offenses in this subsection while operating a  
176 commercial motor vehicle, a driver is disqualified from  
177 operating a commercial motor vehicle for life.

178 (7) Causing a fatality through the negligent operation of a  
179 commercial motor vehicle, including, but not limited to, the  
180 crimes of motor vehicle manslaughter, homicide and negli-  
181 gent homicide as defined in section five, article three,  
182 chapter seventeen-b, and section one, article five, chapter  
183 seventeen-c of this code;

184 (A) For the first conviction while operating a commercial  
185 motor vehicle, a driver is disqualified from operating a  
186 commercial motor vehicle for one year.

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

192 (C) For a second conviction in a separate incident of any  
193 combination of offenses in this subsection while operating a  
194 commercial motor vehicle, a driver is disqualified from  
195 operating a commercial motor vehicle for life.

196 (8) Using a motor vehicle in the commission of any felony  
197 involving the manufacture, distribution or dispensing of a  
198 controlled substance or possession with intent to manufac-  
199 ture, distribute or dispense a controlled substance, a driver  
200 is disqualified from operating a commercial motor vehicle for  
201 life and ~~shall not be~~ is not eligible for reinstatement.

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

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

206 (A) For a second conviction of any combination of offenses  
207 in this subsection in a separate incident within a three year  
208 period while operating a commercial motor vehicle, a driver

209 is disqualified from operating a commercial motor vehicle for  
210 a period of sixty days.

211 (B) For a second conviction of any combination of offenses  
212 in this section in a separate incident within a three-year  
213 period while operating a noncommercial motor vehicle, if the  
214 conviction results in the suspension, revocation or cancella-  
215 tion of the commercial driver's license holder's privilege to  
216 operate any motor vehicle, a commercial driver's license  
217 holder is disqualified from operating a commercial motor  
218 vehicle for a period of sixty days.

219 (C) For a third or subsequent conviction of any combina-  
220 tion of the offenses in this subsection in a separate incident  
221 in a three- year period while operating a commercial motor  
222 vehicle, a driver is disqualified from operating a commercial  
223 motor vehicle for a period of one hundred twenty days.

224 (D) For a third or subsequent conviction of any combina-  
225 tion of offenses in this subsection in a separate incident  
226 within a three- year period while operating a noncommercial  
227 motor vehicle, if the conviction results in the suspension,  
228 revocation or cancellation of the commercial driver's license  
229 holder's privilege to operate any motor vehicle, a commercial  
230 driver's license holder shall be disqualified from operating a



231 commercial motor vehicle for a period of one hundred twenty  
232 days.

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

238 (A) For a second conviction of any combination of offenses  
239 in this subsection in a separate incident within a three-year  
240 period while operating a commercial motor vehicle, a driver  
241 is disqualified from operating a commercial motor vehicle for  
242 a period of sixty days.

243 (B) For a second conviction of any combination of offenses  
244 in this section in a separate incident within a three-year  
245 period while operating a noncommercial motor vehicle, if the  
246 conviction results in the suspension, revocation or cancella-  
247 tion of the commercial driver's license holder's privilege to  
248 operate any motor vehicle, a commercial driver's license  
249 holder is disqualified from operating a commercial motor  
250 vehicle for a period of sixty days.

251 (C) For a third or subsequent conviction of any combina-  
252 tion of the offenses in this subsection in a separate incident

253 in a three- year period while operating a commercial motor  
254 vehicle, a driver is disqualified from operating a commercial  
255 motor vehicle for a period of one hundred twenty days.

256 (D) For a third or subsequent conviction of any combina-  
257 tion of offenses in this subsection in a separate incident  
258 within a three- year period while operating a noncommercial  
259 motor vehicle, if the conviction results in the suspension,  
260 revocation or cancellation of the commercial driver's license  
261 holder's privilege to operate any motor vehicle, a commercial  
262 driver's license holder is disqualified from operating a  
263 commercial motor vehicle for a period of one hundred twenty  
264 days.

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

266 (A) For a second conviction of any combination of offenses  
267 in this subsection in a separate incident within a three-year  
268 period while operating a commercial motor vehicle, a driver  
269 is disqualified from operating a commercial motor vehicle for  
270 a period of sixty days.

271 (B) For a second conviction of any combination of offenses  
272 in this section in a separate incident within a three-year  
273 period while operating a noncommercial motor vehicle, if the  
274 conviction results in the suspension, revocation, or cancella-

275 tion of the commercial driver's license holder's privilege to  
276 operate any motor vehicle, a commercial driver's license  
277 holder is disqualified from operating a commercial motor  
278 vehicle for a period of sixty days.

279 (C) For a third or subsequent conviction of any combina-  
280 tion of the offenses in this subsection in a separate incident  
281 in a three- year period while operating a commercial motor  
282 vehicle, a driver is disqualified from operating a commercial  
283 motor vehicle for a period of one hundred twenty days.

