

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Originating

Senate Bill 545

BY SENATORS BOSO, SWOPE, GAUNCH, JEFFRIES,

PLYMALE, AND BEACH

[Originating in the Committee on Transportation and

Infrastructure; Reported on February 14, 2018]

1 A BILL to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended, relating
2 to driving privileges and requirements for persons under the age of 18; prohibiting use of
3 wireless communication device while operating motor vehicle and specifying exception;
4 and making violation of level-three license terms and conditions subject to penalty
5 provision.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION, AND RENEWAL.

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

1 (a) Any person under the age of 18 may not operate a motor vehicle unless he or she has
2 obtained a graduated driver's license in accordance with the three-level graduated driver's license
3 system described in the following provisions.

4 (b) Any person under the age of 21, regardless of class or level of licensure, who operates
5 a motor vehicle with any measurable alcohol in his or her system is subject to ~~the provisions of~~
6 §17C-5-2 and §17C-5A-2 of this code. Any person under the age of 18, regardless of class or
7 licensure level, is subject to the mandatory school attendance and satisfactory academic progress
8 provisions of §18-8-11 of this code.

9 (c) *Level one instruction permit.* — An applicant who is 15 years or older meeting all other
10 requirements prescribed in this code may be issued a level one instruction permit.

11 (1) *Eligibility.* — The division shall not issue a level one instruction permit unless the
12 applicant:

13 (A) Presents a completed application, as prescribed by ~~the provisions of~~ §17B-2-6 of this
14 code, and which is accompanied by a writing, duly acknowledged, consenting to the issuance of
15 the graduated driver's license, and executed by a parent or guardian entitled to custody of the
16 applicant;

17 (B) Presents a certified copy of a birth certificate issued by a state or other governmental
18 entity responsible for vital records unexpired, or a valid passport issued by the United States

19 government evidencing that the applicant meets the minimum age requirement and is of verifiable
20 identity;

21 (C) Passes the vision and written knowledge examination and completes the driving under
22 the influence awareness program, as prescribed in §17B-2-7 of this code;

23 (D) Presents a driver's eligibility certificate or otherwise shows compliance with ~~the~~
24 ~~provisions of~~ §18-8-11 of this code; and

25 (E) Pays a fee of \$7.50, which shall permit the applicant one attempt at the written
26 knowledge test. The Division of Motor Vehicles may adjust this fee every five years on September
27 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer
28 Price Index: *Provided*, That an increase in such fee may not exceed 10 percent of the total fee
29 amount in a single year.

30 (2) *Terms and conditions of instruction permit.* — A level one instruction permit issued
31 under ~~the provisions of~~ this section is valid until 30 days after the date the applicant attains the
32 age of 18 and is not renewable. However, any permit holder who allows his or her permit to expire
33 prior to successfully passing the road skills portion of the driver examination, and who has not
34 committed any offense which requires the suspension, revocation, or cancellation of the
35 instruction permit, may reapply for a new instruction permit under ~~the provisions of~~ §17B-2-6 of
36 this code. The division shall immediately revoke the permit upon receipt of a second conviction
37 for a moving violation of traffic regulations and laws of the road or violation of the terms and
38 conditions of a level one instruction permit, which convictions have become final unless a greater
39 penalty is required by this section or any other provision of this code. Any person whose
40 instruction permit has been revoked is disqualified from retesting for a period of 90 days. However,
41 after the expiration of 90 days, the person may retest if otherwise eligible. In addition to all other
42 provisions of this code for which a driver's license may be restricted, suspended, revoked, or
43 canceled, the holder of a level one instruction permit may only operate a motor vehicle under the
44 following conditions:

45 (A) Under the direct supervision of a licensed driver, 21 years of age or older, or a driver's
46 education or driving school instructor who is acting in an official capacity as an instructor, who is
47 fully alert and unimpaired, and the only other occupant of the front seat. The vehicle may be
48 operated with no more than two additional passengers, unless the passengers are family
49 members;

50 (B) Between the hours of 5:00 a. m. and 10:00 p. m.;

51 (C) All occupants must use safety belts in accordance with ~~the provisions of §17C-15-49~~
52 of this code;

53 (D) Without any measurable blood alcohol content, in accordance with ~~the provisions of~~
54 §17C-5-2(h) of this code; and

55 (E) Maintains current school enrollment and is making satisfactory academic progress or
56 otherwise shows compliance with ~~the provisions of §18-8-11~~ of this code.

