

FILED

2010 APR -2 PM 4: 08

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

**SEVENTY-NINTH LEGISLATURE**

**REGULAR SESSION, 2010**

---

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 396**

(SENATORS UNGER, KESSLER  
AND CHAFIN, *original sponsors*)

[Passed March 13, 2010; in effect ninety days from passage.]

SB 396

2010 APR -2 PM 4: 08

OFFICE OF THE  
SECRETARY OF STATE

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

## Senate Bill No. 396

(SENATORS UNGER, KESSLER AND CHAFIN, *original sponsors*)

[Passed March 13, 2010; in effect ninety days from passage.]

AN ACT to amend and reenact §17B-2-1a, §17B-2-4 and §17B-2-5a of the Code of West Virginia, 1931, as amended; and to amend and reenact §17E-1-3, §17E-1-4, §17E-1-6, §17E-1-7, §17E-1-12, §17E-1-13 and §17E-1-25 of said code, all relating to the issuance, suspension and revocation of driver's licenses; conducting background checks for employees involved in the issuance of driver's licenses; surrendering driver's licenses; suspending commercial driver's licenses; adding definitions; clarifying requirements for school bus drivers; clarifying certain endorsements or restrictions; requiring the completion of skills test before obtaining a commercial driver's license to operate vehicles equipped with air brakes; updating the criteria for issuance, renewal, disqualification, surrender, reinstatement and maintenance of a commercial driver's license; updating and increasing fines and penalties for certain offenses; and criminal penalties.

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

That §17B-2-1a, §17B-2-4 and §17B-2-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17E-1-3, §17E-1-4, §17E-1-6, §17E-1-7, §17E-1-12, §17E-1-13 and §17E-1-25 of said code be amended and reenacted, all to read as follows:

**CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.**

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

**§17B-2-1a. Surrender of license from other state or jurisdiction prior to receipt of license from this state; examination; fees required.**

1 (a) The Division of Motor Vehicles may not issue a  
2 driver's license to a person who holds a valid license to  
3 operate a motor vehicle issued by another state or jurisdic-  
4 tion subject to a reciprocal agreement governing the  
5 licensing of drivers operating commercial motor vehicles  
6 or party to a reciprocal driver's license exchange agree-  
7 ment with this state unless or until the applicant surren-  
8 ders to the division the foreign license, or the person has  
9 signed and submitted to the division an affidavit to the  
10 effect that the person has surrendered all valid licenses  
11 issued to him or her by other states or jurisdictions. Any  
12 surrendered license issued by any other state or jurisdic-  
13 tion shall be destroyed or at the discretion of the division  
14 retained by the division and the division shall notify the  
15 original state of licensure that the person who surrendered  
16 the license has been licensed in this state. It is unlawful  
17 for a person to possess more than one valid driver's license  
18 at any time.

19 (b) Every driver shall, within thirty days after taking up  
20 residence in this state, apply to the division for a driver's  
21 license as prescribed in this article. For the purposes of  
22 this chapter the presumption that a natural person is a

23 resident of this state is based on the provisions of section  
24 one-a, article three, chapter seventeen-a of this code. The  
25 division may assign the driver's license class, type, en-  
26 dorsements or restrictions based on the applicant's prior  
27 licensing status, age and the type of licensing system used  
28 by the state of prior licensing.

29 (c) All other applicable provisions of this article relating  
30 to issuance, fees, expiration and renewal of licenses, and  
31 driver examination of applicants apply to this section.

**§17B-2-4. Persons prohibited from driving school buses or  
transporting persons or property for compensa-  
tion.**

1 No person may drive any school bus transporting school  
2 children or any motor vehicle when in use for the trans-  
3 portation of persons or property for compensation nor in  
4 either event until the person has been licensed as a Class  
5 A, B, C or D driver for either purpose and the license so  
6 indicates and until he or she is in compliance with the  
7 provisions of chapter seventeen-e of this code and rules  
8 promulgated by the State Board of Education, if applica-  
9 ble.

**§17B-2-5a. Training, certification and monitoring of license  
examiners.**

1 (a) The commissioner shall train, certify and monitor  
2 those employees of the Division of Motor Vehicles desig-  
3 nated by the commissioner as license examiners regarding  
4 the administration of licensing application and testing  
5 procedures for the purpose of ensuring compliance with  
6 statutory and regulatory requirements.

7 (b) In order to determine an applicant's suitability for  
8 employment, the commissioner shall require every appli-  
9 cant or employee who is or may be in a position involved  
10 in the examination, processing or issuance of a driver's

11 license or identification card, or who would have access to  
12 affect any document or record related to an applicant or  
13 holder of a driver's license or identification to furnish a  
14 full set of fingerprints to facilitate a criminal background  
15 check of the applicant. The commissioner shall submit the  
16 fingerprints to the state Criminal Identification Bureau  
17 along with the applicant's identifying information. Prior  
18 to hiring a prospective applicant the commissioner shall  
19 request that the State Police submit the fingerprints and  
20 identifying information to the Federal Bureau of Investi-  
21 gation for a national criminal history record check and  
22 that the commissioner may not hire the prospective  
23 applicant until the results of the national background  
24 check are available for evaluation.

