

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 141**

BY SENATORS TRUMP, MILLER AND STOLLINGS

[Introduced January 13, 2016;

Referred to the Committee on Transportation and

Infrastructure; and then to the Committee on

Government Organization.]

1 A BILL to amend and reenact §17E-1-3 of the Code of West Virginia, 1931, as amended, relating  
 2 generally to commercial driver’s licenses; changing definition of commercial motor vehicle;  
 3 and removing requirement for commercial driver’s license when a towing vehicle is below  
 4 a certain gross vehicle weight rating.

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

1 That §17E-1-3 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted to read as follows:

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

**§17E-1-3. Definitions.**

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

3 (1) "Alcohol" means:

4 (A) Any substance containing any form of alcohol, including, but not limited to, ethanol,  
 5 methanol, ~~propenyl~~ propanol and isopropanol;

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

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

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

13 (2) "Alcohol concentration" means:

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

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

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

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

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

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

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

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

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

31 (A) If the vehicle has a gross combination vehicle weight rating of twenty-six thousand one  
32 pounds or more inclusive of a towed unit(s) with a gross vehicle weight rating of more than ten  
33 thousand pounds, but not when the towing vehicle is designed for use as a standalone vehicle for  
34 highway transportation of passengers and cargo and has a gross vehicle weight rating of ten  
35 thousand pounds or less;

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

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

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

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

43 (9) "Controlled substance" means any substance classified under the provisions of chapter

44 sixty-a of this code, the Uniform Controlled Substances Act, and includes all substances listed on  
45 Schedules I through V, inclusive, of article two of said chapter, as revised. The term "controlled  
46 substance" also has the meaning such term has under 21 U.S.C. §802.6 and includes all  
47 substances listed on Schedules I through V of 21 C.F.R. §1308 as they may be amended by the  
48 United States Department of Justice.

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

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

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

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

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

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

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

69 (14) "Driver" means a person who drives, operates or is in physical control of a commercial

70 motor vehicle in any place open to the general public for purposes of vehicular traffic or who is  
71 required to hold a commercial driver's license.

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

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

76 (17) "Employee" means an operator of a commercial motor vehicle, including full time,  
77 regularly employed drivers, casual, intermittent or occasional drivers, leased drivers and  
78 independent, owner-operator contractors when operating a commercial motor vehicle, who are  
79 either directly employed by or under lease to drive a commercial motor vehicle for an employer.

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

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

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

91 (21) "Farmer" includes an owner, tenant, lessee, occupant or person in control of the  
92 premises used substantially for agricultural or horticultural pursuits who is at least eighteen years  
93 of age with two years licensed driving experience.

94 (22) "Farmer vehicle driver" means the person employed and designated by the "farmer"  
95 to drive a "farm vehicle" as long as driving is not his or her sole or principal function on the farm

96 and who is at least eighteen years of age with two years licensed driving experience.

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

99 (24) "Gross combination weight rating (GCWR)" means the value specified by the  
100 manufacturer as the loaded weight of a combination, articulated vehicle. In the absence of a value  
101 specified by the manufacturer, GCWR will be determined by adding the gross vehicle weight  
102 rating (GVWR) of the power unit and the total weight of the towed unit and load, if any.

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

106 (26) "Hazardous materials" means any material that has been designated as hazardous  
107 under 49 U.S.C. §5103 and is required to be placarded under subpart F of 49 C.F.R., Part §172  
108 or any quantity of a material listed as a select agent or toxin in 42 C.F.R., Part §73.

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

113 (28) "Issuance of a license" means the completion of a transaction signifying that the  
114 applicant has met all the requirements to qualify for, including, but not limited to: The initial  
115 issuance of a driver's license, the renewal of a driver's license, the issuance of a duplicate license  
116 as a replacement to a lost or stolen driver's license, the transfer of any level of driving privileges  
117 including the privilege of operating a commercial motor vehicle from another state or jurisdiction,  
118 the changing of driver's license class, restrictions or endorsements or the change of any other  
119 information pertaining to an applicant either appearing on the face of a driver's license or within  
120 the driver record of the licensee maintained by the division.

121 (29) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which

122 is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

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

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

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

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

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

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

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

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

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

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

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

150 (D) Following the vehicle ahead too closely;

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

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

157 (G) Driving a commercial motor vehicle without the proper class of commercial driver's  
158 license or endorsements for the specific vehicle group being operated or for the passengers or  
159 type of cargo being transported;

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

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

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

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

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

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



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

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

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

184 (B) Texting does not include:

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

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

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

193 (40) "Transportation Security Administration" means the United States Department of  
194 Homeland Security Transportation Security Administration.

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

196 (42) "Valid or Certified Medical Certification Status" means that an applicant or driver has  
197 a current medical evaluation or determination by a licensed physician that the applicant or driver  
198 meets the minimum federal motor carrier safety administration physical qualifications within the  
199 prescribed time frames pursuant 49 CFR Part §391. Not-certified means that an applicant or driver

200 does not have a current medical evaluation or has not been certified by a licensed physician as  
201 meeting the minimum federal motor carrier safety administration physical qualifications pursuant  
202 49 CFR Part § 391.

203 (43) “Vehicle Group” means a class or type of vehicle with certain operating  
204 characteristics.

NOTE: The purpose of this bill is to eliminate the requirement of a CDL license when certain light-weight vehicles, such as pickup trucks, are used to tow trailers in a combination that would otherwise put the combined GVWR of the vehicles over the CDL threshold limit.

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