57 (F) A holder of a level one instruction permit who is under the age of 18 years ~~shall be~~ is
58 prohibited from using a wireless communication device while operating a motor vehicle, unless
59 the use of the wireless communication device is for contacting a 9-1-1 system. ~~A person violating~~
60 ~~the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for~~
61 ~~the first offense be fined \$25; for a second offense be fined \$50; and for a third or subsequent~~
62 ~~offense be fined \$75.~~

63 (d) *Level two intermediate driver's license.* — An applicant 16 years of age or older,
64 meeting all other requirements of the code, may be issued a level two intermediate driver's
65 license.

66 (1) *Eligibility.* — The division shall not issue a level two intermediate driver's license unless
67 the applicant:

68 (A) Presents a completed application as prescribed in §17B-2-6 of this code;

69 (B) Has held the level one instruction permit conviction-free for the 180 days immediately
70 preceding the date of application for a level two intermediate license;

71 (C) Has completed either a driver's education course approved by the state Department
72 of Education or 50 hours of behind-the-wheel driving experience, including a minimum of 10 hours
73 of night time driving, certified by a parent or legal guardian or other responsible adult over the age
74 of 21 as indicated on the form prescribed by the division: *Provided*, That nothing in this paragraph
75 shall be construed to require any school or any county board of education to provide any particular
76 number of driver's education courses or to provide driver's education training to any student;

77 (D) Presents a driver's eligibility certificate or otherwise shows compliance with ~~the~~
78 ~~provisions of~~ §18-8-11 of this code;

79 (E) Passes the road skills examination as prescribed by §17B-2-7 of this code; and

80 (F) Pays a fee of \$7.50 for one attempt. The Division of Motor Vehicles may adjust this
81 fee every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor
82 Statistics most current Consumer Price Index: *Provided*, That an increase in such fee may not
83 exceed 10 percent of the total fee amount in a single year.

84 (2) *Terms and conditions of a level two intermediate driver's license.* — A level two
85 intermediate driver's license issued under the provisions of this section shall expire 30 days after
86 the applicant attains the age of 18, or until the licensee qualifies for a level three full Class E
87 license, whichever comes first. In addition to all other provisions of this code for which a driver's
88 license may be restricted, suspended, revoked, or canceled, the holder of a level two intermediate
89 driver's license may only operate a motor vehicle under the following conditions:

90 (A) Unsupervised between the hours of 5:00 a. m. and 10:00 p. m.;

91 (B) Only under the direct supervision of a licensed driver, age 21 years or older, between
92 the hours of 10:00 p. m. and 5:00 a. m. except when the licensee is going to or returning from:

93 (i) Lawful employment;

94 (ii) A school-sanctioned activity;

95 (iii) A religious event; or

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

98 (C) All occupants shall use safety belts in accordance with ~~the provisions of~~ §17C-15-49
99 of this code;

100 (D) For the first six months after issuance of a level two intermediate driver's license, the
101 licensee may not operate a motor vehicle carrying any passengers less than 20 years old, unless
102 these passengers are family members of the licensee; for the second six months after issuance
103 of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying
104 more than one passenger less than 20 years old, unless these passengers are family members
105 of the licensee;

106 (E) Without any measurable blood alcohol content in accordance with ~~the provisions of~~
107 §17C-5-2(h) of this code;

108 (F) Maintains current school enrollment and is making satisfactory academic progress or
109 otherwise shows compliance with ~~the provisions of~~ §18-8-11 of this code;

110 (G) A holder of a level two intermediate driver's license who is under the age of 18 years
111 ~~shall be~~ is prohibited from using a wireless communication device while operating a motor vehicle,
112 unless the use of the wireless communication device is for contacting a 9-1-1 system; ~~A person~~
113 ~~violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof,~~
114 ~~shall for the first offense be fined \$25; for a second offense be fined \$50; and for a third or~~
115 ~~subsequent offense be fined \$75.~~

