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H. B. 4404

(By Delegates Ellington, Householder, Gearheart, R. Phillips, Overington, Hall, Sobonya and Savilla)

[Introduced February 2, 2012; referred to the Committee on Roads and Transportation then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended, relating to requiring holders of graduated driver's licenses to pass drug tests.

Be it enacted by the Legislature of West Virginia:

That §17B-2-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-3a. Graduated driver's license.

(a) Any person under the age of eighteen may not operate a motor vehicle unless he or she has obtained a graduated driver's license in accordance with the three-level graduated driver's license system described in the following provisions.

(b) Any person under the age of twenty-one, regardless of class or level of licensure, who operates a motor vehicle with any measurable alcohol in his or her system is subject to ~~the provisions of~~ section two, article five, chapter seventeen-c of

1 this code and section two, article five-a of said chapter. Any
2 person under the age of eighteen, regardless of class or licensure
3 level, is subject to the mandatory school attendance and
4 satisfactory academic progress provisions of section eleven,
5 article eight, chapter eighteen of this code.

6 (c) *Level one instruction permit.* -- An applicant who is
7 fifteen years or older meeting all other requirements prescribed in
8 this code may be issued a level one instruction permit.

9 (1) *Eligibility.* -- The division shall not issue a level one
10 instruction permit unless the applicant:

11 (A) Presents a completed application, as prescribed by ~~the~~
12 ~~provisions of~~ section six of this article, and which is accompanied
13 by a writing, duly acknowledged, consenting to the issuance of the
14 graduated driver's license and executed by a parent or guardian
15 entitled to custody of the applicant;

16 (B) Presents a certified copy of a birth certificate issued by
17 a state or other governmental entity responsible for vital records
18 unexpired, or a valid passport issued by the United States
19 government evidencing that the applicant meets the minimum age
20 requirement and is of verifiable identity;

21 (C) Passes the vision and written knowledge examination and
22 completes the driving under the influence awareness program, as
23 prescribed in section seven of this article;

24 (D) Presents a driver's eligibility certificate or otherwise

1 shows compliance with ~~the provisions of~~ section eleven, article
2 eight, chapter eighteen of this code; ~~and~~

3 (E) Pays a fee of \$5, which shall permit the applicant two
4 attempts at the written knowledge test; and

5 (F) Passes a drug test designed to detect illegal consumption
6 of controlled substances.

7 (2) *Terms and conditions of instruction permit.* -- A level one
8 instruction permit issued under ~~the provisions of~~ this section is
9 valid until thirty days after the date the applicant attains the
10 age of eighteen and is not renewable. However, any permit holder
11 who allows his or her permit to expire prior to successfully
12 passing the road skills portion of the driver examination, and who
13 has not committed any offense which requires the suspension,
14 revocation or cancellation of the instruction permit, may reapply
15 for a new instruction permit under ~~the provisions of~~ section six of
16 this article. The division shall immediately revoke the permit
17 upon receipt of a second conviction for a moving violation of
18 traffic regulations and laws of the road or violation of the terms
19 and conditions of a level one instruction permit, which convictions
20 have become final unless a greater penalty is required by this
21 section or any other provision of this code. Any person whose
22 instruction permit has been revoked is disqualified from retesting
23 for a period of ninety days. However, after the expiration of
24 ninety days, the person may retest if otherwise eligible. In

1 addition to all other provisions of this code for which a driver's
2 license may be restricted, suspended, revoked or canceled, the
3 holder of a level one instruction permit may only operate a motor
4 vehicle under the following conditions:

5 (A) Under the direct supervision of a licensed driver, twenty-
6 one years of age or older, or a driver's education or driving
7 school instructor who is acting in an official capacity as an
8 instructor, who is fully alert and unimpaired, and the only other
9 occupant of the front seat. The vehicle may be operated with no
10 more than two additional passengers, unless the passengers are
11 family members;

12 (B) Between the hours of five a.m. and ten p.m.;

13 (C) All occupants must use safety belts in accordance with ~~the~~
14 ~~provisions of~~ section forty-nine, article fifteen, chapter
15 seventeen-c of this code;

16 (D) Without any measurable blood alcohol content, in
17 accordance with ~~the provisions of~~ subsection (h), section two,
18 article five, chapter seventeen-c of this code; and

19 (E) Maintains current school enrollment and is making
20 satisfactory academic progress or otherwise shows compliance with
21 ~~the provisions of~~ section eleven, article eight, chapter eighteen
22 of this code.

