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SB 219

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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2006

ENROLLED

Com. Sub. for Com. Sub. for
SENATE BILL NO. 219

(By Senator Foster, et al)

PASSED March 11, 2006

In Effect 90 days from Passage

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COMMITTEE SUBSTITUTE

FOR

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Senate Bill No. 219

(SENATORS FOSTER, OLIVERIO, MINARD
AND HUNTER, *original sponsors*)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §17B-1-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17B-2-3a of said code, all relating to graduated driver's licenses generally; changing the expiration for level one permits and level two licenses; prohibiting the use of a handheld wireless communication device while driving by a minor holding a level one instruction permit or a level two license; and providing penalties for such violations. .

Be it enacted by the Legislature of West Virginia:

That §17B-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17B-2-3a of said code be amended and reenacted, all to read as follows:

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17B-1-1. Definitions.

1 The following words and phrases when used in this
2 chapter shall, for the purpose of this chapter, have the
3 meanings respectively ascribed to them in this article:

4 (a) *Vehicle*. – Every device in, upon, or by which any
5 person or property is or may be transported or drawn upon
6 a public highway, excepting devices moved by human
7 power or used exclusively upon stationary rails or tracks;

8 (b) *Motor vehicle*. – Every vehicle which is self-pro-
9 pelled and every vehicle which is propelled by electric
10 power obtained from overhead trolley wires, but not
11 operated upon rails;

12 (c) *Motorcycle*. – Every motor vehicle having a seat or
13 saddle for the use of the rider and designed to travel on not
14 more than three wheels in contact with the ground, but
15 excluding a farm tractor as defined herein, a moped as
16 defined in section five-a, article one, chapter seventeen-c
17 of this code, a snowmobile as defined in section one-mm,
18 article one, chapter seventeen-a of this code and an all-
19 terrain vehicle as defined in section one-ii, article one,
20 chapter seventeen-a of this code;

21 (d) *Farm tractor*. – Every motor vehicle designed and
22 used primarily as a farm implement for drawing plows,
23 mowing machines, and other implements of husbandry;

24 (e) *School bus*. – Every motor vehicle owned by a public
25 governmental agency and operated for the transportation
26 of children to or from school or privately owned and
27 operated for compensation for the transportation of
28 children to or from school;

29 (f) *Person*. – Every natural person, firm, copartnership,
30 association or corporation;

31 (g) *Operator*. – Every person, other than a chauffeur,
32 who drives or is in actual physical control of a motor
33 vehicle upon a highway or who is exercising control over
34 or steering a vehicle being towed by a motor vehicle;

35 (h) *Chauffeur*. – Every person who is employed by
36 another for the principal purpose of driving a motor
37 vehicle and every person who drives a school bus trans-
38 porting school children or any motor vehicle when in use
39 for the transportation of persons or property for compen-
40 sation;

41 (i) *Driver*. – Means any person who drives, operates or is
42 in physical control of a motor vehicle, in any place open to
43 the general public for purposes of vehicular traffic, or who
44 is required to hold a driver license;

45 (j) *Driver License*. – Means any permit or license issued
46 by this state to a person which authorizes the person to
47 drive a motor vehicle of a specific class or classes subject
48 to any restriction or endorsement contained thereon;

49 (k) *Owner*. – A person who holds the legal title of a
50 vehicle or in the event a vehicle is the subject of an agree-
51 ment for the conditional sale or lease thereof with the right
52 of purchase upon performance of the conditions stated in
53 the agreement and with an immediate right of possession
54 vested in the conditional vendee or lessee, or in the event
55 a mortgagor of a vehicle is entitled to possession, then such
56 conditional vendee or lessee or mortgagor shall be deemed
57 the owner for the purpose of this chapter;

58 (l) *Nonresident*. – Every person who is not a resident of
59 this state;

60 (m) *Street or highway*. – The entire width between the
61 boundary lines of every way publicly maintained when any

62 part thereof is open to the use of the public for purposes of
63 vehicular travel;

