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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2002*

**ENROLLED**

*Committee Substitute for*

**SENATE BILL NO.** *6664*

(By Senator *Ross, et al* )

**PASSED** *March 9, 2002*

**In Effect** *90 days from* **Passage**

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

### Senate Bill No. 664

(SENATORS ROSS, SHARPE AND FANNING, *original sponsors*)

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[Passed March 9, 2002; in effect ninety days from passage.]

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AN ACT to amend and reenact section three, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections four, twelve and thirteen, article one, chapter seventeen-e of said code, all relating to the requirement that certain vehicles stop or slow down at railroad crossings; and disqualifying violating drivers from operating commercial vehicles for certain periods of time in compliance with federal law.

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

That section three, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections four,

twelve and thirteen, article one, chapter seventeen-e of said code be amended and reenacted, all to read as follows:

**CHAPTER 17C. TRAFFIC REGULATIONS  
AND LAWS OF THE ROAD.**

**ARTICLE 12. SPECIAL STOPS REQUIRED.**

**§17C-12-3. Certain vehicles must stop at all railroad grade crossings.**

1 (a) Except as provided in subsection (f) of this section,  
2 the driver of a commercial motor vehicle specified in  
3 subsection (b) of this section shall not cross a railroad  
4 track or tracks at grade unless he or she first: (1) Stops the  
5 commercial motor vehicle within fifty feet of, and not  
6 closer than fifteen feet to, the tracks; (2) thereafter, listens  
7 and looks in each direction along the tracks for an ap-  
8 proaching train; and (3) ascertains that no train is ap-  
9 proaching. When it is safe to do so, the driver may drive  
10 the commercial motor vehicle across the tracks in a gear  
11 that permits the commercial motor vehicle to complete the  
12 crossing without a change of gears. The driver shall not  
13 shift gears while crossing the tracks.

14 (b) The following commercial vehicles are required to  
15 stop at railroad tracks or tracks at grade:

16 (1) Every bus transporting passengers;

17 (2) Every commercial motor vehicle transporting any  
18 quantity of a United States department of transportation  
19 defined division 2.3 chlorine;

20 (3) Every commercial motor vehicle which, in accordance  
21 with United States department of transportation regula-  
22 tions, is marked or placarded and is required to stop in  
23 accordance with 49 C.F.R. part §392.10(a)(3)(2001).

24 (4) Every cargo tank motor vehicle loaded or empty, used  
25 for the transportation of any hazardous material, as

26 defined in federal department of transportation hazardous  
27 materials rules, 49 C.F.R. parts §107 through §180 (2001);

28 (5) Every cargo tank motor vehicle transporting a  
29 commodity which, at the time of loading, has a tempera-  
30 ture above its flashpoint as determined by 49 C.F.R.  
31 §173.120 (2001); and

32 (6) Every cargo tank motor vehicle, whether loaded or  
33 empty transporting any commodity exemption in accor-  
34 dance with 49 C.F.R. part §107 subpart B (2001).

35 (c) Any vehicle owned by an employer which, in carrying  
36 on the employer's business or in carrying employees to and  
37 from work, carries more than six employees of the em-  
38 ployer is required to stop at all railroad tracks or tracks at  
39 grade, in accordance with subsection (a) of this section.

40 (d) All drivers of commercial motor vehicles not required  
41 to stop at railroad tracks or tracks at grade as provided in  
42 subsection (a) of this section may not cross a railroad track  
43 or tracks at grade unless he or she first slows the commer-  
44 cial motor vehicle to a speed which will permit the com-  
45 mercial motor vehicle to be stopped before reaching the  
46 nearest rail of the railroad crossing and permit exercise of  
47 due caution to ascertain that the tracks are clear of an  
48 approaching train.

49 (e) All drivers of commercial motor vehicles may not  
50 proceed to cross a railroad crossing unless there is suffi-  
51 cient space to drive completely through the crossing  
52 without stopping and the vehicle has sufficient undercar-  
53 riage clearance to drive completely through the crossing  
54 without stopping.

55 (f) No stop need be made at:

56 (1) Any crossing where a police officer, crossing flagger  
57 or a traffic-control signal directs traffic to proceed;

58 (2) A streetcar crossing, or railroad tracks used exclu-  
59 sively for industrial switching purposes within a business  
60 district, as defined in 49 C.F.R. §390.5 (2000);

61 (3) A railroad grade crossing controlled by a functioning  
62 highway traffic signal transmitting a green indication  
63 which, under local law permits the commercial motor  
64 vehicle to proceed across the track without slowing or  
65 stopping; or

66 (4) A railroad grade crossing which is marked with a sign  
67 indicating that the rail line is out of service.

