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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

House Bill No. 2802

(By Delegate Boggs)



Passed April 9, 2005

In Effect Ninety Days from Passage

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SECRETARY OF STATE

E N R O L L E D

H. B. 2802

(BY DELEGATE BOGGS)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §8-11-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §17E-1-2, §17E-1-3; §17E-1-5, §17E-1-6, §17E-1-7, §17E-1-8, §17E-1-9, §17E-1-10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-14, §17E-1-15, §17E-1-16, §17E-1-17, §17E-1-23 and §17E-1-24 of said code, all relating to updating provisions pertaining to commercial driver's licenses to conform with federal law.

Be it enacted by the Legislature of West Virginia:

That §8-11-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17E-1-2, §17E-1-3, §17E-1-5, §17E-1-6, §17E-1-7, §17E-1-8, §17E-1-9, §17E-1-10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-14, §17E-1-15, §17E-1-16, §17E-1-17, §17E-1-23 and §17E-1-24 of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.

§8-11-5. Prejudgment alternative disposition of certain traffic offenses.

1 (a) Municipal courts are hereby authorized to establish a
2 prejudgment alternative disposition procedure for traffic
3 offenses over which the court has jurisdiction.

4 (b) Under a prejudgment disposition procedure authorized
5 by subsection (a) of this section, if a person is found guilty of
6 a traffic offense, the municipal court may, with the person's
7 consent, withhold for a reasonable time not to exceed ninety
8 days the entry of a judgment of conviction so that the person
9 may attend a driver safety education course designated by the
10 municipal court. If the person attends said course, the municipal
11 court, if satisfied with the person's participation in the course,
12 shall, without entering a judgment of conviction, dismiss the
13 proceeding against the person.

14 (c) It shall be a condition of any prejudgment alternative
15 disposition authorized by the provisions of this section that the
16 person pay any fine assessed by the court and pay all fees and
17 costs required to be paid by any provision of this code where a
18 person is convicted of a criminal traffic offense. No municipal
19 court shall utilize any prejudgment alternative disposition
20 procedure unless it collects such fees and costs as are required
21 by any provision of this code and transmits the moneys col-
22 lected as required by law. No municipal court shall utilize any
23 prejudgment alternative disposition procedure unless it con-
24 forms with the requirements of this section.

25 (d) The procedure authorized by the provisions of this
26 section shall not be available to any person who:

27 (1) Holds a commercial driver's license issued by this state
28 in accordance with chapter seventeen-e of this code, or who
29 holds a commercial driver's license issued by any other state or
30 jurisdiction;

31 (2) Is arrested while operating a commercial motor vehicle
32 as defined in chapter seventeen-e of this code; or

33 (3) Is arrested for driving under the influence of alcohol or
34 drugs or any other offense for which a mandatory period of
35 confinement in jail is required.

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

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-2. Statement of intent and purpose.

1 (a) The purpose of this article is to implement 49 U.S.C et
2 seq., The Federal Motor Carrier Safety Improvement Act of
3 1999, 49 U.S.C. §5103a, Uniting and Strengthening America by
4 Providing Appropriate Tools Required to Intercept or Obstruct
5 Terrorism Act of 2001 and to reduce or prevent commercial
6 motor vehicle accidents, fatalities and injuries by:

7 (1) Permitting commercial drivers to hold only one license;

8 (2) Disqualifying commercial drivers who have committed
9 certain serious traffic offenses;

10 (3) Permitting only commercial drivers who do not present
11 a security threat to operate commercial vehicles carrying a
12 hazardous material; and

13 (4) Strengthening licensing and testing standards.

14 (b) This article is a remedial law and shall be liberally
15 construed to promote the public health, safety and welfare.
16 Where this chapter is silent, the general driver licensing
17 provisions and the provisions of Title 49 of the Code of Federal
18 Regulations apply.

§17E-1-3. Definitions.

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

3 (1) "Alcohol" means:

4 (A) Any substance containing any form of alcohol, includ-
5 ing, but not limited to, ethanol, methanol, propanol and
6 isopropanol;

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

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

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

18 (2) "Alcohol concentration" means:

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

21 (B) The number of grams of alcohol per two hundred ten
22 liters of breath; or

23 (C) The number of grams of alcohol per sixty-seven
24 milliliters of urine.

25 (D) The number of grams of alcohol per eighty-six millili-
26 ters of serum.

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

31 (4) "Commercial driver's license" means a license issued in
32 accordance with the requirements of this article to an individual
33 which authorizes the individual to drive a class of commercial
34 motor vehicle.

35 (5) "Commercial driver's license information system" is the
36 information system established pursuant to the Federal Com-
37 mercial Motor Vehicle Safety Act to serve as a clearinghouse
38 for locating information related to the licensing and identifica-
39 tion of commercial motor vehicle drivers.

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

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

44 (A) If the vehicle has a gross combination vehicle weight
45 rating of 26,001 pounds or more inclusive of a towed unit(s)
46 with a gross vehicle weight rating of more than 10,000 pounds;

47 (B) If the vehicle has a gross vehicle weight rating of more
48 than 26,001 pounds or more;

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

51 (D) If the vehicle is of any size transporting hazardous
52 materials as defined in this section.

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

55 (9) “Controlled substance” means any substance classified
56 under the provisions of chapter sixty-a of this code (Uniform
57 Controlled Substances Act) and includes all substances listed on
58 Schedules I through V, inclusive, article two of said chapter
59 sixty-a, as they are revised. The term “controlled substance”
60 also has the meaning such term has under 21 U.S.C. §802.6 and
61 includes all substances listed on Schedules I through V of 21
62 C.F.R. §1308 as they may be amended by the United States
63 Department of Justice.

64 (10) “Conviction” means an unvacated adjudication of
65 guilt; a determination that a person has violated or failed to
66 comply with the law in a court of original jurisdiction or by an
67 authorized administrative tribunal or proceeding; an unvacated
68 forfeiture of bail or collateral deposited to secure the persons
69 appearance in court; a plea of guilty or nolo contendere
70 accepted by the court or the payment of a fine or court cost, or
71 violation of a condition of release without bail regardless of
72 whether or not the penalty is rebated, suspended, or probated.

73 (11) “Division” means the Division of Motor Vehicles.

74 (12) “Disqualification” means any of the following three
75 actions:

76 (A) The suspension, revocation, or cancellation of a
77 driver’s license by the state or jurisdiction of issuance.

78 (B) Any withdrawal of a person’s privilege to drive a
79 commercial motor vehicle by a state or other jurisdiction as the
80 result of a violation of state or local law relating to motor
81 vehicle traffic control other than parking or vehicle weight
82 except as to violations committed by a special permittee on the
83 coal resource transportation system or vehicle defect violations.

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

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

93 (14) "Driver" means any person who drives, operates or is
94 in physical control of a commercial motor vehicle, in any place
95 open to the general public for purposes of vehicular traffic, or
96 who is required to hold a commercial driver's license.

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

100 (16) "Employee" means any operator of a commercial
101 motor vehicle, including full time, regularly employed drivers;
102 casual, intermittent, or occasional drivers; leased drivers and
103 independent, owner-operator contractors (while in the course of
104 operating a commercial motor vehicle) who are either directly
105 employed by or under lease to drive a commercial motor
106 vehicle for an employer.

107 (17) "Employer" means any person, including the United
108 States, a state or a political subdivision of a state, who owns or
109 leases a commercial motor vehicle or assigns a person to drive
110 a commercial motor vehicle.

111 (18) "Endorsement" means an authorization to a person to
112 operate certain types of commercial motor vehicles.

113 (19) "Farm vehicle" includes a motor vehicle or combina-
114 tion vehicle registered to the farm owner or entity operating the
115 farm and used exclusively in the transportation of agricultural
116 or horticultural products, livestock, poultry and dairy products
117 from the farm or orchard on which they are raised or produced

118 to markets, processing plants, packing houses, canneries,
119 railway shipping points and cold storage plants and in the
120 transportation of agricultural or horticultural supplies and
121 machinery to the farms or orchards to be used on the farms or
122 orchards.