116 (H) Upon the first conviction for a moving traffic violation or a violation of ~~paragraph (A),~~
117 ~~(B), (C), (D) or (G), subdivision (1), subsection (d) of this section~~ §17B-2-3a(d)(2)(A), §17B-2-
118 3a(d)(2)(B), §17B-2-3a(d)(2)(C), §17B-2-3a(d)(2)(D), or §17B-2-3a(d)(2)(G) of this code of the
119 terms and conditions of a level two intermediate driver's license, the licensee shall enroll in an
120 approved driver improvement program unless a greater penalty is required by this section or by
121 any other provision of this code; and

122 At the discretion of the commissioner, completion of an approved driver improvement
123 program may be used to negate the effect of a minor traffic violation as defined by the
124 commissioner against the one year conviction-free driving criteria for early eligibility for a level
125 three driver's license and may also negate the effect of one minor traffic violation for purposes of
126 avoiding a second conviction under §17B-2-3a(d)(2)(l) of this code; and

127 (l) Upon the second conviction for a moving traffic violation or a violation of the terms and
128 conditions of the level two intermediate driver's license, the licensee's privilege to operate a motor
129 vehicle shall be revoked or suspended for the applicable statutory period or until the licensee's
130 eighteenth birthday, whichever is longer unless a greater penalty is required by this section or any
131 other provision of this code. Any person whose driver's license has been revoked as a level two
132 intermediate driver, upon reaching the age of 18 years and if otherwise eligible may reapply for
133 an instruction permit, then a driver's license in accordance with ~~the provisions of~~ §17B-2-5, §17B-
134 2-6, and §17B-2-7 of this code.

135 (e) *Level three, full Class E license.* — The level three license is valid until 30 days after
136 the date the licensee attains his or her twenty-first birthday. A holder of a level three driver's
137 license who is under the age of 18 years is prohibited from using a wireless communication device
138 while operating a motor vehicle, unless the use of the wireless communication device is for
139 contacting a 9-1-1 system. Unless otherwise provided in this section or any other section of this
140 code, the holder of a level three full Class E license is subject to the same terms and conditions
141 as the holder of a regular Class E driver's license.

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

146 (1) Has reached the age of 17 years; and

147 (A) Presents a completed application as prescribed by ~~the provisions of §17B-2-6 of this~~
148 code;

149 (B) Has held the level two intermediate license conviction free for the 12-month period
150 immediately preceding the date of the application;

151 (C) Has completed any driver improvement program required under ~~paragraph (G),~~
152 ~~subdivision (2), subsection (d) of this section §17B-2-3a(d)(2)(H) of this code; and~~

153 (D) Pays a fee of \$2.50 for each year the license is valid. An additional fee of 50 cents
154 shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund
155 established in §3-2-12 of this code;

156 (E) Presents a driver's eligibility certificate or otherwise shows compliance with ~~the~~
157 ~~provisions of §18-8-11 of this code; or~~

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

159 (A) Presents a completed application as prescribed by ~~the provisions of §17B-2-6 of this~~
160 code; and

161 (B) Pays a fee of \$5 for each year the license is valid. The Division of Motor Vehicles may
162 adjust this fee every five years on September 1, based on the U. S. Department of Labor, Bureau
163 of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in such fee
164 may not exceed 10 percent of the total fee amount in a single year. An additional fee of 50 cents
165 shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund
166 established in §3-2-12 of this code.

167 (f) A person violating the provisions of the terms and conditions of a level one instruction
168 permit, or level two intermediate driver's license, or level three license is guilty of a misdemeanor
169 and, upon conviction thereof, shall for the first offense be fined \$25; for a second offense be fined
170 \$50; and for a third or subsequent offense be fined \$75.

NOTE: The purpose of this bill is to prohibit all cell phone use for drivers under the age of 18 except for certain emergency situations and to make stylistic changes and corrections.

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

JUDICIARY COMMITTEE AMENDMENT

On page six, section three-a, line one hundred thirty-seven, after the word "device" by inserting the words "for the purpose of communicating with another".