68 (g) Any person driving a vehicle specified in this section  
69 or a vehicle that requires a commercial driver's license  
70 who fails to comply with the requirements of this section  
71 is guilty of a misdemeanor and, upon conviction thereof,  
72 shall be fined one hundred dollars or imprisoned for not  
73 more than ten days: *Provided*, That if the electric or  
74 mechanical signal device is malfunctioning, this subsection  
75 shall not apply.

## CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

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

#### §17E-1-4. Limitation on number of driver's licenses.

1 No person who drives a commercial motor vehicle may  
2 have more than one driver license at one time.

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

1 Commercial driver's licenses may be issued with the  
2 following classifications, endorsements and restrictions;  
3 the holder of a valid commercial driver's license may drive  
4 all vehicles in the class for which that license is issued, and  
5 all lesser classes of vehicles and vehicles which require an  
6 endorsement, unless the proper endorsement appears on  
7 the license:

8 (a) *Classifications.* -

9 (1) Class A - Any combination of vehicles with a gross  
10 combined vehicle weight rating of twenty-six thousand  
11 one pounds or more, provided the gross vehicle weight

12 rating of the vehicle being towed is in excess of ten  
13 thousand pounds.

14 (2) Class B - Any single vehicle with a gross vehicle  
15 weight rating of twenty-six thousand one pounds or more  
16 and any vehicle towing a vehicle not in excess of ten  
17 thousand pounds.

18 (3) Class C - Any single vehicle or combination vehicle  
19 with a gross vehicle weight rating of less than twenty-six  
20 thousand one pounds or any vehicle towing a vehicle with  
21 a gross vehicle weight rating not in excess of ten thousand  
22 pounds comprising:

23 (A) Vehicles designed to transport sixteen or more  
24 passengers, including the driver; and

25 (B) Vehicles used in the transportation of hazardous  
26 materials which requires the vehicle to be placarded under  
27 49 C.F.R., Part §172, subpart F (2001).

28 (b) *Endorsements and restrictions.* - The commissioner  
29 upon issuing a commercial driver's license may impose  
30 endorsements or restrictions determined by the commis-  
31 sioner to be appropriate to assure the safe operation of a  
32 motor vehicle and to comply with 49 U.S.C., *et seq.*, and  
33 federal rules implementing the law.

34 (c) *Applicant record check.* - Before issuing a commer-  
35 cial driver's license, the commissioner shall obtain driving  
36 record information through the commercial driver's license  
37 information system, the national driver register and from  
38 each state in which the person has been commercially  
39 licensed.

40 (d) *Notification of license issuance.* - Within ten days  
41 after issuing a commercial driver's license, the commis-  
42 sioner shall notify the commercial driver's license informa-  
43 tion system of that fact, providing all information required  
44 to ensure identification of the person.

45 (e) *Expiration of license.* -

46 (1) Every commercial driver's license issued to persons  
47 who have attained their twenty-first birthday expires on  
48 the applicant's birthday in those years in which the appli-  
49 cant's age is evenly divisible by five. Except as provided  
50 in subdivision (2) of this subsection, no commercial  
51 driver's license may be issued for less than three years nor  
52 more than seven years and the commercial driver's license  
53 shall be renewed by the applicant's birthday and is valid  
54 for a period of five years, expiring in the month in which  
55 the applicant's birthday occurs and in a year in which the  
56 applicant's age is evenly divisible by five.

57 (2) Every commercial driver's license issued to persons  
58 who have not attained their twenty-first birthday expires  
59 on the last day of the month in the year in which the  
60 applicant attains the age of twenty-one years.

61 (3) Commercial driver's licenses held by any person in  
62 the armed forces which expire while that person is on  
63 active duty remains valid for thirty days from the date on  
64 which that person reestablishes residence in West Virginia.

65 (4) Any person applying to renew a commercial driver's  
66 license which has been expired for two years or more shall  
67 follow the procedures for an initial issuance of a commer-  
68 cial driver's license, including the testing provisions.

