

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 13

BY SENATORS CARMICHAEL, BOSO, GAUNCH,
LEONHARDT, TRUMP, WALTERS, BLAIR, TAKUBO, MILLER
AND UNGER

[Introduced January 13, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §17C-12-7 of the Code of West Virginia, 1931, as amended, relating
2 to increasing penalties for overtaking and passing a school bus stopped for the purpose
3 of receiving and discharging children; and providing penalties in the event that the driver
4 of the passing vehicle cannot be ascertained.

Be it enacted by the Legislature of West Virginia:

1 That §17C-12-7 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 12. SPECIAL STOPS REQUIRED.

**§17C-12-7. Overtaking and passing school bus; penalties; signs and warning lights upon
buses; requirements for sale of buses; mounting of cameras; educational
information campaign; limitation on idling.**

1 (a) The driver of a vehicle, upon meeting or overtaking from either direction any school
2 bus which has stopped for the purpose of receiving or discharging any school children, shall stop
3 the vehicle before reaching the school bus when there is in operation on the school bus flashing
4 warning signal lights, as referred to in section eight of this article, and the driver may not proceed
5 until the school bus resumes motion, or is signaled by the school bus driver to proceed or the
6 visual signals are no longer actuated. This section applies wherever the school bus is receiving
7 or discharging children including, but not limited to, any street, highway, parking lot, private road
8 or driveway: *Provided*, That the driver of a vehicle upon a controlled access highway need not
9 stop upon meeting or passing a school bus which is on a different roadway or adjacent to the
10 highway and where pedestrians are not permitted to cross the roadway.

11 (b) Any driver acting in violation of subsection (a) of this section is guilty of a misdemeanor
12 and, upon conviction for a first offense, shall be fined not less than \$150 or more than \$500, or
13 confined in jail not more than six months, or both fined and confined. Upon conviction of a second
14 violation of subsection (a), the driver shall be fined \$500, or confined in jail not more than six
15 months, or both fined and confined. Upon conviction of a third or subsequent violation of

16 subsection (a), the driver shall be fined \$500, and confined not less than twenty-four hours in jail
17 but not more than six months.

18 (c) If, as evidenced by a video recording system, the identity of the driver cannot be
19 ascertained, then the registration plate number of the vehicle as recorded by a video recording
20 system or as provided in a sworn affidavit by a school bus driver, establishes a rebuttable
21 presumption for civil enforcement purposes that the owner or lessee of the vehicle was operating
22 the vehicle, and a fine of not less than \$50 nor more than \$200 may be assessed against the
23 owner.

24 (1) An owner or lessee of a vehicle may overcome this presumption only if the owner or
25 lessee proves by a preponderance of the evidence that he or she was not in fact operating the
26 vehicle at the time the violation occurred.

27 (2) If a violation of this section occurs:

28 (A) The owner or operator of the school bus shall provide information concerning the
29 registration plate number to the Division of Motor Vehicles.

30 (B) The Division of Motor Vehicles shall prepare and mail a notice of violation as follows:

31 (i) The notice of violation shall be sent by first class mail to each person listed as owner;

32 (ii) The notice shall be mailed, postage prepaid, to the address shown on the vehicle
33 registration, which is presumed to be the last known address of the owner or owners;

34 (iii) Notice shall be mailed no later than one hundred twenty days after either the date of
35 the violation or the date that a lessor provides sufficient information to identify who the lessee is.

36 (iv) Personal service is not required.

37 (v) The notice shall contain the following:

38 (I) Information advising the person of the violation, when and where it occurred and that
39 the violation may be contested.

40 (II) A warning advising the person receiving the notice:

41 (aa) That failure to contest the manner and time provided is an admission of liability;

42 (bb) That a default judgment may be entered on the notice; and

43 (cc) That a violation of this section may subject the owner or operator to civil penalties,
44 administrative fees, administrative hearing costs and collection fees and costs.

45 (3) Notwithstanding other provisions of this code to the contrary, this subsection does not
46 subject the owner or lessee to any criminal liability or any further administrative or other penalties
47 for the offense.

48 ~~(e)~~(d) In addition to the penalties prescribed in subsections (b) of this section, the
49 Commissioner of Motor Vehicles shall, upon conviction, suspend the drivers license of the person
50 so convicted:

51 (1) Of a first offense under subsection (b) of this section, for a period of thirty days;

52 (2) Of a second offense under subsection (b) of this section, for a period of ninety days;

53 or

54 (3) Of a third or subsequent offense under subsection (b) of this section, for a period of
55 one hundred ~~and~~ eighty days.

56 ~~(d)~~(e) Any driver of a vehicle who willfully violates the provisions of subsection (a) of this
57 section and the violation causes serious bodily injury to any person other than the driver, is guilty
58 of a felony and, upon conviction, shall be confined in a state correctional facility not less than one
59 year nor more than three years and fined not less than \$500 nor more than \$2,000.

60 ~~(e)~~(f) Any driver of a vehicle who willfully violates the provisions of subsection (a) of this
61 section, and the violation causes death, is guilty of a felony and, upon conviction, shall be confined
62 in a state correctional facility not less than one year nor more than ten years and fined not less
63 than \$1,000 nor more than \$3,000.

64 ~~(f)~~(g) Every bus used for the transportation of school children shall bear upon the front and
65 rear of the bus a plainly visible sign containing the words "school bus" in letters not less than eight
66 inches in height. When a contract school bus is being operated upon a highway for purposes
67 other than the actual transportation of children either to or from school, all markings on the

68 contract school bus indicating "school bus" shall be covered or concealed. Any school bus sold or
69 transferred to another owner by a county board of education, agency or individual shall have all
70 flashing warning lights disconnected and all lettering removed or permanently obscured, except
71 when sold or transferred for the transportation of school children.

72 ~~(g)~~(h) Every county board of education is hereby authorized to mount a camera on any
73 school bus for the purpose of enforcing this section or for any other lawful purpose.

74 ~~(h)~~(i) To the extent that state, federal or other funds are available, the State Police shall
75 conduct an information campaign to educate drivers concerning the provisions of this section and
76 the importance of school bus safety.

77 ~~(i)~~(j) The State Board of Education shall promulgate a rule in accordance with the
78 provisions of article three-b, chapter twenty-nine-a of this code governing the idling of school
79 buses.

NOTE: The purpose of this bill is to increase the penalties for overtaking and passing a school bus stopped for the purpose of receiving and discharging children, and provide penalties in the event that the driver of the passing vehicle cannot be ascertained.

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