123 (20) "Farmer" includes an owner, tenant, lessee, occupant
124 or person in control of the premises used substantially for
125 agricultural or horticultural pursuits who is at least eighteen
126 years of age with two years' licensed driving experience.

127 (21) "Farmer vehicle driver" means the person employed
128 and designated by the "farmer" to drive a "farm vehicle" as
129 long as driving is not his or her sole or principal function on the
130 farm who is at least eighteen years of age with two years'
131 licensed driving experience.

132 (22) "Felony" means an offense under state or federal law
133 that is punishable by death or imprisonment for a term exceed-
134 ing one year.

135 (23) "Gross combination weight rating (GCWR)" means
136 the value specified by the manufacturer as the loaded weight of
137 a combination (articulated) vehicle. In the absence of a value
138 specified by the manufacturer, GCWR will be determined by
139 adding the GVWR of the power unit and the total weight of the
140 towed unit and any load thereon.

141 (24) "Gross vehicle weight rating (GVWR)" means the
142 value specified by the manufacturer as the loaded weight of a
143 single vehicle. In the absence of a value specified by the
144 manufacturer the GVWR will be determined by the total weight
145 of the vehicle and any load thereon.

146 (25) "Hazardous materials" means any material that has
147 been designated as hazardous under 49 U.S.C. §5103 and is

148 required to be placarded under subpart F of 49 C.F.R. Part §172
149 or any quantity of a material listed in 42 C.F.R. Part §73.

150 (26) “Imminent Hazard” means existence of a condition
151 that presents a substantial likelihood that death, serious illness,
152 severe personal injury or a substantial endangerment to health,
153 property or the environment may occur before the reasonably
154 foreseeable completion date of a formal proceeding begun to
155 lessen the risk of that death, illness, injury or endangerment.

156 (27) “Motor vehicle” means every vehicle which is
157 self-propelled and every vehicle which is propelled by electric
158 power obtained from overhead trolley wires but not operated
159 upon rails.

160 (28) “Non-Commercial motor vehicle” means a motor
161 vehicle or combination of motor vehicles not defined by the
162 term “commercial motor vehicle”.

163 (29) “Out-of-service order” means a temporary prohibition
164 against driving a commercial motor vehicle as a result of a
165 determination by a law-enforcement officer, an authorized
166 enforcement officer of a federal, state, Canadian, Mexican,
167 county or local jurisdiction including any special agent of the
168 Federal Motor Carrier Safety Administration pursuant to 49
169 C.F.R. §§386.72, 392.5, 395.13, 396.9 or compatible laws or
170 the North American uniform out-of-service criteria that an
171 imminent hazard exists.

172 (30) “Violation of an out-of-service order” means:

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

175 (B) The operation of a commercial motor vehicle by a
176 driver after the vehicle was placed out of service and before the
177 required repairs are made.

178 (30) "School bus" means a commercial motor vehicle used
179 to transport preprimary, primary, or secondary school students
180 from home-to-school, from school-to-home, or to and from
181 school sponsored events. School bus does not include a bus
182 used as a common carrier.

183 (31) "Serious traffic violation" means conviction for any of
184 the following offenses when operating a commercial motor
185 vehicle:

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

189 (B) Reckless driving as defined in section three, article five,
190 chapter seventeen-c of this code, careless, or negligent driving,
191 including, but not limited to, the offenses of driving a commer-
192 cial motor vehicle in willful or wanton disregard for the safety
193 of persons or property;

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

197 (D) Following the vehicle ahead too closely;

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

200 (F) Driving a commercial motor vehicle without a commer-
201 cial driver's license in the driver's possession. However, any
202 person who provides proof to the law-enforcement agency that
203 issued the citation, by the date the person must appear in court,
204 or pay any fine for such violation, that the person held a valid
205 commercial driver's license on the date the citation was issued,
206 shall not be guilty of this offense;

207 (G) Driving a commercial motor vehicle without the proper
208 class of commercial driver's license and/or, endorsements for
209 the specific vehicle group being operated or for the passengers
210 or type of cargo being transported; or

211 (H) A violation of state or local law relating to motor
212 vehicle traffic control, other than a parking violation, arising in
213 connection with a fatal traffic accident.

214 (I) Vehicle defects are excluded as serious traffic viola-
215 tions, except as to violations committed by a special permittee
216 on the coal resource transportation road system; or

217 (J) Any other serious violations determined by the United
218 States Secretary of Transportation.

219 (32) "State" means a state of the United States and the
220 District of Columbia.

221 (33) "State of Domicile" means the state where a person
222 has his or her true, fixed and permanent home and principle
223 residence and to which he or she has the intention of returning
224 whenever absent in accordance with chapter seventeen-a, article
225 three, section one-a.

226 (34) "Suspension, revocation or cancellation" of a driver's
227 license, or a commercial driver's license means the privilege to
228 operate any type of motor vehicle on the roads and highways of
229 this state is withdrawn.

230 (35) "Tank vehicle" means any commercial motor vehicle
231 that is designed to transport any liquid or gaseous materials
232 within a tank that is either permanently or temporarily attached
233 to the vehicle or the chassis. These vehicles include, but are not
234 limited to, cargo tanks and portable tanks, as defined in 49 C.
235 F. R. Part 171 (1998). However, this definition does not include

236 portable tanks having a rated capacity under one thousand
237 gallons.

238 “At fault traffic accident” means for the purposes of
239 waiving the road test, a determination, by the official filing of
240 the accident report, of fault as evidenced by an indication of
241 contributing circumstances in the accident report.

242 (36) “Transportation Security Administration” means the
243 United States Department of Homeland Security Transportation
244 Security Administration.

245 (37) “United States” means the fifty states and the District
246 of Columbia.

247 (38) “Vehicle Group” means a class or type of vehicle with
248 certain operating characteristics.

§17E-1-5. Notification required by driver.

1 (a) Notification of convictions.

2 (1) Any driver of a commercial motor vehicle holding a
3 driver's license issued by this state, who is convicted of
4 violating any state law or local ordinance relating to motor
5 vehicle traffic control, in any other state or federal, provincial,
6 territorial or municipal laws of Canada, other than parking
7 violations, shall notify the West Virginia Division of Motor
8 Vehicles in the manner specified by the Commissioner and in
9 accordance with C.F.R. §383.31(2004) within thirty days of the
10 date of conviction.

11 (2) Any driver of a commercial motor vehicle holding a
12 driver's license issued by this state, who is convicted of
13 violating any state law or local ordinance relating to motor
14 vehicle traffic control in this state or any other state or federal,
15 provincial, territorial or municipal laws of Canada, other than

16 parking violations, must notify his or her employer in writing
17 and in accordance with 49 C. F. R. §383.31 (2004) of the
18 conviction within thirty days of the date of conviction.

19 (b) Each driver whose driver's license is:

20 (1) Suspended, revoked, canceled or expired, by any state;

21 (2) Who loses the privilege to drive a commercial motor
22 vehicle in any state for any period; or

23 (3) Who is disqualified from driving a commercial motor
24 vehicle for any period, shall notify his or her employer of that
25 fact before the end of the business day following the day the
26 driver received notice of the action against his or her driving
27 privileges.

28 (c) Each person who applies to be a commercial motor
29 vehicle driver shall provide the employer, at the time of the
30 application, with the following information for the ten years
31 preceding the date of application:

32 (1) A list of the names and addresses of the applicant's
33 previous employers for which the applicant was a driver of a
34 commercial motor vehicle;

35 (2) The dates between which the applicant drove for each
36 employer; and

37 (3) The reason for leaving that employer.

38 The applicant shall certify that all information furnished is
39 true and complete. An employer may require an applicant to
40 provide additional information.

§17E-1-6. Employer responsibilities.

1 (a) Each employer must require the applicant to provide the
2 information specified in section five of this article.

3 (b) No employer may knowingly allow, permit or authorize
4 a driver to drive a commercial motor vehicle during any period:

5 (1) In which the driver has a driver's license suspended,
6 revoked or canceled by a state; has lost the privilege to drive a
7 commercial motor vehicle in a state, or has been disqualified
8 from driving a commercial motor vehicle; or

9 (2) In which the driver has more than one driver's license at
10 one time.