69 (f) *License renewal procedures.* – When applying for  
70 renewal of a commercial driver's license, the applicant  
71 shall complete the application form and provide updated  
72 information and required certifications. If the applicant  
73 wishes to retain a hazardous materials endorsement, the  
74 applicant shall comply with a background check in  
75 accordance with 49 U.S.C. §5103a and pass the written  
76 test for a hazardous materials endorsement.

**§17E-1-13. Disqualification and cancellation.**

1 (a) *Disqualification offenses.* – Any person is disquali-  
2 fied from driving a commercial motor vehicle for a period  
3 of one year if convicted of a first violation of:

4 (1) Driving a commercial motor vehicle under the  
5 influence of alcohol or a controlled substance;

6 (2) Driving a commercial motor vehicle while the per-  
7 son's alcohol concentration of the person's blood, breath or  
8 urine is four hundredths of one percent or more, by weight;

9 (3) Leaving the scene of an accident involving a commer-  
10 cial motor vehicle driven by the person;

11 (4) Using a commercial motor vehicle in the commission  
12 of any felony as defined in this article: *Provided*, That the  
13 commission of any felony involving the manufacture,  
14 distribution or dispensing of a controlled substance, or  
15 possession with intent to manufacture, distribute or  
16 dispense a controlled substance falls under the provisions  
17 of subsection (e) of this section;

18 (5) Refusing to submit to a test to determine the person's  
19 alcohol concentration while driving a commercial motor  
20 vehicle;

21 (6) Manslaughter or negligent homicide resulting from  
22 the operation of a motor vehicle as defined in section five,  
23 article three, chapter seventeen-b, and section one, article  
24 five, chapter seventeen-c of this code;

25 (7) Driving while his or her license is suspended or  
26 revoked, as defined in section three, article four, chapter  
27 seventeen-b of this code; or

28 (8) Perjury or making a false affidavit or statement  
29 under oath to the division of motor vehicles, as defined in  
30 subsection (4), section five, article three, chapter seven-  
31 teen-b of this code and section two, article four of said  
32 chapter.

33 If any of the violations in this subsection occurred while  
34 transporting a hazardous material required to be plac-  
35 arded, the person is disqualified for a period of not less  
36 than three years for a first violation.

37 (b) A person is disqualified for life if convicted of two or  
38 more violations of any of the offenses specified in subsec-  
39 tion (a) of this section, or any combination of those  
40 offenses, arising from two or more separate incidents.

41 (c) The commissioner may propose rules for promulga-  
42 tion in accordance with article three, chapter twenty-nine-  
43 a of this code establishing guidelines, including conditions,  
44 under which a disqualification for life under subsection (b)  
45 of this section may be reduced to a period of not less than  
46 ten years.

47 (d) A person is disqualified from driving a commercial  
48 motor vehicle for life who uses a commercial motor vehicle  
49 in the commission of any felony involving the manufac-  
50 ture, distribution or dispensing of a controlled substance,  
51 or possession with intent to manufacture, distribute or  
52 dispense a controlled substance.

53 (e) A person is disqualified from driving a commercial  
54 motor vehicle for a period of sixty days if convicted of two  
55 serious traffic violations, or one hundred twenty days if  
56 convicted of three serious violations, committed in a  
57 commercial motor vehicle arising from separate incidents  
58 occurring within a three-year period.

59 (f) In addition, in accordance with the provision of 49  
60 C.F.R. §391.15 and §383.15 (1998), a conviction of violat-  
61 ing an out-of-service order is a disqualifying offense. For  
62 the first offense, the period of disqualification shall be for  
63 ninety days. For the second offense within a ten-year  
64 period for violations in separate incidents, the period of  
65 disqualification shall be for a period of one year. For the  
66 third or subsequent offense within a ten-year period for  
67 violations in separate incidents, the period of disqualifica-  
68 tion shall be for a period of three years. If the violation of  
69 the out-of-service order occurred while the person was  
70 operating a commercial motor vehicle transporting  
71 hazardous material required to be placarded under the  
72 Hazardous Transportation Act (49 U.S.C. §§5101, *et seq.*)

73 or while operating a motor vehicle designed to transport  
74 sixteen or more passengers, including the driver, the  
75 period of disqualification for the first offense shall be for  
76 one hundred eighty days. For the second or subsequent  
77 offense within a ten-year period for violations in separate  
78 incidents, the period of disqualification shall be for three  
79 years.