284 (D) For a third or subsequent conviction of any combina-  
285 tion of offenses in this subsection in a separate incident  
286 within a three-year period while operating a noncommercial  
287 motor vehicle, if the conviction results in the suspension,  
288 revocation or cancellation of the commercial driver's license  
289 holder's privilege to operate any motor vehicle, a commercial  
290 driver's license holder is disqualified from operating a  
291 commercial motor vehicle for a period of one hundred twenty  
292 days.

293 (4) Following the vehicle ahead too closely;

294 (A) For a second conviction of any combination of offenses  
295 in this subsection in a separate incident within a three-year  
296 period while operating a commercial motor vehicle, a driver

297 is disqualified from operating a commercial motor vehicle for  
298 a period of sixty days.

299 (B) For a second conviction of any combination of offenses  
300 in this section in a separate incident within a three-year  
301 period while operating a noncommercial motor vehicle, if the  
302 conviction results in the suspension, revocation, or cancella-  
303 tion of the commercial driver's license holder's privilege to  
304 operate any motor vehicle, a commercial driver's license  
305 holder is disqualified from operating a commercial motor  
306 vehicle for a period of sixty days.

307 (C) For a third or subsequent conviction of any combina-  
308 tion of the offenses in this subsection in a separate incident  
309 in a three- year period while operating a commercial motor  
310 vehicle, a driver is disqualified from operating a commercial  
311 motor vehicle for a period of one hundred twenty days.

312 (D) For a third or subsequent conviction of any combina-  
313 tion of offenses in this subsection in a separate incident  
314 within a three- year period while operating a noncommercial  
315 motor vehicle, if the conviction results in the suspension,  
316 revocation or cancellation of the commercial driver's license  
317 holder's privilege to operate any motor vehicle, a commercial  
318 driver's license holder is disqualified from operating a

319 commercial motor vehicle for a period of one hundred twenty  
320 days.

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

324 (A) For a second conviction of any combination of offenses  
325 in this subsection in a separate incident within a three-year  
326 period while operating a commercial motor vehicle, a driver  
327 is disqualified from operating a commercial motor vehicle for  
328 a period of sixty days.

329 (B) For a second conviction of any combination of offenses  
330 in this section in a separate incident within a three-year  
331 period while operating a noncommercial motor vehicle, if the  
332 conviction results in the suspension, revocation, or cancella-  
333 tion of the commercial driver's license holder's privilege to  
334 operate any motor vehicle, a commercial driver's license  
335 holder is disqualified from operating a commercial motor  
336 vehicle for a period of sixty days.

337 (C) For a third or subsequent conviction of any combina-  
338 tion of the offenses in this subsection in a separate incident  
339 in a three- year period while operating a commercial motor

340 vehicle, a driver is disqualified from operating a commercial  
341 motor vehicle for a period of one hundred twenty days.

342 (D) For a third or subsequent conviction of any combina-  
343 tion of offenses in this subsection in a separate incident  
344 within a three- year period while operating a noncommercial  
345 motor vehicle, if the conviction results in the suspension,  
346 revocation or cancellation of the commercial driver's license  
347 holder's privilege to operate any motor vehicle, a commercial  
348 motor vehicle license holder is disqualified from operating a  
349 commercial motor vehicle for a period of one hundred twenty  
350 days.

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

353 (A) For a second conviction of any combination of offenses  
354 in this subsection in a separate incident within a three-year  
355 period while operating a commercial motor vehicle, a driver  
356 is disqualified from operating a commercial motor vehicle for  
357 a period of sixty days.

358 (B) For a third or subsequent conviction of any combina-  
359 tion of the offenses in this subsection in a separate incident  
360 in a three-year period while operating a commercial motor

361 vehicle, a driver is disqualified from operating a commercial  
362 motor vehicle for a period of one hundred twenty days.

363 (7) Driving a commercial motor vehicle without a commer-  
364 cial driver's license in the driver's possession ~~provided~~  
365 except that any person who provides proof of possession of  
366 a commercial driver's license to the enforcement agency that  
367 issued the citation by the court appearance or fine payment  
368 deadline ~~shall not be~~ is not guilty of this offense;

369 (A) For a second conviction of any combination of offenses  
370 in this subsection in a separate incident within a three-year  
371 period while operating a commercial motor vehicle, a  
372 commercial driver's license holder is disqualified from  
373 operating a commercial motor vehicle for a period of sixty  
374 days.

375 (B) For a third or subsequent conviction of any combina-  
376 tion of the offenses in this subsection in a separate incident  
377 in a three- year period while operating a commercial motor  
378 vehicle, a commercial driver's license holder is disqualified  
379 from operating a commercial motor vehicle for a period of  
380 one hundred twenty days.