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

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

#### **§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,  
5 including, but not limited to, ethanol, methanol, propenyl  
6 and isopropanol;

7 (B) Beer, ale, port or stout and other similar fermented  
8 beverages (including sake or similar products) of any name  
9 or description containing one half of one percent or more  
10 of alcohol by volume, brewed or produced from malt,  
11 wholly or in 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  
14 all dilutions and mixtures thereof from whatever source or  
15 by whatever process produced); or

16 (D) Wine of not less than one half of one percent of  
17 alcohol 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  
26 milliliters of serum.

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

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

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

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

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

47 (A) If the vehicle has a gross combination vehicle weight  
48 rating of twenty-six thousand one pounds or more inclu-  
49 sive of a towed unit(s) with a gross vehicle weight rating  
50 of more than ten thousand pounds;

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

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

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

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

59 (9) "Controlled substance" means any substance classi-  
60 fied under the provisions of chapter sixty-a of this code  
61 (Uniform Controlled Substances Act) and includes all  
62 substances listed on Schedules I through V, inclusive,  
63 article two of said chapter sixty-a, as they are revised.  
64 The term "controlled substance" also has the meaning  
65 such term has under 21 U.S.C. §802.6 and includes all  
66 substances listed on Schedules I through V of 21 C.F.R.  
67 §1308 as they may be amended by the United States  
68 Department of Justice.

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

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

80 (12) “Disqualification” means any of the following three  
81 actions:

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

84 (B) Any withdrawal of a person’s privilege to drive a  
85 commercial motor vehicle by a state or other jurisdiction  
86 as the result of a violation of state or local law relating to  
87 motor vehicle traffic control other than parking or vehicle  
88 weight except as to violations committed by a special  
89 permittee on the coal resource transportation system or  
90 vehicle defect violations.

91 (C) A determination by the Federal Motor Carrier Safety  
92 Administration that a person is not qualified to operate a  
93 commercial motor vehicle under 49 C.F.R. Part §391  
94 (2004).

95 (13) “Drive” means to drive, operate or be in physical  
96 control of a motor vehicle in any place open to the general  
97 public for purposes of vehicular traffic. For the purposes  
98 of sections twelve, thirteen and fourteen of this article,  
99 “drive” includes operation or physical control of a motor  
100 vehicle anywhere in this state.

101 (14) “Driver” means any person who drives, operates or  
102 is in physical control of a commercial motor vehicle, in  
103 any place open to the general public for purposes of  
104 vehicular traffic, or who is required to hold a commercial  
105 driver’s license.

106 (15) “Driver’s license” means a license issued by a state  
107 to an individual which authorizes the individual to drive  
108 a motor vehicle of a specific class.

109 (16) “Employee” means any operator of a commercial  
110 motor vehicle, including full time, regularly employed  
111 drivers; casual, intermittent or occasional drivers; leased  
112 drivers and independent, owner-operator contractors



113 (while in the course of operating a commercial motor  
114 vehicle) who are either directly employed by or under lease  
115 to drive a commercial motor vehicle for an employer.

116 (17) "Employer" means any person, including the United  
117 States, a state or a political subdivision of a state, who  
118 owns or leases a commercial motor vehicle or assigns a  
119 person to drive a commercial motor vehicle.

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

122 (19) "Farm vehicle" includes a motor vehicle or combi-  
123 nation vehicle registered to the farm owner or entity  
124 operating the farm and used exclusively in the transporta-  
125 tion of agricultural or horticultural products, livestock,  
126 poultry and dairy products from the farm or orchard on  
127 which they are raised or produced to markets, processing  
128 plants, packing houses, canneries, railway shipping points  
129 and cold storage plants and in the transportation of  
130 agricultural or horticultural supplies and machinery to the  
131 farms or orchards to be used on the farms or orchards.

132 (20) "Farmer" includes an owner, tenant, lessee, occu-  
133 pant or person in control of the premises used substan-  
134 tially for agricultural or horticultural pursuits who is at  
135 least eighteen years of age with two years' licensed driving  
136 experience.

137 (21) "Farmer vehicle driver" means the person employed  
138 and designated by the "farmer" to drive a "farm vehicle"  
139 as long as driving is not his or her sole or principal func-  
140 tion on the farm who is at least eighteen years of age with  
141 two years' licensed driving experience.

142 (22) "Felony" means an offense under state or federal  
143 law that is punishable by death or imprisonment for a  
144 term exceeding one year.

145 (23) “Gross combination weight rating (GCWR)” means  
146 the value specified by the manufacturer as the loaded  
147 weight of a combination (articulated) vehicle. In the  
148 absence of a value specified by the manufacturer, GCWR  
149 will be determined by adding the GVWR of the power unit  
150 and the total weight of the towed unit and any load  
151 thereon.

152 (24) “Gross vehicle weight rating (GVWR)” means the  
153 value specified by the manufacturer as the loaded weight  
154 of a single vehicle. In the absence of a value specified by  
155 the manufacturer the GVWR will be determined by the  
156 total weight of the vehicle and any load thereon.

157 (25) “Hazardous materials” means any material that has  
158 been designated as hazardous under 49 U.S.C. §5103 and  
159 is required to be placarded under subpart F of 49 C.F.R.  
160 Part §172 or any quantity of a material listed as a select  
161 agent or toxin in 42 C.F.R. Part §73.

162 (26) “Imminent Hazard” means existence of a condition  
163 that presents a substantial likelihood that death, serious  
164 illness, severe personal injury or a substantial endanger-  
165 ment to health, property or the environment may occur  
166 before the reasonably foreseeable completion date of a  
167 formal proceeding begun to lessen the risk of that death,  
168 illness, injury or endangerment.