23 (F) A holder of a level one instruction permit who is under
24 the age of eighteen years shall be prohibited from using a wireless

1 communication device while operating a motor vehicle, unless the
2 use of the wireless communication device is for contacting a 9-1-1
3 system. A person violating ~~the provisions of~~ this paragraph is
4 guilty of a misdemeanor and, upon conviction thereof, shall for the
5 first offense be fined \$25; for a second offense be fined \$50; and
6 for a third or subsequent offense be fined \$75.

7 (d) *Level two intermediate driver's license.* -- An applicant
8 sixteen years of age or older, meeting all other requirements of
9 the code, may be issued a level two intermediate driver's license.

10 (1) *Eligibility.* -- The division shall not issue a level two
11 intermediate driver's license unless the applicant:

12 (A) Presents a completed application as prescribed in section
13 six of this article;

14 (B) Has held the level one instruction permit conviction-free
15 for the one hundred eighty days immediately preceding the date of
16 application for a level two intermediate license;

17 (C) Has completed either a driver's education course approved
18 by the state Department of Education or fifty hours of behind-the-
19 wheel driving experience, including a minimum of ten hours of
20 nighttime driving, certified by a parent or legal guardian or other
21 responsible adult over the age of twenty-one as indicated on the
22 form prescribed by the division: *Provided,* That nothing in this
23 paragraph shall be construed to require any school or any county
24 board of education to provide any particular number of driver's

1 education courses or to provide driver's education training to any
2 student;

3 (D) Presents a driver's eligibility certificate or otherwise
4 shows compliance with ~~the provisions of~~ section eleven, article
5 eight, chapter eighteen of this code;

6 (E) Passes the road skills examination as prescribed by
7 section seven of this article; ~~and~~

8 (F) Pays a fee of \$5; and

9 (G) Passes a drug test designed to detect illegal consumption
10 of controlled substances.

11 (2) *Terms and conditions of a level two intermediate driver's*
12 *license.* -- A level two intermediate driver's license issued under
13 ~~the provisions of~~ this section shall expire thirty days after the
14 applicant attains the age of eighteen, or until the licensee
15 qualifies for a level three full Class E license, whichever comes
16 first. In addition to all other provisions of this code for which
17 a driver's license may be restricted, suspended, revoked or
18 canceled, the holder of a level two intermediate driver's license
19 may only operate a motor vehicle under the following conditions:

20 (A) Unsupervised between the hours of five a.m. and ten p.m.;

21 (B) Only under the direct supervision of a licensed driver,
22 age twenty-one years or older, between the hours of ten p.m. and
23 five a.m. except when the licensee is going to or returning from:

24 (I) Lawful employment;

1 (ii) A school-sanctioned activity;

2 (iii) A religious event; or

3 (iv) An emergency situation that requires the licensee to
4 operate a motor vehicle to prevent bodily injury or death of
5 another;

6 (C) All occupants shall use safety belts in accordance with
7 ~~the provisions of~~ section forty-nine, article fifteen, chapter
8 seventeen-c of this code;

9 (D) For the first six months after issuance of a level two
10 intermediate driver's license, the licensee may not operate a motor
11 vehicle carrying any passengers less than twenty years old, unless
12 these passengers are family members of the licensee; for the second
13 six months after issuance of a level two intermediate driver's
14 license, the licensee may not operate a motor vehicle carrying more
15 than one passenger less than twenty years old, unless these
16 passengers are family members of the licensee;

17 (E) Without any measurable blood alcohol content in accordance
18 with ~~the provisions of~~ subsection (h), section two, article five,
19 chapter seventeen-c of this code;

20 (F) Maintains current school enrollment and is making
21 satisfactory academic progress or otherwise shows compliance with
22 ~~the provisions of~~ section eleven, article eight, chapter eighteen
23 of this code;

24 (G) A holder of a level two intermediate driver's license who

1 is under the age of eighteen years shall be prohibited from using
2 a wireless communication device while operating a motor vehicle,
3 unless the use of the wireless communication device is for
4 contacting a 9-1-1 system. A person violating ~~the provisions of~~
5 this paragraph is guilty of a misdemeanor and, upon conviction
6 thereof, shall for the first offense be fined \$25; for a second
7 offense be fined \$50; and for a third or subsequent offense be
8 fined \$75.