381 (8) Driving a commercial motor vehicle without the proper  
382 class of commercial driver's license or the proper endorse-

383 ments for the specific vehicle group being operated or for the  
384 passengers or type of cargo being transported;

385 (A) For a second conviction of any combination of offenses  
386 in this subsection in a separate incident within a three-year  
387 period while operating a commercial motor vehicle, a  
388 commercial driver's license holder is disqualified from  
389 operating a commercial motor vehicle for a period of sixty  
390 days.

391 (B) For a third or subsequent conviction of any combina-  
392 tion of the offenses in this subsection in a separate incident  
393 in a three- year period while operating a commercial motor  
394 vehicle, a commercial driver's license holder is disqualified  
395 from operating a commercial motor vehicle for a period of  
396 one hundred twenty days.

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

401 (A) For a second conviction of any combination of offenses  
402 in this subsection in a separate incident within a three-year  
403 period while operating a commercial motor vehicle, a  
404 commercial driver's license holder is disqualified from



405 operating a commercial motor vehicle for a period of sixty  
406 days.

407 (B) For a third or subsequent conviction of any combina-  
408 tion of the offenses in this subsection in a separate incident  
409 in a three- year period while operating a commercial motor  
410 vehicle, a commercial driver's license holder is disqualified  
411 from operating a commercial motor vehicle for a period of  
412 one hundred twenty days.

413 (d) Any person convicted of operating a commercial motor  
414 vehicle in violation of any federal, state or local law or  
415 ordinance pertaining to ~~any of the~~ railroad crossing viola-  
416 tions described in subdivisions (1) through (6) of this subsec-  
417 tion, is disqualified from operating a commercial motor  
418 vehicle for the period of time specified;

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

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

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

430 (C) For a third or subsequent conviction of any combina-  
431 tion of offenses in this subsection within a three-year period,  
432 a driver is disqualified from operating a commercial motor  
433 vehicle for one year.

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

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

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

445 (C) For a third or subsequent conviction of any combina-  
446 tion of offenses in this subsection within a three-year period,

447 a driver is disqualified from operating a commercial motor  
448 vehicle for one year.

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

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

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

459 (C) For a third or subsequent conviction of any combina-  
460 tion of offenses in this subsection within a three-year period,  
461 a driver is disqualified from operating a commercial motor  
462 vehicle for one year.

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

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

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

474 (C) For a third or subsequent conviction of any combina-  
475 tion of offenses in this subsection within a three-year period,  
476 a driver is disqualified from operating a commercial motor  
477 vehicle for one year.

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

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

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

489 (C) For a third or subsequent conviction of any combina-  
490 tion of offenses in this subsection within a three-year period,

491 a driver is disqualified from operating a commercial motor  
492 vehicle for one year.

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

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

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

504 (C) For a third or subsequent conviction of any combina-  
505 tion of offenses in this subsection within a three-year period,  
506 a driver is disqualified from operating a commercial motor  
507 vehicle for one year.

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

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

513 (A) For the first conviction of violating an out-of-service  
514 order while operating a commercial motor vehicle, a driver  
515 is disqualified from operating a commercial motor vehicle for  
516 one hundred eighty days.

517 (B) For a second conviction in a separate incident within a  
518 ten-year period for violating an out of service order while  
519 operating a commercial motor vehicle, a driver is disquali-  
520 fied from operating a commercial motor vehicle for two  
521 years.

522 (C) For a third or subsequent conviction in a separate  
523 incident within a ten-year period for violating an out-of-  
524 service order while operating a commercial motor vehicle, a  
525 driver is disqualified from operating a commercial motor  
526 vehicle for three years.

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

532 (A) For the first conviction of violating an out of service  
533 order while operating a commercial motor vehicle, a driver

534 is disqualified from operating a commercial motor vehicle for  
535 one hundred eighty days.

536 (B) For a second conviction in a separate incident within a  
537 ten-year period for violating an out-of-service order while  
538 operating a commercial motor vehicle, a driver  
539 is disqualified from operating a commercial motor vehicle for  
540 three years.

541 (C) For a third or subsequent conviction in a separate  
542 incident within a ten-year period for violating an out-of-  
543 service order while operating a commercial motor vehicle, a  
544 driver is disqualified from operating a commercial motor  
545 vehicle for three years.

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

549 (g) In accordance with the provisions of 49 U.S.C.  
550 §313119(a)(19)(2004), and 49 C.F.R §384.226 (2004), ~~and~~  
551 notwithstanding the provisions of section twenty-five, article  
552 eleven, chapter sixty-one of this code, no record of convic-  
553 tion, revocation, suspension or disqualification related to any  
554 type of motor vehicle traffic control offense, other than a  
555 parking violation, of a commercial driver's license holder or

556 a person operating a commercial motor vehicle may be  
557 masked, expunged, deferred or be subject to any diversion  
558 program.