169 (27) “Issuance of a license” means the completion of a  
170 transaction signifying that the applicant has met all the  
171 requirements incumbent in qualifying for, including, but  
172 not limited to: the initial issuance of a driver’s license, the  
173 renewal of a driver’s license, the issuance of a duplicate  
174 license as a replacement to a lost or stolen driver’s license,  
175 the transfer of any level of driving privileges including the  
176 privilege of operating a commercial motor vehicle from  
177 another state or jurisdiction, the changing of driver’s  
178 license class, restrictions or endorsements or the change of  
179 any other information pertaining to an applicant either

180 appearing on the face of a driver's license or within the  
181 driver record of the licensee maintained by the division.

182 (28) "Motor vehicle" means every vehicle which is self-  
183 propelled and every vehicle which is propelled by electric  
184 power obtained from overhead trolley wires but not  
185 operated upon rails.

186 (29) "Noncommercial motor vehicle" means a motor  
187 vehicle or combination of motor vehicles not defined by  
188 the term "commercial motor vehicle".

189 (30) "Out-of-service order" means a temporary prohibi-  
190 tion against driving a commercial motor vehicle as a result  
191 of a determination by a law-enforcement officer, an  
192 authorized enforcement officer of a federal, state, Cana-  
193 dian, Mexican, county or local jurisdiction including any  
194 special agent of the Federal Motor Carrier Safety Admin-  
195 istration pursuant to 49 C.F.R. §§386.72, 392.5, 395.13,  
196 396.9 or compatible laws or the North American uniform  
197 out-of-service criteria that an imminent hazard exists.

198 (31) "Violation of an out-of-service order" means:

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

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

204 (32) "School bus" means a commercial motor vehicle  
205 used to transport preprimary, primary or secondary school  
206 students from home-to-school, from school-to-home, or to  
207 and from school sponsored events. School bus does not  
208 include a bus used as a common carrier.

209 (33) "Serious traffic violation" means conviction for any  
210 of the following offenses when operating a commercial  
211 motor vehicle:

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

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

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

223 (D) Following the vehicle ahead too closely;

224 (E) Driving a commercial motor vehicle without obtain-  
225 ing a commercial driver's license;

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

234 (G) Driving a commercial motor vehicle without the  
235 proper class of commercial driver's license and/or endorse-  
236 ments for the specific vehicle group being operated or for  
237 the passengers or type of cargo being transported;

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

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

243 (J) Vehicle defects are excluded as serious traffic viola-  
244 tions, except as to violations committed by a special  
245 permittee on the coal resource transportation road system.

246 (34) "State" means a state of the United States and the  
247 District of Columbia or a province or territory of Canada  
248 or a state of the United Mexican States.

249 (35) "State of Domicile" means the state where a person  
250 has his or her true, fixed and permanent home and princi-  
251 ple residence and to which he or she has the intention of  
252 returning whenever absent in accordance with chapter  
253 seventeen-a, article three, section one-a.

254 (36) "Suspension, revocation or cancellation" of a  
255 driver's license, or a commercial driver's license means the  
256 privilege to operate any type of motor vehicle on the roads  
257 and highways of this state is withdrawn.

258 (37) "Tank vehicle" means any commercial motor vehicle  
259 that is designed to transport any liquid or gaseous materi-  
260 als within a tank that is either permanently or temporarily  
261 attached to the vehicle or the chassis. These vehicles  
262 include, but are not limited to, cargo tanks and portable  
263 tanks, as defined in 49 C. F. R. Part 171 (1998). How-  
264 ever, this definition does not include portable tanks having  
265 a rated capacity under one thousand gallons.

266 (38) "Transportation Security Administration" means  
267 the United States Department of Homeland Security  
268 Transportation Security Administration.

269 (39) "United States" means the fifty states and the  
270 District of Columbia.

271 (40) "Vehicle Group" means a class or type of vehicle  
272 with certain operating characteristics.

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

1 No person who drives a commercial motor vehicle may  
2 have more than one driver's license at one time. The  
3 division shall require the surrender of any previously  
4 issued driver's license before issuing a renewed or dupli-  
5 cate driver's license with updated information.

**§17E-1-6. Employer responsibilities.**

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

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

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

10 (2) Has more than one driver's license at one time;

11 (3) Or the commercial motor vehicle he or she is driving  
12 or the motor carrier operation is subject to an out-of-  
13 service order;

14 (4) Is in violation of federal, state or local law or regula-  
15 tion pertaining to railroad highway grade crossings; or

16 (5) Is in violation of any provision of 49 C.F.R., Part §382  
17 related to controlled substances and alcohol use and  
18 testing.

19 (c) The division shall impose a civil penalty, in addition  
20 to any penalty required under the provisions of section  
21 twenty-five of this article, on any employer who know-  
22 ingly allows, permits, requires or authorizes a driver to  
23 drive a commercial motor vehicle in violation of subdivi-  
24 sion three or four of subsection (b) of this section.

25 (1) If the conviction is for a violation of subdivision three  
26 of subsection (b) of this section, the penalty is \$2,750.

27 (2) If the conviction is for a violation of subdivision four  
28 of subsection (b) of this section, the penalty shall be no  
29 more than \$25,000.

**§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 com-  
3 mercial driver's instruction permit accompanied by the  
4 holder of a commercial driver's license valid for the  
5 vehicle being driven, no person may drive a commercial  
6 motor vehicle unless the person holds a commercial  
7 driver's license and applicable endorsements valid for the  
8 vehicle they are driving.