80 (g) A person is disqualified from driving a commercial  
81 motor vehicle if he or she has failed to pay overdue child  
82 support or comply with subpoenas or warrants relating to  
83 paternity or child support proceedings, if a circuit court  
84 has ordered the suspension of the commercial driver's  
85 license as provided in article five-a, chapter forty-eight-a  
86 of this code and the child support enforcement division has  
87 forwarded to the division a copy of the court order sus-  
88 pending the license, or has forwarded its certification that  
89 the licensee has failed to comply with a new or modified  
90 order that stayed the suspension and provided for the  
91 payment of current support and any arrearage due. A  
92 disqualification under this section continues until the  
93 division has received a court order restoring the license or  
94 a certification by the child support enforcement division  
95 that the licensee is complying with the original support  
96 order or a new or modified order that provides for the  
97 payment of current support and any arrearage due.

98 (h) In accordance with the provisions of 49 C.F.R.  
99 §383.51, (2001) any person convicted of operating a  
100 commercial motor vehicle in violation of any federal, state  
101 or local law or ordinance pertaining to any of the railroad  
102 crossing violations described in subdivision (1) of this  
103 subsection shall be disqualified for the period of time  
104 specified in subdivision (2) of this subsection:

105 (1) Conviction for any of the following railroad crossing  
106 violations shall result in disqualification:

107 (A) Failing to slow down and check that the tracks are  
108 clear of an approaching train, if not required to stop in

109 accordance with the provisions of section three, article  
110 twelve, chapter seventeen-c of this code;

111 . (B) Failing to stop before reaching the crossing, if the  
112 tracks are not clear, if not required to stop, in accordance  
113 with the provisions of section one, article twelve, chapter  
114 seventeen-c of this code;

115 (C) Failing to stop before driving onto the crossing, if  
116 required to stop in accordance with the provisions of  
117 section three, article twelve, chapter seventeen-c of this  
118 code;

119 (D) Failing to have sufficient space to drive completely  
120 through the crossing without stopping in accordance with  
121 the provisions of section three, article twelve, chapter  
122 seventeen-c of this code;

123 (E) Failing to obey a traffic control device or the direc-  
124 tions of an enforcement official at the crossing in accor-  
125 dance with the provisions of section one, article twelve,  
126 chapter seventeen-c of this code; or

127 (F) Failing to negotiate a crossing because of insufficient  
128 undercarriage clearance in accordance with the provisions  
129 of section three, article twelve, chapter seventeen-c of this  
130 code.

131 (2) Duration of disqualification time periods for rail-  
132 road-highway grade crossing convictions are as follows:

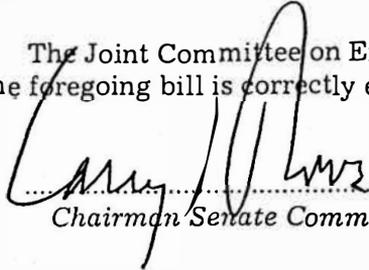
133 (A) For the first conviction, a driver of a commercial  
134 motor vehicle shall be disqualified for sixty days if the  
135 driver is convicted of a first violation of a railroad-high-  
136 way grade crossing violation;

137 (B) For a second conviction, a driver of a commercial  
138 vehicle shall be disqualified for one hundred and twenty  
139 days if during any three-year period the driver is convicted  
140 of a second railroad-highway grade crossing violation in  
141 separate incidents;

142 (C) For the third or subsequent conviction, a driver of a  
143 commercial motor vehicle shall be disqualified for one  
144 year if during any three-year period the driver is convicted  
145 of a third or subsequent railroad-highway grade crossing  
146 violation in separate incidents.

147 (i) After suspending, revoking or canceling a commercial  
148 driver's license, the division shall update its records to  
149 reflect that action within ten days.

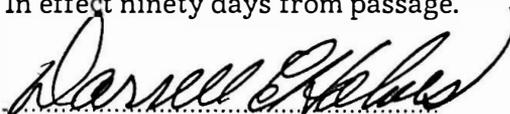
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

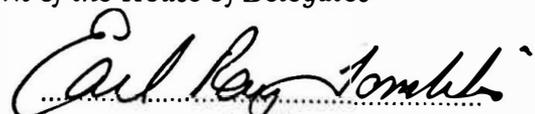
  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved this the 3rd  
Day of April, 2002.

  
.....  
Governor

PRESENTED TO THE

COMMISSION

Date: 3/25/02

Time: 11:30am