11 (3) During any period in which the driver, or the commer-
12 cial motor vehicle he or she is driving or the motor carrier
13 operation, is subject to an out-of-service order; or

14 (4) In violation of federal, state or local law or regulation
15 pertaining to railroad highway grade crossings; or

16 (5) During any period the driver is in violation of any
17 provision of 49 C.F.R., Part §382 related to controlled sub-
18 stances and alcohol use and testing.

**§17E-1-7. Commercial driver's license required; disqualification
for driving without valid license.**

1 (a) On or after the first day of April, one thousand nine
2 hundred ninety-two, except when driving under a commercial
3 driver's instruction permit accompanied by the holder of a
4 commercial driver's license valid for the vehicle being driven,
5 no person may drive a commercial motor vehicle unless the
6 person holds a commercial driver's license and applicable
7 endorsements valid for the vehicle they are driving.

8 (b) No person may drive a commercial motor vehicle while
9 their driving privilege is suspended, revoked, canceled, expired,
10 subject to a disqualification or in violation of an out-of-service
11 order.

12 (c) Drivers of a commercial motor vehicle must have a
13 commercial driver's license in their possession at all times
14 while driving.

15 (d) The Commissioner shall suspend for a period of ninety
16 days the driving privileges of any person who is convicted of
17 operating a commercial motor vehicle without holding a valid
18 commercial driver's license and the applicable endorsements
19 valid for the vehicle he or she is driving or for any conviction
20 for operating a commercial motor vehicle while disqualified
21 from operating a commercial motor vehicle.

22 (e) Any person not holding a commercial driver's license
23 who is convicted of an offense that requires disqualification
24 from operating a commercial motor vehicle shall also be
25 disqualified from eligibility for a commercial driver's license
26 for the same time periods as prescribed in federal law or rule or
27 section thirteen of this article for commercial driver's license
28 holders.

§17E-1-8. Exemptions to the commercial driver's license requirements.

1 (a) Bona fide farmers or farm vehicle drivers, as defined,
2 operating a vehicle otherwise covered by the commercial
3 driver's license requirements may be exempted from the
4 provisions of this article only if the vehicle used is:

5 (1) Driven by a farmer or farm vehicle driver;

6 (2) Used only to transport either agricultural products, farm
7 machinery, farm supplies, to or from a farm;

8 (3) Not used in the operation of a common or contract
9 motor carrier; and

10 (4) Used within one hundred fifty miles of the qualifying
11 farm. Farmers who wish to be exempted from the commercial
12 driver's license requirements must apply to the Division of
13 Motor Vehicles for a certificate of exemption.

14 (b) Military personnel, including the National Guard and
15 Reserve, are exempt from the provisions of this article, only:

16 (1) When in uniform; and

17 (2) Operating equipment owned by the United States
18 Department of Defense, except during declared emergencies or
19 disaster situations; and

20 (3) On duty; and

21 (4) In possession of a valid classified military driver's
22 license for the class of vehicle being driven.

23 (c) Fire fighting and rescue equipment. Operators of
24 vehicles authorized to hold an "authorized emergency vehicle
25 permit" for use of red signal lights only are exempt from the
26 provisions of this article while the "authorized emergency
27 vehicle permit" is in force. Vehicles in this class include, but
28 are not limited to, firefighters and rescue equipment:

29 (1) Owned and operated by state, county and municipal fire
30 departments;

31 (2) Owned and operated by state, county and municipal
32 civil defense organizations;

33 (3) Owned and operated by a manufacturer engaged in a
34 type of business that requires firefighter equipment to protect
35 the safety of their plants and its employees; or

36 (4) Owned and operated by volunteer fire departments.

37 (d) Operators of off-road construction and mining equip-
38 ment. Operators of equipment which, by its design, appearance
39 and function, is not intended for use on a public road, including,
40 without limitation, motorscrapers, backhoes, motorgraders,
41 compactors, excavators, tractors, trenches and bulldozers, are
42 exempt from the provisions of this article: *Provided*, That the
43 exemption recognized by this subsection shall not be construed
44 to permit the operation of such equipment on any public road
45 except such operation as may be required for a crossing of such
46 road: *Provided, however*, That no such equipment may be
47 operated on a public road for a distance exceeding five hundred
48 feet from the place where such equipment entered upon the
49 public road.

50 (e) The Federal Motor Carrier Safety Improvement Act of
51 1999 exempts vehicles used exclusively for personal use such
52 as recreation vehicles and rental trucks used only to transport
53 the driver's personal or household property.

§17E-1-9. Commercial driver license qualification standards.

1 (a) No person may be issued a commercial driver's license
2 unless that person is a resident of this state and has passed a
3 knowledge and skills test for driving a commercial motor
4 vehicle which complies with minimum federal standards
5 established by federal regulations enumerated in 49 C.F.R. part
6 §383, sub-parts G and H, (2004) and has satisfied all other
7 requirements of the Federal Motor Carrier Safety Improvement
8 Act of 1999 in addition to other requirements imposed by state
9 law or federal regulations.

10 (b) Third party testing. The Commissioner may authorize
11 a person, including an agency of this or another state, an
12 employer, private individual or institution, department, agency

13 or instrumentality of local government, to administer the skills
14 test specified by this section: *Provided, That:*

15 (1) The test is the same which would otherwise be adminis-
16 tered by the state; and

17 (2) The party has entered into an agreement with the state
18 which complies with the requirements of 49 C.F.R., part
19 §383.75.

20 (c) Indemnification of driver examiners. No person who
21 has been officially trained and certified by the state as a driver
22 examiner, who administers a driving test, and no other person,
23 firm or corporation by whom or with which that person is
24 employed or is in any way associated, may be criminally liable
25 for the administration of the tests, or civilly liable in damages
26 to the person tested or other persons or property unless for gross
27 negligence or willful or wanton injury.

28 (d) The Commissioner may waive the skills test specified
29 in this section for a commercial driver license applicant who
30 meets the requirements of 49 C.F.R. part §383.77 and those
31 requirements specified by the Commissioner.

32 (e) A commercial driver's license or commercial driver's
33 instruction permit may not be issued to a person while the
34 person is subject to a disqualification from driving a commer-
35 cial motor vehicle, or while the person's driver's license is
36 suspended, revoked or canceled in any state; nor may a com-
37 mercial driver's license be issued by any other state unless the
38 person first surrenders all such licenses to the division.

39 (f) Commercial driver's instruction permit may be issued as
40 follows:

41 (1) A commercial driver's instruction permit may be issued
42 to an individual who holds a valid Class E or Class D driver's

43 license who has passed the vision and written tests required for
44 issuance of a commercial driver's license.

45 (2) The commercial instruction permit may not be issued
46 for a period to exceed six months. Only one renewal or
47 reissuance may be granted within a two-year period. The
48 holder of a commercial driver's instruction permit may drive a
49 commercial motor vehicle on a highway only when accompa-
50 nied by the holder of a commercial driver's license valid for
51 the type of vehicle driven who is twenty-one years of age or
52 older and who occupies a seat beside the individual for the
53 purpose of giving instruction or testing.

54 (3) A commercial driver's instruction permit may only be
55 issued to a person who is at least eighteen years of age and has
56 held a graduated Class E, Class E or Class D license for at least
57 two years.

58 (4) The applicant for a commercial driver's instruction
59 permit shall also be otherwise qualified to hold a commercial
60 driver's license.

§17E-1-10. Application for commercial driver's license.

1 (a) The application for a commercial driver's license or
2 commercial driver's instruction permit must include at least the
3 following:

4 (1) The full name and current mailing and residential
5 address of the person;

6 (2) A physical description of the person including sex,
7 height, weight and eye color;

8 (3) Date of birth;

9 (4) The applicant's social security number;

- 10 (5) The person's signature;
- 11 (6) The person's color photograph;
- 12 (7) Certifications including those required by 49 C.F.R. Part
13 §383.71(a)(2004);
- 14 (8) Any other information required by the Commissioner;
15 and
- 16 (9) A consent to release driving record information.
- 17 (b) When a licensee changes his or her name, mailing
18 address or residence, the licensee shall submit an application
19 for a duplicate license and obtain a duplicate driver's license
20 displaying the updated information.
- 21 (c) No person who has been a resident of this state for thirty
22 days or more may drive a commercial motor vehicle under the
23 authority of a commercial driver's license issued by another
24 jurisdiction.