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

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

16 (d) The Commissioner shall suspend for a period of sixty  
17 days the driving privileges of any person who is convicted  
18 of operating a commercial motor vehicle:

19 (1) Without holding a valid commercial driver's license  
20 and the applicable endorsements valid for the vehicle he  
21 or she is driving in accordance with subsection (a) of this  
22 section, or

23 (2) For any conviction for operating a commercial motor  
24 vehicle while his or her privilege to operate a motor  
25 vehicle were suspended, revoked, canceled or while

26 disqualified from operating a commercial motor vehicle in  
27 accordance with subsection (b) of this section.

28 (e) Any person not holding a commercial driver's license  
29 who is convicted of an offense that requires disqualifica-  
30 tion from operating a commercial motor vehicle shall also  
31 be disqualified from eligibility for a commercial driver's  
32 license for the same time periods as prescribed in federal  
33 law or rule or section thirteen of this article for commer-  
34 cial driver's license holders.

35 (f) The Commissioner shall suspend the driver's license  
36 or the privilege to drive in this state of any holder of a  
37 commercial driver's license or operator of a commercial  
38 motor vehicle upon receiving notice from another state or  
39 jurisdiction of failure to pay fines, costs, forfeitures or  
40 penalties imposed or failure to appear or failure to re-  
41 spond for any violation of a state or local law relating to  
42 motor vehicle traffic control in accordance with 49 C.F.R.  
43 §384.225 (2009). A suspension under this section will  
44 continue until the person provides proof of compliance  
45 from the court and pays the reinstatement fee provided in  
46 section nine, article three, chapter seventeen-b of this  
47 Code.

**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  
6 gross vehicle weight rating of the vehicle being towed is in  
7 excess of ten thousand pounds.

8 (2) *Class B heavy straight vehicle.* – Any single vehicle  
9 with a gross vehicle weight rating of twenty-six thousand



10 one pounds or more and any vehicle towing a vehicle not  
11 in excess of ten thousand pounds.

12 (3) *Class C small vehicle.* – Any single vehicle or combi-  
13 nation vehicle that does not fall under either Class A or  
14 Class B but are:

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

17 (B) Vehicles used in the transportation of hazardous  
18 materials which requires the vehicle to be placarded under  
19 49 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 appli-  
22 cant is authorized is required to retake and pass all related  
23 tests except the following:

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

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

33 (b) *Endorsements and restrictions.* – The Commissioner  
34 upon issuing a commercial driver's license may impose  
35 endorsements and or restrictions determined by the  
36 Commissioner to be appropriate to assure the safe opera-  
37 tion of a specific class, type or category of motor vehicle or  
38 a specifically equipped motor vehicle and to comply with  
39 49 U.S.C., et seq., and 49 C.F.R. §383.93 (2004) including,  
40 but not limited to endorsements or restrictions to operate:

41 (1) Double or triple trailers which requires successful  
42 completion of a knowledge test;

43 (2) Passenger vehicles which requires successful comple-  
44 tion of a knowledge and skills test;

45 (3) Tank vehicles which requires successful completion  
46 of a knowledge test;

47 (4) Vehicles used for the transportation of hazardous  
48 materials as defined in section three of this article which  
49 requires the completion of a knowledge test and a back-  
50 ground security risk check in accordance with 49 C.F.R.  
51 §1572.5 (2004);

52 (5) School buses which requires successful completion of  
53 a knowledge and skills test unless the applicant meets the  
54 criteria for waiver of the skills test in accordance with 49  
55 C.F.R. §383.123(b) (2004); or

56 (6) Vehicles equipped with air brakes which requires the  
57 completion of a skills test.

58 (c) *Applicant record check.* – Before issuing a commer-  
59 cial driver’s license, the Commissioner shall obtain driving  
60 record information through the commercial driver’s  
61 license information system, the national driver register  
62 and from each state in which the person has been licensed.

63 (d) *Notification of license issuance.* – Within ten days  
64 after issuing a commercial driver’s license, the Commis-  
65 sioner shall notify the commercial driver’s license infor-  
66 mation system of that fact, providing all information  
67 required to ensure identification of the person.

68 (e) *Expiration of license.* –

69 (1) Every commercial driver’s license issued to persons  
70 who have attained their twenty-first birthday expires on  
71 the applicant’s birthday in those years in which the  
72 applicant’s age is evenly divisible by five. Except as

73 provided in subdivision two of this subsection, no com-  
74 mercial driver's license may be issued for less than three  
75 years nor more than seven years and the commercial  
76 driver's license shall be renewed by the applicant's  
77 birthday and is valid for a period of five years, expiring on  
78 the applicant's birthday and in a year in which the appli-  
79 cant's age is evenly divisible by five. No commercial  
80 driver's license with a hazardous materials endorsement  
81 may be issued for more than five years.

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

86 (3) Commercial driver's licenses held by any person in  
87 the Armed Forces which expire while that person is on  
88 active duty remains valid for thirty days from the date on  
89 which that person reestablishes residence in West Virginia.

90 (4) Any person applying to renew a commercial driver's  
91 license which has been expired for six months or more  
92 shall follow the procedures for an initial issuance of a  
93 commercial driver's license, including the testing provi-  
94 sions.