559 (h) Notwithstanding any provision in this code to the  
560 contrary, the division may not issue any temporary driving  
561 permit, work-only driving permit or hardship license or  
562 permit that authorizes a person to operate a commercial  
563 motor vehicle when his or her privilege to operate any motor  
564 vehicle has been revoked, suspended, disqualified or other-  
565 wise canceled for any reason.

566 (i) In accordance with the provisions of 49 C.F.R.  
567 §391.15(b), a driver is disqualified from operating a commer-  
568 cial motor vehicle for the duration of any suspension,  
569 revocation or cancellation of his or her driver's license or  
570 privilege to operate a motor vehicle by this state or by any  
571 other state or jurisdiction until the driver complies with the  
572 terms and conditions for reinstatement set by this state or by  
573 another state or jurisdiction.

574 (j) In accordance with the provisions of 49 C.F.R. 353.52  
575 (2006), the division shall immediately disqualify a driver's  
576 privilege to operate a commercial motor vehicle upon a  
577 notice from the Assistant Administrator of the Federal Motor



578 Carrier Safety Administration that the driver poses an  
579 imminent hazard. Any disqualification period imposed under  
580 the provisions of this subsection shall be served concurrently  
581 with any other period of disqualification if applicable.

582 (k) In accordance with the provisions of 49 C.F.R.  
583 1572.11(a), the division shall immediately disqualify a  
584 driver's privilege to operate a commercial motor vehicle if  
585 the driver fails to surrender his or her driver's license with  
586 a hazardous material endorsement to the division upon  
587 proper notice by the division to the driver that the division  
588 received notice from the Department of Homeland Security  
589 Transportation Security Administration of an initial deter-  
590 mination of threat assessment and immediate revocation that  
591 the driver does not meet the standards for security threat  
592 assessment provided in 49 C.F.R. 1572.5. The disqualification  
593 remains in effect until the driver either surrenders the  
594 driver's license to the division or provides the division with  
595 an affidavit attesting to the fact that the driver has lost or is  
596 otherwise unable to surrender the license.

597 (l) In accordance with 49 C.F.R §391.41, a driver is disqual-  
598 ified from operating a commercial motor vehicle if the driver  
599 is not physically qualified to operate a commercial motor

600 vehicle or does not possess a valid medical certification  
601 status.

602 (m) In accordance with the provisions of 49 C.F.R.  
603 §383.73(g), the division shall disqualify a driver's privilege  
604 to operate a commercial motor vehicle if the division deter-  
605 mines that the licensee has falsified any information or  
606 certifications required under the provisions of 49 C.F.R. 383  
607 Subpart J or 49 C.F.R. §383.71a for sixty days in addition to  
608 any other penalty prescribed by this code.

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

1 (a) No commercial driver may engage in texting while  
2 driving a commercial motor vehicle.

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

5 (c) For the purposes of this section only, and unless a more  
6 restrictive prohibition is prescribed in this code, driving  
7 means operating a commercial motor vehicle with the motor  
8 running, including while temporarily stationed because of  
9 traffic, a traffic control device or other momentary delays.  
10 Driving does not include operating a commercial motor  
11 vehicle with or without the motor running when the driver  
12 moved the vehicle to the side of or off a highway, as defined

13 in 49 CFR 390.5, and halted in a location where the vehicle  
14 can safely remain stationary.

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

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

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

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

9 (b) To any motor carrier employer or prospective motor  
10 carrier employer;

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

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

**§17E-1-20. Reciprocity.**

1 (a) Notwithstanding any law to the contrary, a person may  
2 drive a commercial motor vehicle if the person has a com-  
3 mercial driver's license by any state of the United States and  
4 the District of Columbia or a province or territory of Canada  
5 or a state or federal agency of the United Mexican States in  
6 accordance with the minimum federal standards for the  
7 issuance of commercial motor vehicle driver licenses if the  
8 license is not suspended, revoked or canceled, ~~and~~ if the  
9 person is not disqualified from driving a commercial motor  
10 vehicle or not subject to an "out-of-service" order.

11 (b) The commissioner is authorized to suspend, revoke or  
12 cancel the privilege to operate a motor vehicle or disqualify  
13 the privilege to operate a commercial motor vehicle of any  
14 resident of this state or of a nonresident upon receiving  
15 notice of the conviction of such person in another state of an  
16 offense ~~therein~~ which, if committed in this state, would be  
17 grounds for the suspension, revocation or cancellation of the  
18 privilege to operate a motor vehicle or the disqualification of  
19 the privilege to operate 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 prohibiting 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 eighteen, section six-d, line twenty-nine, after "(b)" by inserting the words "or subsection (c)".

JUDICIARY COMMITTEE AMENDMENT

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