§17E-1-11. Commercial driver's license.

- 1 The commercial driver's license shall be marked "commer-
2 cial driver's license" or "CDL" and shall be, to the maximum
3 extent practicable, tamper proof. It must include, but not be
4 limited to, the following information:
- 5 (a) The name and residential address of the person;
 - 6 (b) The person's color photograph;
 - 7 (c) A physical description of the person including sex,
8 height, weight, and eye color;
 - 9 (d) Date of birth;

- 10 (e) The person's signature;
- 11 (f) The class or type of commercial motor vehicle or
12 vehicles which the person is authorized to drive, together with
13 any endorsement(s) and or restriction(s);
- 14 (g) The name of this state; and
- 15 (h) The dates between which the license is valid.

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

- 1 (a) Commercial driver's licenses may be issued with the
2 following classifications:
- 3 (1) *Class A combination vehicle* - Any combination of
4 vehicles with a gross combined vehicle weight rating of
5 twenty-six thousand one pounds or more, provided the gross
6 vehicle weight rating of the vehicle being towed is in excess of
7 ten thousand pounds.
- 8 (2) *Class B heavy straight vehicle* - Any single vehicle with
9 a gross vehicle weight rating of twenty-six thousand one pounds
10 or more and any vehicle towing a vehicle not in excess of ten
11 thousand pounds.
- 12 (3) *Class C Small Vehicle* - Any single vehicle or combina-
13 tion vehicle that does not fall under either Class A or Class B
14 but are:
- 15 (A) Vehicles designed to transport sixteen or more passen-
16 gers, including the driver; and
- 17 (B) Vehicles used in the transportation of hazardous
18 materials which requires the vehicle to be placarded under 49
19 C.F.R., Part §172, subpart F (2004).

20 (4) Each applicant who desires to operate a vehicle in a
21 classification different from the class in which the applicant is
22 authorized shall be required to retake and pass all related tests
23 except the following;

24 (A) A driver who has passed the knowledge and skills test
25 for a combination vehicle in Class A may operate a heavy
26 straight vehicle in Class B or a small vehicle in Class C
27 provided he or she possesses the required endorsements; and

28 (B) A driver who has passed the knowledge and skills test
29 for a vehicle in Class B may operate any small vehicle in Class
30 C provided he or she possesses the required endorsements.

31 (b) *Endorsements and restrictions.* -- The commissioner
32 upon issuing a commercial driver's license may impose
33 endorsements and or restrictions determined by the commis-
34 sioner to be appropriate to assure the safe operation of a motor
35 vehicle and to comply with 49 U.S.C., et seq., and 49 C.F.R.
36 §383.93 (2004) including, but not limited to:

37 (1) Double/triple trailers which shall require successful
38 completion of a knowledge test;

39 (2) Passenger vehicles which shall require successful
40 completion of a knowledge and skills test;

41 (3) Tank vehicles which shall require successful completion
42 of a knowledge test;

43 (4) Vehicles used for the transportation of hazardous
44 materials as defined in section three of this article which shall
45 require the completion of a knowledge test and a background
46 security risk check in accordance with 49 C.F.R. 1572.5
47 (2004);or

48 (5) School buses which shall require successful completion
49 of a knowledge and skills test unless the applicant meets the
50 criteria for waiver of the skills test in accordance with 49 C.F.R.
51 §383.123(b)(2004).

52 (c) *Applicant record check.* -- Before issuing a commercial
53 driver's license, the Commissioner shall obtain driving record
54 information through the commercial driver's license informa-
55 tion system, the national driver register and from each state in
56 which the person has been licensed.

57 (d) *Notification of license issuance.* -- Within ten days after
58 issuing a commercial driver's license, the Commissioner shall
59 notify the commercial driver's license information system of
60 that fact, providing all information required to ensure identifica-
61 tion of the person.

62 (e) *Expiration of license.* --

63 (1) Every commercial driver's license issued to persons who
64 have attained their twenty-first birthday expires on the appli-
65 cant's birthday in those years in which the applicant's age is
66 evenly divisible by five. Except as provided in subdivision (2)
67 of this subsection, no commercial driver's license may be issued
68 for less than three years nor more than seven years and the
69 commercial driver's license shall be renewed by the applicant's
70 birthday and is valid for a period of five years, expiring on the
71 applicant's birthday and in a year in which the applicant's age
72 is evenly divisible by five.

73 (2) Every commercial driver's license issued to persons who
74 have not attained their twenty-first birthday expires thirty days
75 after the applicant's birthday in the year in which the applicant
76 attains the age of twenty-one years.

77 (3) Commercial driver's licenses held by any person in the
78 armed forces which expire while that person is on active duty

79 remains valid for thirty days from the date on which that person
80 reestablishes residence in West Virginia.

81 (4) Any person applying to renew a commercial driver's
82 license which has been expired for six months or more shall
83 follow the procedures for an initial issuance of a commercial
84 driver's license, including the testing provisions.

85 (f) When applying for renewal of a commercial driver's
86 license, the applicant shall complete the application form and
87 provide updated information and required certifications.

88 (g) If the applicant wishes to obtain or retain a hazardous
89 materials endorsement, the applicant shall comply with a
90 background check in accordance with 49 U.S.C., § 5103a and
91 49 C.F.R. Part §1572 (2004) and subject to the following:

92 (1) The applicant is a citizen of the United States or a
93 lawful permanent resident of the United States;

94 (2) The applicant completes the application prescribed by
95 the Division and submits fingerprints in a form and manner
96 prescribed by the Division and the United States Department of
97 Homeland Security- Transportation Security Administration at
98 the time of application or at any other time in accordance with
99 49 C.F.R. §1572.5(2004);

100 (3) The applicant pays all fees prescribed by the Transpor-
101 tation Security Administration or its agent and the Division;

102 (4) The applicant has not been adjudicated as a mental
103 defective or committed to a mental institution as prescribed in
104 49 C.F.R. §1572.109(2004);

105 (5) The applicant has not committed a disqualifying
106 criminal offense as described in 49 C.F.R. §1572.103 (2004);

107 (6) The applicant has passed the Transportation Security
108 Administration security threat assessment and the Division has
109 received a final notification of threat assessment or notification
110 of no security threat from the Transportation Security Adminis-
111 tration: *Provided*, That any appeal of any decision, determina-
112 tion or ruling of the Federal Bureau of Investigation or the
113 Transportation Security Agency shall be directed to that
114 agency; and

115 (7) The applicant has successfully passed the written test
116 for the issuance or renewal of a hazardous material endorse-
117 ment.

§17E-1-13. Disqualification.

1 (a) A person shall not operate a commercial motor vehicle
2 if his or her privilege to operate a commercial motor vehicle is
3 disqualified under the provisions of the Federal Motor Carrier
4 Safety Improvement Act of 1999 (public law 106-159 §1748),
5 49 C.F.R. Part §383, Subpart D (2004) or in accordance with
6 the provisions of this section.

7 (1) For the purposes of determining first and subsequent
8 violations of the offenses listed in this section, each conviction
9 for any offense listed in this section resulting from a separate
10 incident shall include convictions for offenses committed in a
11 commercial motor vehicle or a noncommercial motor vehicle.

12 (2) Any person disqualified from operating a commercial
13 motor vehicle for life under the provisions of this chapter for
14 offenses described in subsection (b), subdivisions (1) through
15 (8) of this section is eligible for reinstatement of privileges to
16 operate a commercial motor vehicle after ten years and after
17 completion of the safety and treatment program or other
18 appropriate program prescribed by the Division. Any person
19 whose lifetime disqualification has been amended under the
20 provisions of this subdivision and who is subsequently con-

21 victed of a disqualifying offense described in subsection (b),
22 subdivisions (1) through (8) of this section shall not be eligible
23 for reinstatement.