95 (f) When applying for renewal of a commercial driver's  
96 license, the applicant shall complete the application form  
97 and provide updated information and required certifica-  
98 tions.

99 (g) If the applicant wishes to obtain or retain a hazard-  
100 ous materials endorsement, the applicant shall comply  
101 with a background check in accordance with 49 U.S.C.  
102 §5103a and 49 C.F.R. Part §1572 (2004) and subject to the  
103 following:

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

106 (2) The applicant completes the application prescribed  
107 by the division and submits fingerprints in a form and  
108 manner prescribed by the division and the United States  
109 Department of Homeland Security-Transportation  
110 Security Administration at the time of application or at  
111 any other time in accordance with 49 C.F.R. §1572.5  
112 (2004);

113 (3) The applicant pays all fees prescribed by the Trans-  
114 portation Security Administration or its agent and the  
115 division;

116 (4) The applicant has not been adjudicated as a mental  
117 defective or committed to a mental institution as pre-  
118 scribed in 49 C.F.R. §1572.109 (2004);

119 (5) The applicant has not committed a disqualifying  
120 criminal offense as described in 49 C.F.R. §1572.103  
121 (2004);

122 (6) The applicant has passed the Transportation Security  
123 Administration security threat assessment and the Divi-  
124 sion has received a final notification of threat assessment  
125 or notification of no security threat from the Transporta-  
126 tion Security Administration: *Provided*, That any appeal  
127 of any decision, determination or ruling of the Federal  
128 Bureau of Investigation or the Transportation Security  
129 Agency shall be directed to that agency; and

130 (7) The applicant has successfully passed the written test  
131 for the issuance or renewal of a hazardous material  
132 endorsement.

**§17E-1-13. Disqualification.**

1 (a) A person may not operate a commercial motor vehicle  
2 if his or her privilege to operate a commercial motor  
3 vehicle is disqualified under the provisions of the Federal  
4 Motor Carrier Safety Improvement Act of 1999 (public law

5 106-159 §1748), 49 C.F.R. Part §383, Subpart D (2004) or  
6 in accordance with 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  
9 conviction for any offense listed in this section resulting  
10 from a separate incident includes convictions for offenses  
11 committed in a commercial motor vehicle or a noncom-  
12 mercial motor vehicle.

13 (2) Any person disqualified from operating a commercial  
14 motor vehicle for life under the provisions of this chapter  
15 for offenses described in subsection (b) subdivisions (4)  
16 and (6) of this section is eligible for reinstatement of  
17 privileges to operate a commercial motor vehicle after ten  
18 years and after completion of the safety and treatment  
19 program or other appropriate program prescribed by the  
20 division. Any person whose lifetime disqualification has  
21 been amended under the provisions of this subdivision and  
22 who is subsequently convicted of a disqualifying offense  
23 described in subsection (b), subdivisions (1) through (8) of  
24 this section is not eligible for reinstatement.

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

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

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

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

38 (A) For a first conviction or for refusal to submit to any  
39 designated secondary chemical test while operating a  
40 commercial motor vehicle, a driver is disqualified from  
41 operating a commercial motor vehicle for a period of one  
42 year.

43 (B) For a first conviction or for refusal to submit to any  
44 designated secondary chemical test while operating a  
45 noncommercial motor vehicle, a commercial driver's  
46 license holder is disqualified from operating a commercial  
47 motor vehicle for a period of one year.

48 (C) For a first conviction or for refusal to submit to any  
49 designated secondary chemical test while operating a  
50 commercial motor vehicle transporting hazardous materi-  
51 als required to be placarded under 49 C.F.R. Part §172,  
52 Subpart F, a driver is disqualified from operating a  
53 commercial motor vehicle for a period of three years.

54 (D) For a second conviction or for refusal to submit to  
55 any designated secondary chemical test in a separate  
56 incident of any combination of offenses in this subsection  
57 while operating a commercial motor vehicle, a driver is  
58 disqualified from operating a commercial motor vehicle  
59 for life.

60 (E) For a second conviction or refusal to submit to any  
61 designated secondary chemical test in a separate incident  
62 of any combination of offenses in this subsection while  
63 operating a noncommercial motor vehicle, a commercial  
64 motor vehicle license holder is disqualified from operating  
65 a commercial motor vehicle for life.

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

70 (A) For a first conviction or for refusal to submit to any  
71 designated secondary chemical test while operating a

72 commercial motor vehicle, a driver is disqualified from  
73 operating a commercial motor vehicle for one year.

74 (B) For a first conviction or for refusal to submit to any  
75 designated secondary chemical test while operating a  
76 commercial motor vehicle transporting hazardous materi-  
77 als required to be placarded under 49 C.F.R. Part §172,  
78 Subpart F, a driver is disqualified from operating a  
79 commercial motor vehicle for three years.

80 (C) For a second conviction or refusal to submit to any  
81 designated secondary chemical test in a separate incident  
82 of any combination of offenses in this subsection while  
83 operating a commercial motor vehicle, a driver is disquali-  
84 fied from operating a commercial motor vehicle for life.

85 (3) Refusing to submit to any designated secondary  
86 chemical test required by the provisions of this code or the  
87 provisions of 49 C.F.R. §383.72 (2004);

88 (A) For the first conviction or refusal to submit to any  
89 designated secondary chemical test while operating a  
90 commercial motor vehicle, a driver is disqualified from  
91 operating a commercial motor vehicle for one year.