64 (n) *Commissioner.* – The Commissioner of Motor Vehi-
65 cles of this state;

66 (o) *Division.* – The Division of Motor Vehicles of this
67 state acting directly or through its duly authorized officers
68 or agents;

69 (p) *Suspension.* – Suspension means that the driver’s
70 license and privilege to drive a motor vehicle on the public
71 highways are temporarily withdrawn but only during the
72 period of such suspension;

73 (q) *Revocation.* – Revocation means that the driver’s
74 license and privilege to drive a motor vehicle on the public
75 highways are terminated and shall not be renewed or
76 restored, except that an application for a new license may
77 be presented and acted upon by the division after the
78 expiration of at least one year after the date of revocation,
79 except as otherwise provided in section two, article five-a,
80 chapter seventeen-c of this code;

81 (r) *Cancellation.* – Cancellation means that a driver’s
82 license is annulled and terminated because of some error
83 or defect or because the licensee is no longer entitled to
84 such license, but the cancellation of a license is without
85 prejudice and application for a new license may be made
86 at any time after such cancellation.

87 (s) “9-1-1 system” means an emergency telephone system
88 or enhanced emergency telephone system as defined in
89 section two, article six, chapter twenty-four of this code.

90 (t) “Wireless communication device” means a handheld
91 device used to access a wireless telephone service or a text
92 messaging device.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-3a. Graduated driver’s licenses.

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

6 (b) Any person under the age of twenty-one, regardless
7 of class or level of licensure, who operates a motor vehicle
8 with any measurable alcohol in his or her system is subject
9 to the provisions of section two, article five, and section
10 two, article five-a both of chapter seventeen-c of this code.
11 Any person under the age of eighteen, regardless of class
12 or licensure level, is subject to the mandatory school
13 attendance provisions of section eleven, article eight,
14 chapter eighteen of this code.

15 (c) *Level one instruction permit.* – An applicant who is
16 fifteen years or older meeting all other requirements
17 prescribed in this code may be issued a level one instruc-
18 tion permit.

19 (1) *Eligibility.* – The division shall not issue a level one
20 instruction permit unless the applicant:

21 (A) Presents a completed application, as prescribed by
22 the provisions of section six of this article, and which is
23 accompanied by a writing, duly acknowledged, consenting
24 to the issuance of the graduated driver's license and
25 executed by a parent or guardian entitled to custody of the
26 applicant;

27 (B) Presents a certified birth certificate issued by a state
28 or other governmental entity responsible for vital records,
29 evidencing that the applicant meets the minimum age
30 requirement;

31 (C) Passes the vision and written knowledge examina-
32 tion, and completes the driving under the influence
33 awareness program, as prescribed in section seven of this
34 article;

35 (D) Presents a current school enrollment form or other-
36 wise shows compliance with the provisions of section
37 eleven, article eight, chapter eighteen of this code; and

38 (E) Pays a fee of five dollars.

39 (2) *Terms and conditions of instruction permit.* – A level
40 one instruction permit issued under the provisions of this
41 section is valid until thirty days after the date the appli-
42 cant attains the age of eighteen and is not renewable.
43 However, any permit holder who allows his or her permit
44 to expire prior to successfully passing the road skills
45 portion of the driver examination, and who has not
46 committed any offense which requires the suspension,
47 revocation or cancellation of the instruction permit, may
48 reapply for a new instruction permit under the provisions
49 of section six of this article. The division shall immedi-
50 ately revoke the permit upon receipt of a second conviction
51 for a moving violation of traffic regulations and laws of
52 the road or violation of the terms and conditions of a level
53 one instruction permit, which convictions have become
54 final unless a greater penalty is required by this section or
55 any other provision of this code. Any person whose
56 instruction permit has been revoked is disqualified from
57 retesting for a period of ninety days. However, after the
58 expiration of ninety days, the person may retest if other-
59 wise eligible. In addition to all other provisions of this
60 code for which a driver's license may be restricted, sus-
61 pended, revoked or canceled, the holder of a level one
62 instruction permit may only operate a motor vehicle under
63 the following conditions:

64 (A) Under the direct supervision of a licensed driver,
65 twenty-one years of age or older, or a driver's education or
66 driving school instructor who is acting in an official
67 capacity as an instructor, who is fully alert and unim-
68 paired, and the only other occupant of the front seat. The
69 vehicle may be operated with no more than two additional
70 passengers, unless the passengers are family members;

71 (B) Between the hours of five a.m. and eleven p.m.;

72 (C) All occupants must use safety belts in accordance
73 with the provisions of section forty-nine, article fifteen,
74 chapter seventeen-c of this code;

75 (D) Without any measurable blood alcohol content, in
76 accordance with the provisions of subsection (h), section
77 two, article five, chapter seventeen-c of this code; and

78 (E) Maintains current school enrollment or otherwise
79 shows compliance with the provisions of section eleven,
80 article eight, chapter eighteen of this code.

81 (F) A holder of a level one instruction permit or a level
82 two intermediate driver's license who is under the age of
83 eighteen years may not use a wireless communication
84 device while operating a motor vehicle, unless the use of
85 the wireless communication device is for contacting a 9-1-
86 1 system. A law-enforcement officer may enforce the
87 provisions of this paragraph only as a secondary action
88 when a law-enforcement officer with probable cause
89 detains a driver for a suspected violation of another
90 provision of this code.

91 (d) *Level two intermediate driver's license.* – An appli-
92 cant sixteen years of age or older, meeting all other
93 requirements of the code, may be issued a level two
94 intermediate driver's license.

95 (1) *Eligibility.* – The division shall not issue a level two
96 intermediate driver's license unless the applicant:

97 (A) Presents a completed application as prescribed in
98 section six of this article;

99 (B) Has held the level one instruction permit convic-
100 tion-free for the one hundred eighty days immediately
101 preceding the date of application for a level two interme-
102 diate license;

103 (C) Has completed either a driver's education course
104 approved by the State Department of Education or thirty
105 hours of behind the wheel driving experience certified by
106 a parent or legal guardian or other responsible adult over
107 the age of twenty-one as indicated on the form prescribed
108 by the division: *Provided*, That nothing in this paragraph
109 shall be construed to require any school or any county
110 board of education to provide any particular number of
111 driver's education courses or to provide driver's education
112 training to any student;

113 (D) Presents a current school enrollment form or other-
114 wise shows compliance with the provisions of section
115 eleven, article eight, chapter eighteen of this code;

116 (E) Passes the road skills examination as prescribed by
117 section seven of this article; and

118 (F) Pays a fee of five dollars.

119 (2) *Terms and conditions of a level two intermediate*
120 *driver's license.* – A level two intermediate driver's license
121 issued under the provisions of this section shall expire
122 thirty days after the applicant attains the age of eighteen,
123 or until the licensee qualifies for a level three full Class E
124 license, whichever comes first. In addition to all other
125 provisions of this code for which a driver's license may be
126 restricted, suspended, revoked or canceled, the holder of a
127 level two intermediate driver's license may only operate a
128 motor vehicle under the following conditions:

129 (A) Unsupervised between the hours of five a.m. and
130 eleven p.m.;

131 (B) Only under the direct supervision of a licensed
132 driver, age twenty-one years or older, between the hours
133 of eleven p.m. and five a.m. except when the licensee is
134 going to or returning from:

135 (i) Lawful employment;

136 (ii) A school sanctioned activity;

137 (iii) A religious event; or

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

141 (C) All occupants shall use safety belts in accordance
142 with the provisions of section forty-nine, article fifteen,
143 chapter seventeen-c of this code;

144 (D) Operates the vehicle with no more than three passen-
145 gers under the age of nineteen, unless the passengers are
146 family members, in addition to the driver;

147 (E) Without any measurable blood alcohol content in
148 accordance with the provisions of subsection (h), section
149 two, article five, chapter seventeen-c of this code;