24 (3) Any disqualification imposed by this section shall be in
25 addition to any action to suspend, revoke or cancel the driver's
26 license or driving privileges if suspension, revocation or
27 cancellation is required under another provision of this code.

28 (4) The provisions of this section apply to any person
29 operating a commercial motor vehicle and to any person
30 holding a commercial driver's license.

31 (b) Any person is disqualified from driving a commercial
32 motor vehicle for the following offenses and time periods if
33 convicted of:

34 (1) Driving a motor vehicle under the influence of alcohol
35 or a controlled substance;

36 (A) For a first conviction or for refusal to submit to any
37 designated secondary chemical test while operating a commer-
38 cial motor vehicle, a driver shall be disqualified from operating
39 a commercial motor vehicle for a period of one year.

40 (B) For a first conviction or for refusal to submit to any
41 designated secondary chemical test while operating a noncom-
42 mercial motor vehicle, a commercial driver's license holder
43 shall be disqualified from operating a commercial motor
44 vehicle for a period of one year.

45 (C) For a first conviction or for refusal to submit to any
46 designated secondary chemical test while operating a commer-
47 cial motor vehicle transporting hazardous materials required to
48 be placarded under 49 C.F.R. Part §172, Subpart F, a driver
49 shall be disqualified from operating a commercial motor
50 vehicle for a period of three years.

51 (D) For a second conviction or for refusal to submit to any
52 designated secondary chemical test in a separate incident of any
53 combination of offenses in this subsection while operating a
54 commercial motor vehicle, a driver shall be disqualified from
55 operating a commercial motor vehicle for life.

56 (E) For a second conviction or refusal to submit to any
57 designated secondary chemical test in a separate incident of any
58 combination of offenses in this subsection while operating a
59 noncommercial motor vehicle, a commercial motor vehicle
60 license holder shall be disqualified from operating a commer-
61 cial motor vehicle for life.

62 (2) Driving a commercial motor vehicle while the person's
63 alcohol concentration of the person's blood, breath or urine is
64 four hundredths of one percent or more, by weight;

65 (A) For a first conviction or for refusal to submit to any
66 designated secondary chemical test while operating a commer-
67 cial motor vehicle, a driver shall be disqualified from operating
68 a commercial motor vehicle for one year.

69 (B) For a first conviction or for refusal to submit to any
70 designated secondary chemical test while operating a commer-
71 cial motor vehicle transporting hazardous materials required to
72 be placarded under 49 C.F.R. Part §172, Subpart F, a driver
73 shall be disqualified from operating a commercial motor
74 vehicle for three years.

75 (C) For a second conviction or refusal to submit to any
76 designated secondary chemical test in a separate incident of any
77 combination of offenses in this subsection while operating a
78 commercial motor vehicle, a driver shall be disqualified from
79 operating a commercial motor vehicle for life.

80 (3) Refusing to submit to any designated secondary
81 chemical required by the provisions of this code or the provi-
82 sions of 49 C.F.R. §383.72 (2004);

83 (A) For the first conviction or refusal to submit to any
84 designated secondary chemical test while operating a commer-
85 cial motor vehicle, a driver shall be disqualified from operating
86 a commercial motor vehicle for one year.

87 (B) For the first conviction or refusal to submit to any
88 designated secondary chemical test while operating a noncom-
89 mercial motor vehicle, a commercial driver's license holder
90 shall be disqualified from operating a commercial motor
91 vehicle for one year.

92 (C) For the first conviction or for refusal to submit to any
93 designated secondary chemical test while operating a commer-
94 cial motor vehicle transporting hazardous materials required to
95 be placarded under 49 C.F.R. Part §172, Subpart F (2004), a
96 driver shall be disqualified from operating a commercial motor
97 vehicle for a period of three years.

98 (D) For a second conviction or refusal to submit to any
99 designated secondary chemical test in a separate incident of any
100 combination of offenses in this subsection while operating a
101 commercial motor vehicle, a driver shall be disqualified from
102 operating a commercial motor vehicle for life.

103 (E) For a second conviction or refusal to submit to any
104 designated secondary chemical test in a separate incident of any
105 combination of offenses in this subsection while operating a
106 noncommercial motor vehicle, a commercial driver's license
107 holder shall be disqualified from operating a commercial motor
108 vehicle for life.

109 (4) Leaving the scene of an accident;

110 (A) For the first conviction while operating a commercial
111 motor vehicle, a driver shall be disqualified from operating a
112 commercial motor vehicle for one year.

113 (B) For the first conviction while operating a noncommer-
114 cial motor vehicle, a commercial driver's license holder shall be
115 disqualified for one year.

116 (C) For the first conviction while operating a commercial
117 motor vehicle transporting hazardous materials required to be
118 placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver
119 shall be disqualified from operating a commercial motor
120 vehicle for a period of three years.

121 (D) For a second conviction in a separate incident of any
122 combination of offenses in this subsection while operating a
123 commercial motor vehicle, a driver shall be disqualified from
124 operating a commercial motor vehicle for life.

125 (E) For a second conviction in a separate incident of any
126 combination of offenses in this subsection while operating a
127 noncommercial motor vehicle, a commercial driver's license
128 holder shall be disqualified from operating a commercial motor
129 vehicle for life.

130 (5) Using a motor vehicle in the Commission of any felony
131 as defined in section three, article one of this chapter: *Pro-*
132 *vided*, That the Commission of any felony involving the
133 manufacture, distribution or dispensing of a controlled sub-
134 stance, or possession with intent to manufacture, distribute or
135 dispense a controlled substance falls under the provisions of
136 subdivision(8)of this subsection;

137 (A) For the first conviction while operating a commercial
138 motor vehicle, a driver shall be disqualified from operating a
139 commercial motor vehicle for one year.

140 (B) For the first conviction while operating a noncommer-
141 cial motor vehicle, a commercial driver's license holder shall be
142 disqualified from operating a commercial motor vehicle for one
143 year.

144 (C) For the first conviction while operating a commercial
145 motor vehicle transporting hazardous materials required to be
146 placarded under 49 C.F.R. Part §172, Subpart F,(2004), a driver
147 shall be disqualified from operating a commercial motor
148 vehicle for a period of three years.

149 (D) For a second conviction in a separate incident of any
150 combination of offenses in this subsection while operating a
151 commercial motor vehicle, a driver shall be disqualified from
152 operating a commercial motor vehicle for life.

153 (E) For a second conviction in a separate incident of any
154 combination of offenses in this subsection while operating a
155 noncommercial motor vehicle, a commercial motor vehicle
156 license holder shall be disqualified from operating a commer-
157 cial motor vehicle for life.

158 (6) Operating a commercial motor vehicle when, as a result
159 of prior violations committed operating a commercial motor
160 vehicle, the driver's privilege to operate a motor vehicle has
161 been suspended, revoked or canceled, or the driver's privilege
162 to operate a commercial motor vehicle has been disqualified.

163 (A) For the first conviction while operating a commercial
164 motor vehicle, a driver shall be disqualified from operating a
165 commercial motor vehicle for one year.

166 (B) For the first conviction while operating a commercial
167 motor vehicle transporting hazardous materials required to be
168 placarded under 49 C.F.R. Part §172, Subpart F,(2004), a driver
169 shall be disqualified from operating a commercial motor
170 vehicle for a period of three years.

171 (C) For a second conviction in a separate incident of any
172 combination of offenses in this subsection while operating a
173 commercial motor vehicle, a driver shall be disqualified from
174 operating a commercial motor vehicle for life.

175 (7) Causing a fatality through the negligent operation of a
176 commercial motor vehicle, including, but not limited to, the
177 crimes of motor vehicle manslaughter, homicide and negligent
178 homicide as defined in section five, article three, chapter
179 seventeen-b, and section one, article five, chapter seventeen-c
180 of this code;

181 (A) For the first conviction while operating a commercial
182 motor vehicle, a driver shall be disqualified from operating a
183 commercial motor vehicle for one year.