92 (B) For the first conviction or refusal to submit to any  
93 designated secondary chemical test while operating a  
94 noncommercial motor vehicle, a commercial driver's  
95 license holder is disqualified from operating a commercial  
96 motor vehicle for one year.

97 (C) For the first conviction or for refusal to submit to  
98 any designated secondary chemical test while operating a  
99 commercial motor vehicle transporting hazardous materi-  
100 als required to be placarded under 49 C.F.R. Part §172,  
101 Subpart F (2004), a driver is disqualified from operating  
102 a commercial motor vehicle for a period of three years.

103 (D) For a second conviction or refusal to submit to any  
104 designated secondary chemical test in a separate incident

105 of any combination of offenses in this subsection while  
106 operating a commercial motor vehicle, a driver is disquali-  
107 fied from operating a commercial motor vehicle for life.

108 (E) For a second conviction or refusal to submit to any  
109 designated secondary chemical test in a separate incident  
110 of any combination of offenses in this subsection while  
111 operating a noncommercial motor vehicle, a commercial  
112 driver's license holder is disqualified from operating a  
113 commercial motor vehicle for life.

114 (4) Leaving the scene of an accident;

115 (A) For the first conviction while operating a commercial  
116 motor vehicle, a driver is disqualified from operating a  
117 commercial motor vehicle for one year.

118 (B) For the first conviction while operating a noncom-  
119 mercial motor vehicle, a commercial driver's licenseholder  
120 is disqualified for one year.

121 (C) For the first conviction while operating a commercial  
122 motor vehicle transporting hazardous materials required  
123 to be placarded under 49 C.F.R. Part §172, Subpart F  
124 (2004), a driver is disqualified from operating a commer-  
125 cial motor vehicle for a period of three years.

126 (D) For a second conviction in a separate incident of any  
127 combination of offenses in this subsection while operating  
128 a commercial motor vehicle, a driver is disqualified from  
129 operating a commercial motor vehicle for life.

130 (E) For a second conviction in a separate incident of any  
131 combination of offenses in this subsection while operating  
132 a noncommercial motor vehicle, a commercial driver's  
133 license holder is disqualified from operating a commercial  
134 motor vehicle for life.

135 (5) Using a motor vehicle in the commission of any  
136 felony as defined in section three, article one of this



137 chapter: *Provided*, That the commission of any felony  
138 involving the manufacture, distribution or dispensing of a  
139 controlled substance, or possession with intent to manu-  
140 facture, distribute or dispense a controlled substance falls  
141 under the provisions of subdivision eight of this subsec-  
142 tion;

143 (A) For the first conviction while operating a commercial  
144 motor vehicle, a driver is disqualified from operating a  
145 commercial motor vehicle for one year.

146 (B) For the first conviction while operating a noncom-  
147 mercial motor vehicle, a commercial driver's license holder  
148 is disqualified from operating a commercial motor vehicle  
149 for one year.

150 (C) For the first conviction while operating a commercial  
151 motor vehicle transporting hazardous materials required  
152 to be placarded under 49 C.F.R. Part §172, Subpart F,  
153 (2004), a driver is disqualified from operating a commer-  
154 cial motor vehicle for a period of three years.

155 (D) For a second conviction in a separate incident of any  
156 combination of offenses in this subsection while operating  
157 a commercial motor vehicle, a driver is disqualified from  
158 operating a commercial motor vehicle for life.

159 (E) For a second conviction in a separate incident of any  
160 combination of offenses in this subsection while operating  
161 a noncommercial motor vehicle, a commercial motor  
162 vehicle license holder is disqualified from operating a  
163 commercial motor vehicle for life.

164 (6) Operating a commercial motor vehicle when, as a  
165 result of prior violations committed operating a commer-  
166 cial motor vehicle, the driver's privilege to operate a motor  
167 vehicle has been suspended, revoked or canceled, or the  
168 driver's privilege to operate a commercial motor vehicle  
169 has been disqualified.

170 (A) For the first conviction while operating a commercial  
171 motor vehicle, a driver is disqualified from operating a  
172 commercial motor vehicle for one year.

173 (B) For the first conviction while operating a commercial  
174 motor vehicle transporting hazardous materials required  
175 to be placarded under 49 C.F.R. Part §172, Subpart F,  
176 (2004), a driver is disqualified from operating a commer-  
177 cial motor vehicle for a period of three years.

178 (C) For a second conviction in a separate incident of any  
179 combination of offenses in this subsection while operating  
180 a commercial motor vehicle, a driver is disqualified from  
181 operating a commercial motor vehicle for life.

182 (7) Causing a fatality through the negligent operation of  
183 a commercial motor vehicle, including, but not limited to,  
184 the crimes of motor vehicle manslaughter, homicide and  
185 negligent homicide as defined in section five, article three,  
186 chapter seventeen-b, and section one, article five, chapter  
187 seventeen-c of this code;

188 (A) For the first conviction while operating a commercial  
189 motor vehicle, a driver is disqualified from operating a  
190 commercial motor vehicle for one year.

191 (B) For the first conviction while operating a commercial  
192 motor vehicle transporting hazardous materials required  
193 to be placarded under 49 C.F.R. Part §172, Subpart F,  
194 (2004), a driver is disqualified from operating a commer-  
195 cial motor vehicle for a period of three years.

196 (C) For a second conviction in a separate incident of any  
197 combination of offenses in this subsection while operating  
198 a commercial motor vehicle, a driver is disqualified from  
199 operating a commercial motor vehicle for life.