150 (F) Maintains current school enrollment or otherwise
151 shows compliance with the provisions of section eleven,
152 article eight, chapter eighteen of this code;

153 (G) A holder of a level one instruction permit or a level
154 two intermediate driver's license who is under the age of
155 eighteen years may not use a wireless communication
156 device while operating a motor vehicle, unless the use of
157 the wireless communication device is for contacting a 9-1-
158 1 system. A law-enforcement officer may enforce the
159 provisions of this paragraph only as a secondary action
160 when a law-enforcement officer with probable cause
161 detains a driver for a suspected violation of another
162 provision of this code.

163 (H) Upon the first conviction for a moving traffic
164 violation or a violation of paragraph (A), (B), (C), (D) or
165 (G), subdivision (1), subsection (d) of this section of the
166 terms and conditions of a level two intermediate driver's
167 license, the licensee shall enroll in an approved driver
168 improvement program unless a greater penalty is required
169 by this section or by any other provision of this code.

170 At the discretion of the commissioner, completion of an
171 approved driver improvement program may be used to
172 negate the effect of a minor traffic violation as defined by
173 the commissioner against the one year conviction free
174 driving criteria for early eligibility for a level three
175 driver's license; and

176 (I) Upon the second conviction for a moving traffic
177 violation or a violation of the terms and conditions of the
178 level two intermediate driver's license, the licensee's
179 privilege to operate a motor vehicle shall be revoked or
180 suspended for the applicable statutory period or until the
181 licensee's eighteenth birthday, whichever is longer unless
182 a greater penalty is required by this section or any other
183 provision of this code. Any person whose driver's license
184 has been revoked as a level two intermediate driver, upon
185 reaching the age of eighteen years and if otherwise eligible
186 may reapply for an instruction permit, then a driver's
187 license in accordance with the provisions of sections five,
188 six and seven of this article.

189 (e) *Level three, full Class E license.* - The level three
190 license is valid until the day designated by the commis-
191 sioner of the month in which the licensee attains the age of
192 twenty-one. Unless otherwise provided in this section or
193 any other section of this code, the holder of a level three
194 full Class E license is subject to the same terms and
195 conditions as the holder of a regular Class E driver's
196 license.

197 A level two intermediate licensee whose privilege to
198 operate a motor vehicle has not been suspended, revoked
199 or otherwise canceled and who meets all other require-
200 ments of the code, may be issued a level three full Class E
201 license without further examination or road skills testing,
202 if the licensee:

203 (1) Has reached the age of seventeen years; and

204 (A) Presents a completed application as prescribed by
205 the provisions of section six of this article;

206 (B) Has held the level two intermediate license convic-
207 tion-free for the twelve-month period immediately preced-
208 ing the date of the application;

209 (C) Has completed any driver improvement program
210 required under paragraph (G), subdivision (2), subsection
211 (d) of this section; and

212 (D) Pays a fee of two dollars and fifty cents for each year
213 the license is valid. An additional fee of fifty cents shall be
214 collected to be deposited in the combined voter registra-
215 tion and driver's licensing fund established in section
216 twelve, article two, chapter three of this code; or

217 (2) Reaches the age of eighteen years; and

218 (A) Presents a completed application as prescribed by
219 the provisions of section six of this article; and

220 (B) Pays a fee of two dollars and fifty cents for each year
221 the license is valid. An additional fee of fifty cents shall be
222 collected to be deposited in the combined voter registra-
223 tion and driver's licensing fund established in section
224 twelve, article two, chapter three of this code.

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

Handwritten signature
.....
Chairman Senate Committee

Handwritten signature
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Handwritten signature
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Clerk of the Senate

Handwritten signature
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Clerk of the House of Delegates

Handwritten signature
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President of the Senate

Handwritten signature
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Speaker House of Delegates

The within *is approved* this the *31st*
Day of *March*, 2006.

Handwritten signature
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 31 2006

Time 10:30am