184 (B) For the first conviction while operating a commercial
185 motor vehicle transporting hazardous materials required to be
186 placarded under 49 C.F.R. Part §172, Subpart F, (2004), a driver
187 shall be disqualified from operating a commercial motor
188 vehicle for a period of three years.

189 (C) For a second conviction in a separate incident of any
190 combination of offenses in this subsection while operating a
191 commercial motor vehicle, a driver shall be disqualified from
192 operating a commercial motor vehicle for life.

193 (8) Using a motor vehicle in the commission of any felony
194 involving the manufacture, distribution or dispensing of a
195 controlled substance, or possession with intent to manufacture,
196 distribute or dispense a controlled substance, a driver shall be
197 disqualified from operating a commercial motor vehicle for life
198 and shall not be eligible for reinstatement.

199 (c) Any person is disqualified from driving a commercial
200 motor vehicle if convicted of;

201 (1) Speeding excessively involving any speed of fifteen
202 miles per hour or more above the posted speed limit;

203 (A) For a second conviction of any combination of offenses
204 in this subsection in a separate incident within a three-year
205 period while operating a commercial motor vehicle, a driver
206 shall be disqualified from operating a commercial motor
207 vehicle for a period of sixty days.

208 (B) For a second conviction of any combination of offenses
209 in this section in a separate incident within a three-year period
210 while operating a noncommercial motor vehicle, if the convic-
211 tion results in the suspension, revocation or cancellation of the
212 commercial driver's license holder's privilege to operate any
213 motor vehicle, a commercial driver's license holder shall be
214 disqualified from operating a commercial motor vehicle for a
215 period of sixty days.

216 (C) For a third or subsequent conviction of any combination
217 of the offenses in this subsection in a separate incident in a
218 three-year period while operating a commercial motor vehicle,
219 a driver shall be disqualified from operating a commercial
220 motor vehicle for a period of one hundred twenty days.

221 (D) For a third or subsequent conviction of any combina-
222 tion of offenses in this subsection in a separate incident within
223 a three-year period while operating a noncommercial motor
224 vehicle, if the conviction results in the suspension, revocation
225 or cancellation of the commercial driver's license holder's
226 privilege to operate any motor vehicle, a commercial driver's
227 license holder shall be disqualified from operating a commer-
228 cial motor vehicle for a period of one hundred twenty days.

229 (2) Reckless driving as defined in section three, article five,
230 chapter seventeen-c of this code, careless, or negligent driving
231 including, but not limited to, the offenses of driving a motor

232 vehicle in willful or wanton disregard for the safety of persons
233 or property;

234 (A) For a second conviction of any combination of offenses
235 in this subsection in a separate incident within a three-year
236 period while operating a commercial motor vehicle, a driver
237 shall be disqualified from operating a commercial motor
238 vehicle for a period of sixty days.

239 (B) For a second conviction of any combination of offenses
240 in this section in a separate incident within a three-year period
241 while operating a noncommercial motor vehicle, if the convic-
242 tion results in the suspension, revocation, or cancellation of the
243 commercial driver's license holder's privilege to operate any
244 motor vehicle, a commercial driver's license holder shall be
245 disqualified from operating a commercial motor vehicle for a
246 period of sixty days.

247 (C) For a third or subsequent conviction of any combination
248 of the offenses in this subsection in a separate incident in a
249 three-year period while operating a commercial motor vehicle,
250 a driver shall be disqualified from operating a commercial
251 motor vehicle for a period of one hundred twenty days.

252 (D) For a third or subsequent conviction of any combina-
253 tion of offenses in this subsection in a separate incident within
254 a three-year period while operating a noncommercial motor
255 vehicle, if the conviction results in the suspension, revocation
256 or cancellation of the commercial driver's license holder's
257 privilege to operate any motor vehicle, a commercial driver's
258 license holder shall be disqualified from operating a commer-
259 cial motor vehicle for a period of one hundred twenty days.

260 (3) Making improper or erratic traffic lane changes;

261 (A) For a second conviction of any combination of offenses
262 in this subsection in a separate incident within a three-year

263 period while operating a commercial motor vehicle, a driver
264 shall be disqualified from operating a commercial motor
265 vehicle for a period of sixty days.

266 (B) For a second conviction of any combination of offenses
267 in this section in a separate incident within a three-year period
268 while operating a noncommercial motor vehicle, if the convic-
269 tion results in the suspension, revocation, or cancellation of the
270 commercial driver's license holder's privilege to operate any
271 motor vehicle, a commercial driver's license holder shall be
272 disqualified from operating a commercial motor vehicle for a
273 period of sixty days.

274 (C) For a third or subsequent conviction of any combination
275 of the offenses in this subsection in a separate incident in a
276 three-year period while operating a commercial motor vehicle,
277 a driver shall be disqualified from operating a commercial
278 motor vehicle for a period of one hundred twenty days.

279 (D) For a third or subsequent conviction of any combina-
280 tion of offenses in this subsection in a separate incident within
281 a three-year period while operating a noncommercial motor
282 vehicle, if the conviction results in the suspension, revocation
283 or cancellation of the commercial driver's license holder's
284 privilege to operate any motor vehicle, a commercial driver's
285 license holder shall be disqualified from operating a commer-
286 cial motor vehicle for a period of one hundred twenty days.

287 (4) Following the vehicle ahead too closely;

288 (A) For a second conviction of any combination of offenses
289 in this subsection in a separate incident within a three-year
290 period while operating a commercial motor vehicle, a driver
291 shall be disqualified from operating a commercial motor
292 vehicle for a period of sixty days.

293 (B) For a second conviction of any combination of offenses
294 in this section in a separate incident within a three-year period
295 while operating a noncommercial motor vehicle, if the convic-
296 tion results in the suspension, revocation, or cancellation of the
297 commercial driver's license holder's privilege to operate any
298 motor vehicle, a commercial driver's license holder shall be
299 disqualified from operating a commercial motor vehicle for a
300 period of sixty days.

301 (C) For a third or subsequent conviction of any combination
302 of the offenses in this subsection in a separate incident in a
303 three-year period while operating a commercial motor vehicle,
304 a driver shall be disqualified from operating a commercial
305 motor vehicle for a period of one hundred twenty days.

306 (D) For a third or subsequent conviction of any combina-
307 tion of offenses in this subsection in a separate incident within
308 a three-year period while operating a noncommercial motor
309 vehicle, if the conviction results in the suspension, revocation
310 or cancellation of the commercial driver's license holder's
311 privilege to operate any motor vehicle, a commercial driver's
312 license holder shall be disqualified from operating a commer-
313 cial motor vehicle for a period of one hundred twenty days.

314 (5) Violating any law relating to traffic control arising in
315 connection with a fatal accident, other than a parking violation;

316 (A) For a second conviction of any combination of offenses
317 in this subsection in a separate incident within a three-year
318 period while operating a commercial motor vehicle, a driver
319 shall be disqualified from operating a commercial motor
320 vehicle for a period of sixty days.

321 (B) For a second conviction of any combination of offenses
322 in this section in a separate incident within a three-year period
323 while operating a noncommercial motor vehicle, if the convic-
324 tion results in the suspension, revocation, or cancellation of the

325 commercial driver's license holder's privilege to operate any
326 motor vehicle, a commercial driver's license holder shall be
327 disqualified from operating a commercial motor vehicle for a
328 period of sixty days.

329 (C) For a third or subsequent conviction of any combination
330 of the offenses in this subsection in a separate incident in a
331 three-year period while operating a commercial motor vehicle,
332 a driver shall be disqualified from operating a commercial
333 motor vehicle for a period of one hundred twenty days.

334 (D) For a third or subsequent conviction of any combina-
335 tion of offenses in this subsection in a separate incident within
336 a three-year period while operating a noncommercial motor
337 vehicle, if the conviction results in the suspension, revocation
338 or cancellation of the commercial driver's license holder's
339 privilege to operate any motor vehicle, a commercial motor
340 vehicle license holder shall be disqualified from operating a
341 commercial motor vehicle for a period of one hundred twenty
342 days.