200 (8) Using a motor vehicle in the commission of any  
201 felony involving the manufacture, distribution or dispens-  
202 ing of a controlled substance, or possession with intent to

203 manufacture, distribute or dispense a controlled sub-  
204 stance, a driver is disqualified from operating a commer-  
205 cial motor vehicle for life and shall not be eligible for  
206 reinstatement.

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

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

211 (A) For a second conviction of any combination of  
212 offenses in this subsection in a separate incident within a  
213 three-year period while operating a commercial motor  
214 vehicle, a driver is disqualified from operating a commer-  
215 cial motor vehicle for a period of sixty days.

216 (B) For a second conviction of any combination of  
217 offenses in this section in a separate incident within a  
218 three-year period while operating a noncommercial motor  
219 vehicle, if the conviction results in the suspension, revoca-  
220 tion or cancellation of the commercial driver's license  
221 holder's privilege to operate any motor vehicle, a commer-  
222 cial driver's license holder is disqualified from operating  
223 a commercial motor vehicle for a period of sixty days.

224 (C) For a third or subsequent conviction of any combina-  
225 tion of the offenses in this subsection in a separate inci-  
226 dent in a three-year period while operating a commercial  
227 motor vehicle, a driver is disqualified from operating a  
228 commercial motor vehicle for a period of one hundred  
229 twenty days.

230 (D) For a third or subsequent conviction of any combina-  
231 tion of offenses in this subsection in a separate incident  
232 within a three-year period while operating a noncommer-  
233 cial motor vehicle, if the conviction results in the suspen-  
234 sion, revocation or cancellation of the commercial driver's  
235 license holder's privilege to operate any motor vehicle, a

236 commercial driver's license holder shall be disqualified  
237 from operating a commercial motor vehicle for a period of  
238 one hundred twenty days.

239 (2) Reckless driving as defined in section three, article  
240 five, chapter seventeen-c of this code, careless, or negli-  
241 gent driving including, but not limited to, the offenses of  
242 driving a motor vehicle in willful or wanton disregard for  
243 the safety of persons or property;

244 (A) For a second conviction of any combination of  
245 offenses in this subsection in a separate incident within a  
246 three-year period while operating a commercial motor  
247 vehicle, a driver is disqualified from operating a commer-  
248 cial motor vehicle for a period of sixty days.

249 (B) For a second conviction of any combination of  
250 offenses in this section in a separate incident within a  
251 three-year period while operating a noncommercial motor  
252 vehicle, if the conviction results in the suspension, revoca-  
253 tion, or cancellation of the commercial driver's license  
254 holder's privilege to operate any motor vehicle, a commer-  
255 cial driver's license holder is disqualified from operating  
256 a commercial motor vehicle for a period of sixty days.

257 (C) For a third or subsequent conviction of any combina-  
258 tion of the offenses in this subsection in a separate inci-  
259 dent in a three-year period while operating a commercial  
260 motor vehicle, a driver is disqualified from operating a  
261 commercial motor vehicle for a period of one hundred  
262 twenty days.

263 (D) For a third or subsequent conviction of any combina-  
264 tion of offenses in this subsection in a separate incident  
265 within a three-year period while operating a noncommer-  
266 cial motor vehicle, if the conviction results in the suspen-  
267 sion, revocation or cancellation of the commercial driver's  
268 license holder's privilege to operate any motor vehicle, a  
269 commercial driver's license holder is disqualified from

270 operating a commercial motor vehicle for a period of one  
271 hundred twenty days.

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

273 (A) For a second conviction of any combination of  
274 offenses in this subsection in a separate incident within a  
275 three-year period while operating a commercial motor  
276 vehicle, a driver is disqualified from operating a commer-  
277 cial motor vehicle for a period of sixty days.

278 (B) For a second conviction of any combination of  
279 offenses in this section in a separate incident within a  
280 three-year period while operating a noncommercial motor  
281 vehicle, if the conviction results in the suspension, revoca-  
282 tion, or cancellation of the commercial driver's license  
283 holder's privilege to operate any motor vehicle, a commer-  
284 cial driver's license holder is disqualified from operating  
285 a commercial motor vehicle for a period of sixty days.

286 (C) For a third or subsequent conviction of any combina-  
287 tion of the offenses in this subsection in a separate inci-  
288 dent in a three-year period while operating a commercial  
289 motor vehicle, a driver is disqualified from operating a  
290 commercial motor vehicle for a period of one hundred  
291 twenty days.

292 (D) For a third or subsequent conviction of any combina-  
293 tion of offenses in this subsection in a separate incident  
294 within a three-year period while operating a noncommer-  
295 cial motor vehicle, if the conviction results in the suspen-  
296 sion, revocation or cancellation of the commercial driver's  
297 license holder's privilege to operate any motor vehicle, a  
298 commercial driver's license holder is disqualified from  
299 operating a commercial motor vehicle for a period of one  
300 hundred twenty days.

301 (4) Following the vehicle ahead too closely;

302 (A) For a second conviction of any combination of  
303 offenses in this subsection in a separate incident within a

304 three-year period while operating a commercial motor  
305 vehicle, a driver is disqualified from operating a commer-  
306 cial motor vehicle for a period of sixty days.