9 (H) Upon the first conviction for a moving traffic violation
10 or a violation of paragraph (A), (B), (C), (D) or (G), subdivision
11 (1), subsection (d) of this section of the terms and conditions of
12 a level two intermediate driver's license, the licensee shall
13 enroll in an approved driver improvement program unless a greater
14 penalty is required by this section or by any other provision of
15 this code; and

16 At the discretion of the commissioner, completion of an
17 approved driver improvement program may be used to negate the
18 effect of a minor traffic violation as defined by the commissioner
19 against the one year conviction-free driving criteria for early
20 eligibility for a level three driver's license and may also negate
21 the effect of one minor traffic violation for purposes of avoiding
22 a second conviction under paragraph (I) of this subdivision; and

23 (I) Upon the second conviction for a moving traffic violation
24 or a violation of the terms and conditions of the level two

1 intermediate driver's license, the licensee's privilege to operate
2 a motor vehicle shall be revoked or suspended for the applicable
3 statutory period or until the licensee's eighteenth birthday,
4 whichever is longer unless a greater penalty is required by this
5 section or any other provision of this code. Any person whose
6 driver's license has been revoked as a level two intermediate
7 driver, upon reaching the age of eighteen years and if otherwise
8 eligible may reapply for an instruction permit, then a driver's
9 license in accordance with ~~the provisions of~~ sections five, six and
10 seven of this article.

11 (e) *Level three, full Class E license.* -- The level three
12 license is valid until thirty days after the date the licensee
13 attains his or her twenty-first birthday. Unless otherwise
14 provided in this section or any other section of this code, the
15 holder of a level three full Class E license is subject to the same
16 terms and conditions as the holder of a regular Class E driver's
17 license.

18 A level two intermediate licensee whose privilege to operate
19 a motor vehicle has not been suspended, revoked or otherwise
20 canceled and who meets all other requirements of the code may be
21 issued a level three full Class E license without further
22 examination or road skills testing if the licensee:

23 (1) Has reached the age of seventeen years; and

24 (A) Presents a completed application as prescribed by ~~the~~

1 ~~provisions of~~ section six of this article;

2 (B) Has held the level two intermediate license conviction
3 free for the twelve-month period immediately preceding the date of
4 the application;

5 (C) Has completed any driver improvement program required
6 under paragraph (G), subdivision (2), subsection (d) of this
7 section; ~~and~~

8 (D) Passes a drug test designed to detect illegal consumption
9 of controlled substances;

10 ~~(D)~~ (E) Pays a fee of \$2.50 for each year the license is
11 valid. An additional fee of \$.50 shall be collected to be
12 deposited in the Combined Voter Registration and Driver's Licensing
13 Fund established in section twelve, article two, chapter three of
14 this code; and

15 ~~(E)~~ (F) Presents a driver's eligibility certificate or
16 otherwise shows compliance with ~~the provisions of~~ section eleven,
17 article eight, chapter eighteen of this code; or

18 (2) Reaches the age of eighteen years; and

19 (A) Presents a completed application as prescribed by ~~the~~
20 ~~provisions of~~ section six of this article; and

21 (B) Pays a fee of \$2.50 for each year the license is valid.
22 An additional fee of \$.50 shall be collected to be deposited in the
23 Combined Voter Registration and Driver's Licensing Fund established
24 in section twelve, article two, chapter three of this code.

1 (f) A person violating ~~the provisions of~~ the terms and
2 conditions of a level one or level two intermediate driver's
3 license is guilty of a misdemeanor and, upon conviction thereof,
4 shall for the first offense be fined \$25; for a second offense be
5 fined \$50; and for a third or subsequent offense be fined \$75.

NOTE: The purpose of this bill is to require holders of graduated driver's licenses to pass drug tests.

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