343 (6) Driving a commercial motor vehicle without obtaining
344 a commercial driver's license;

345 (A) For a second conviction of any combination of offenses
346 in this subsection in a separate incident within a three-year
347 period while operating a commercial motor vehicle, a driver
348 shall be disqualified from operating a commercial motor
349 vehicle for a period of sixty days.

350 (B) For a third or subsequent conviction of any combination
351 of the offenses in this subsection in a separate incident in a
352 three-year period while operating a commercial motor vehicle,
353 a driver shall be disqualified from operating a commercial
354 motor vehicle for a period of one hundred twenty days.

355 (7) Driving a commercial motor vehicle without a commer-
356 cial driver's license in the driver's possession, provided that
357 any person who provides proof of possession of a commercial
358 driver's license to the enforcement agency that issued the
359 citation, by the court appearance or fine payment deadline shall
360 not be guilty of this offense;

361 (A) For a second conviction of any combination of offenses
362 in this subsection in a separate incident within a three-year
363 period while operating a commercial motor vehicle, a commer-
364 cial driver's license holder shall be disqualified from operating
365 a commercial motor vehicle for a period of sixty days.

366 (B) For a third or subsequent conviction of any combination
367 of the offenses in this subsection in a separate incident in a
368 three-year period while operating a commercial motor vehicle,
369 a commercial driver's license holder shall be disqualified from
370 operating a commercial motor vehicle for a period of one
371 hundred twenty days.

372 (8) Driving a commercial motor vehicle without the proper
373 class of commercial driver's license or the proper endorsements
374 for the specific vehicle group being operated, or for the
375 passengers or type of cargo being transported;

376 (A) For a second conviction of any combination of offenses
377 in this subsection in a separate incident within a three-year
378 period while operating a commercial motor vehicle, a commer-
379 cial driver's license holder shall be disqualified from operating
380 a commercial motor vehicle for a period of sixty days.

381 (B) For a third or subsequent conviction of any combination
382 of the offenses in this subsection in a separate incident in a
383 three-year period while operating a commercial motor vehicle,
384 a commercial driver's license holder shall be disqualified from
385 operating a commercial motor vehicle for a period of one
386 hundred twenty days.

387 (d) Any person convicted of operating a commercial motor
388 vehicle in violation of any federal, state or local law or ordi-
389 nance pertaining to any of the railroad crossing violations
390 described in subdivisions (1) through (6) of this subsection shall
391 be disqualified from operating a commercial motor vehicle for
392 the period of time specified;

393 (1) Failing to slow down and check that the tracks are clear
394 of an approaching train, if not required to stop in accordance
395 with the provisions of section three, article twelve, chapter
396 seventeen-c of this code;

397 (A) For the first conviction, a driver shall be disqualified
398 from operating a commercial motor vehicle for a period of sixty
399 days;

400 (B) For a second conviction of any combination of offenses
401 in this subsection within a three-year period, a driver shall be
402 disqualified from operating a commercial motor vehicle for one
403 hundred twenty days; and

404 (C) For a third or subsequent conviction of any combination
405 of offenses in this subsection within a three-year period, a
406 driver shall be disqualified from operating a commercial motor
407 vehicle for one year.

408 (2) Failing to stop before reaching the crossing, if the tracks
409 are not clear, if not required to stop, in accordance with the
410 provisions of section one, article twelve, chapter seventeen-c of
411 this code;

412 (A) For the first conviction, a driver shall be disqualified
413 from operating a commercial motor vehicle for a period of sixty
414 days;

415 (B) For a second conviction of any combination of offenses
416 in this subsection within a three-year period, a driver shall be

417 disqualified from operating a commercial motor vehicle for one
418 hundred twenty days; and

419 (C) For a third or subsequent conviction of any combination
420 of offenses in this subsection within a three-year period, a
421 driver shall be disqualified from operating a commercial motor
422 vehicle for one year.

423 (3) Failing to stop before driving onto the crossing, if
424 required to stop in accordance with the provisions of section
425 three, article twelve, chapter seventeen-c of this code;

426 (A) For the first conviction, a driver shall be disqualified
427 from operating a commercial motor vehicle for a period of sixty
428 days;

429 (B) For a second conviction of any combination of offenses
430 in this subsection within a three-year period, the driver shall be
431 disqualified from operating a commercial motor vehicle for one
432 hundred twenty days; and

433 (C) For a third or subsequent conviction of any combination
434 of offenses in this subsection within a three-year period, a
435 driver shall be disqualified from operating a commercial motor
436 vehicle for one year.

437 (4) Failing to have sufficient space to drive completely
438 through the crossing without stopping in accordance with the
439 provisions of section three, article twelve, chapter seventeen-c
440 of this code;

441 (A) For the first conviction, a driver shall be disqualified
442 from operating a commercial motor vehicle for a period of sixty
443 days;

444 (B) For a second conviction of any combination of offenses
445 in this subsection within a three-year period, a driver shall be

446 disqualified from operating a commercial motor vehicle for one
447 hundred twenty days; and

448 (C) For a third or subsequent conviction of any combination
449 of offenses in this subsection within a three-year period, a
450 driver shall be disqualified from operating a commercial motor
451 vehicle for one year.

452 (5) Failing to obey a traffic control device or the directions
453 of an enforcement official at the crossing in accordance with the
454 provisions of section one, article twelve, chapter seventeen-c of
455 this code; or

456 (A) For the first conviction, a driver shall be disqualified
457 from operating a commercial motor vehicle for a period of sixty
458 days;

459 (B) For a second conviction of any combination of offenses
460 in this subsection within a three-year period, a driver shall be
461 disqualified from operating a commercial motor vehicle for one
462 hundred twenty days; and

463 (C) For a third or subsequent conviction of any combination
464 of offenses in this subsection within a three-year period, a
465 driver shall be disqualified from operating a commercial motor
466 vehicle for one year.

467 (6) Failing to negotiate a crossing because of insufficient
468 undercarriage clearance in accordance with the provisions of
469 section three, article twelve, chapter seventeen-c of this code.

470 (A) For the first conviction, a driver shall be disqualified
471 from operating a commercial motor vehicle for a period of sixty
472 days;

473 (B) For a second conviction of any combination of offenses
474 in this subsection within a three-year period, a driver shall be

475 disqualified from operating a commercial motor vehicle for one
476 hundred twenty days; and

477 (C) For a third or subsequent conviction of any combination
478 of offenses in this subsection within a three-year period, a
479 driver shall be disqualified from operating a commercial motor
480 vehicle for one year.

481 (e) Any person who is convicted of violating an out-of-
482 service order while operating a commercial motor vehicle shall
483 be disqualified for the following periods of time if:

484 (1) Convicted of violating a driver or vehicle out-of-service
485 order while transporting nonhazardous materials;

486 (A) For the first conviction of violating an out-of-service
487 order while operating a commercial motor vehicle, a driver
488 shall be disqualified from operating a commercial motor
489 vehicle for ninety days.

490 (B) For a second conviction in a separate incident within a
491 ten-year period for violating an out of service order while
492 operating a commercial motor vehicle, a driver shall be
493 disqualified from operating a commercial motor vehicle for one
494 year.

495 (C) For a third or subsequent conviction in a separate
496 incident within a ten-year period for violating an out-of-service
497 order while operating a commercial motor vehicle, a driver
498 shall be disqualified from operating a commercial motor
499 vehicle for three years.

500 (2) Convicted of violating a driver or vehicle out-of-service
501 order while transporting hazardous materials required to be
502 placarded under 49 C.F.R. Part §172, Subpart F (2004), or
503 while operating a vehicle designed to transport sixteen or more
504 passengers including the driver;

505 (A) For the first conviction of violating an out of service
506 order while operating a commercial motor vehicle, a driver
507 shall be disqualified from operating a commercial motor
508 vehicle for one-hundred eighty days.

509 (B) For a second conviction in a separate incident within a
510 ten-year period for violating an out-of-service order while
511 operating a commercial motor vehicle, a driver shall be
512 disqualified from operating a commercial motor vehicle for
513 three years.

514 (C) For a third or subsequent conviction in a separate
515 incident within a ten-year period for violating an out-of-service
516 order while operating a commercial motor vehicle, a driver
517 shall be disqualified from operating a commercial motor
518 vehicle for three years.

519 (f) After disqualifying, suspending, revoking or canceling
520 a commercial driver's license, the division shall update its
521 records to reflect that action within ten days.

522 (g) In accordance with the provisions of 49 U.S.C.
523 §313119(a)(19)(2004), and 49 C.F.R §384.226 (2004), and
524 notwithstanding the provisions of section twenty-five, article
525 eleven, chapter sixty-one of this code, no record of conviction,
526 revocation, suspension or disqualification related to any type of
527 motor vehicle traffic control offense, other than a parking
528 violation, of a commercial driver's license holder or a person
529 operating a commercial motor vehicle may be masked, ex-
530 punged, deferred, or be subject to any diversion program.

531 (h) Notwithstanding any provision in this code to the
532 contrary, the Division shall not issue any temporary driving
533 permit, work-only driving permit or hardship license or permit
534 that authorizes a person to operate a commercial motor vehicle
535 when his or her privilege to operate any motor vehicle has been

536 revoked, suspended, disqualified or otherwise canceled for any
537 reason.

538 (i) In accordance with the provisions of 49 C.F.R.
539 §391.15(b), a driver is disqualified from operating a commer-
540 cial motor vehicle for the duration of any suspension, revoca-
541 tion or cancellation of his or her driver's license or privilege to
542 operate a motor vehicle by this state or by any other state or
543 jurisdiction until the driver complies with the terms and
544 conditions for reinstatement set by this state or by another state
545 or jurisdiction.

**§17E-1-14. Commercial drivers prohibited from driving with
blood alcohol concentration of four hundredths of
one percent or more; refusal of preliminary
breath test to determine alcohol content of blood;
criminal penalties.**

1 (a) In addition to any other penalties provided by this code,
2 any person who drives, operates or is in physical control of a
3 commercial motor vehicle while having an alcohol concentra-
4 tion in his or her blood, breath or urine of four hundredths of
5 one percent or more, by weight, is guilty of a misdemeanor and,
6 upon conviction thereof, shall be confined in jail for not less
7 than twenty-four hours nor more than six months, and shall be
8 fined not less than one hundred dollars nor more than five
9 hundred dollars. A person convicted of a second or any subse-
10 quent offense under the provisions of this subsection shall be
11 confined in jail for a period of not less than six months nor
12 more than one year, and the court may, in its discretion, impose
13 a fine of not less than one thousand dollars nor more than three
14 thousand dollars.

15 (b) A person who violates the provisions of subsection (a)
16 of this section shall be treated in the same manner set forth in
17 section three, article nineteen, chapter seventeen-c of this code,

18 as if he or she had been arrested for driving under the influence
19 of alcohol or of any controlled substance.

20 (c) In addition to any other penalties provided by this code,
21 a person who drives, operates or is in physical control of a
22 commercial motor vehicle having any measurable alcohol in
23 such person's system or who refuses to take a preliminary
24 breath test to determine such person's blood alcohol content as
25 provided by section fifteen of this article, shall be placed out of
26 service for twenty-four hours by the arresting law-enforcement
27 officer.

**§17E-1-15. Implied consent requirements for commercial motor
vehicle drivers; disqualification for driving with
blood alcohol concentration of four hundredths of
one percent or more, by weight.**

1 (a) A person who drives a commercial motor vehicle within
2 this state is deemed to have given consent, subject to provisions
3 of section four, article five, chapter seventeen-c of this code, to
4 take a test or tests of that person's blood, breath or urine for the
5 purpose of determining that person's alcohol concentration, or
6 the presence of other drugs.

7 (b) A test or tests may be administered at the direction of a
8 law-enforcement officer, who after lawfully stopping or
9 detaining the commercial motor vehicle driver, has reasonable
10 cause to believe that driver was driving a commercial motor
11 vehicle while having alcohol in his or her system.

12 (c) A person requested to submit to a test as provided in
13 subsection (a) of this section must be warned by the
14 law-enforcement officer requesting the test that a refusal to
15 submit to the test will result in that person being disqualified
16 from operating a commercial motor vehicle under section
17 thirteen or fifteen of this article.

18 (d) If the person refuses testing, or submits to a test which
19 discloses an alcohol concentration of four hundredths of one
20 percent or more, by weight, that law-enforcement officer shall
21 submit a sworn report to the Division of Motor Vehicles
22 certifying that the test was requested pursuant to subsection (a)
23 of this section and that the person refused to submit to testing,
24 or submitted to a test which disclosed an alcohol concentration
25 of four hundredths of one percent or more, by weight.

26 (e) Upon receipt of the sworn report of a law-enforcement
27 officer submitted under subsection (d) of this section, the
28 commissioner shall enter an order revoking the person's
29 driver's license in accordance with section seven, article five,
30 chapter seventeen-c of this code and disqualifying the person
31 from driving a commercial motor vehicle for the period of time
32 prescribed in section thirteen of this article.

§17E-1-16. Notification of traffic convictions.

1 (a) The commissioner shall notify the licensing authority of
2 the state where the driver is licensed within thirty days of the
3 date of conviction of any holder of a commercial driver license
4 or any person operating a commercial motor vehicle for any
5 violation of state law or local ordinance relating to motor
6 vehicle traffic control, other than parking violations, committed
7 in a commercial motor vehicle.

8 (b) The commissioner shall notify the driver licensing
9 authority in the licensing state where the driver is licensed
10 within ten days of the date of disqualification of any holder of
11 a commercial driver license or any person operating a commer-
12 cial motor vehicle.

13 (c) Beginning on the thirtieth day of September, two
14 thousand eight, the commissioner shall notify the driver
15 licensing authority in the licensing state where the driver is
16 licensed within ten days of the date of conviction of any holder

17 of a commercial driver's license or any person operating a
18 commercial motor vehicle for any violation of state law or local
19 ordinance relating to motor vehicle traffic control, other than
20 parking violations, committed in a commercial motor vehicle.

§17E-1-17. Driving record information to be furnished.

1 Subject to the provisions of article two-a, chapter seven-
2 teen-a of this code, the commissioner shall furnish full informa-
3 tion regarding the driving record of any person:

4 (a) To the driver license administrator of any other state or
5 province or territory of Canada requesting that information;

6 (b) To any motor carrier employer or prospective motor
7 carrier employer;

8 (c) To the United States Secretary of Transportation; and

9 (d) To the driver.

10 *Provided*, That nothing in this section shall be construed to
11 prevent an insurer from obtaining a standard driving record
12 issued in accordance with section two, article two, chapter
13 seventeen-d of this code.

§17E-1-23. Funding for the commercial driver's license fees.

1 (a) Each application for a commercial driver's license shall
2 be accompanied by the fees provided in this section and the fees
3 shall be deposited in a special revolving fund for the operation
4 by the division of its functions established by this chapter.

5 (b) The fee for a commercial driver's license shall be
6 established by the commissioner to cover all necessary costs for
7 program administration. The fees for knowledge and road
8 testing shall also be established by the commissioner to cover
9 all program costs projected to be incurred by the division.

§17E-1-24. Enforcement.

1 In addition to the officers of the West Virginia State Police,
2 any police officer, or any inspector or weight enforcement
3 officer of the Public Service Commission, Motor Carrier
4 Division, and any special agent of the Federal Motor Carrier
5 Safety Administration may enforce the provisions of this
6 article.

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

Randy White
Chairman Senate Committee

D. Richard Browning
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Darrell Eskew
Clerk of the Senate

Betsy M. Sawyer
Clerk of the House of Delegates

Carl Roy Tomblin
President of the Senate

Robert L. Williford
Speaker of the House of Delegates

The within is approved this the 2nd
day of May, 2005.

Jeffrey M. Perine
Governor

PRESENTED TO THE
GOVERNOR

APR 26 2005

Time 11:00am