307 (B) For a second conviction of any combination of  
308 offenses in this section in a separate incident within a  
309 three-year period while operating a noncommercial motor  
310 vehicle, if the conviction results in the suspension, revoca-  
311 tion, or cancellation of the commercial driver's license  
312 holder's privilege to operate any motor vehicle, a commer-  
313 cial driver's license holder is disqualified from operating  
314 a commercial motor vehicle for a period of sixty days.

315 (C) For a third or subsequent conviction of any combina-  
316 tion of the offenses in this subsection in a separate inci-  
317 dent in a three-year period while operating a commercial  
318 motor vehicle, a driver is disqualified from operating a  
319 commercial motor vehicle for a period of one hundred  
320 twenty days.

321 (D) For a third or subsequent conviction of any combina-  
322 tion of offenses in this subsection in a separate incident  
323 within a three-year period while operating a noncommer-  
324 cial motor vehicle, if the conviction results in the suspen-  
325 sion, revocation or cancellation of the commercial driver's  
326 license holder's privilege to operate any motor vehicle, a  
327 commercial driver's license holder is disqualified from  
328 operating a commercial motor vehicle for a period of one  
329 hundred twenty days.

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

333 (A) For a second conviction of any combination of  
334 offenses in this subsection in a separate incident within a  
335 three-year period while operating a commercial motor  
336 vehicle, a driver is disqualified from operating a commer-  
337 cial motor vehicle for a period of sixty days.

338 (B) For a second conviction of any combination of  
339 offenses in this section in a separate incident within a  
340 three-year period while operating a noncommercial motor  
341 vehicle, if the conviction results in the suspension, revoca-  
342 tion, or cancellation of the commercial driver's license  
343 holder's privilege to operate any motor vehicle, a commer-  
344 cial driver's license holder is disqualified from operating  
345 a commercial motor vehicle for a period of sixty days.

346 (C) For a third or subsequent conviction of any combina-  
347 tion of the offenses in this subsection in a separate inci-  
348 dent in a three-year period while operating a commercial  
349 motor vehicle, a driver is disqualified from operating a  
350 commercial motor vehicle for a period of one hundred  
351 twenty days.

352 (D) For a third or subsequent conviction of any combina-  
353 tion of offenses in this subsection in a separate incident  
354 within a three-year period while operating a noncommer-  
355 cial motor vehicle, if the conviction results in the suspen-  
356 sion, revocation or cancellation of the commercial driver's  
357 license holder's privilege to operate any motor vehicle, a  
358 commercial motor vehicle license holder is disqualified  
359 from operating a commercial motor vehicle for a period of  
360 one hundred twenty days.

361 (6) Driving a commercial motor vehicle without obtain-  
362 ing a commercial driver's license;

363 (A) For a second conviction of any combination of  
364 offenses in this subsection in a separate incident within a  
365 three-year period while operating a commercial motor  
366 vehicle, a driver is disqualified from operating a commer-  
367 cial motor vehicle for a period of sixty days.

368 (B) For a third or subsequent conviction of any combina-  
369 tion of the offenses in this subsection in a separate inci-  
370 dent in a three-year period while operating a commercial  
371 motor vehicle, a driver is disqualified from operating a

372 commercial motor vehicle for a period of one hundred  
373 twenty days.

374 (7) Driving a commercial motor vehicle without a  
375 commercial driver's license in the driver's possession,  
376 provided that any person who provides proof of possession  
377 of a commercial driver's license to the enforcement agency  
378 that issued the citation, by the court appearance or fine  
379 payment deadline shall not be guilty of this offense;

380 (A) For a second conviction of any combination of  
381 offenses in this subsection in a separate incident within a  
382 three-year period while operating a commercial motor  
383 vehicle, a commercial driver's license holder is disqualified  
384 from operating a commercial motor vehicle for a period of  
385 sixty days.

386 (B) For a third or subsequent conviction of any combina-  
387 tion of the offenses in this subsection in a separate inci-  
388 dent in a three-year period while operating a commercial  
389 motor vehicle, a commercial driver's license holder  
390 is disqualified from operating a commercial motor vehicle  
391 for a period of one hundred twenty days.

392 (8) Driving a commercial motor vehicle without the  
393 proper class of commercial driver's license or the proper  
394 endorsements for the specific vehicle group being oper-  
395 ated, or for the passengers or type of cargo being trans-  
396 ported;

397 (A) For a second conviction of any combination of  
398 offenses in this subsection in a separate incident within a  
399 three-year period while operating a commercial motor  
400 vehicle, a commercial driver's license holder is disqualified  
401 from operating a commercial motor vehicle for a period of  
402 sixty days.

403 (B) For a third or subsequent conviction of any combina-  
404 tion of the offenses in this subsection in a separate inci-



405 dent in a three-year period while operating a commercial  
406 motor vehicle, a commercial driver's license holder  
407 is disqualified from operating a commercial motor vehicle  
408 for a period of one hundred twenty days.

409 (d) Any person convicted of operating a commercial  
410 motor vehicle in violation of any federal, state or local law  
411 or ordinance pertaining to any of the railroad crossing  
412 violations described in subdivisions one through six of this  
413 subsection is disqualified from operating a commercial  
414 motor vehicle for the period of time specified;

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

419 (A) For the first conviction, a driver is disqualified from  
420 operating a commercial motor vehicle for a period of sixty  
421 days;

422 (B) For a second conviction of any combination of  
423 offenses in this subsection within a three-year period, a  
424 driver is disqualified from operating a commercial motor  
425 vehicle for one hundred twenty days; and

426 (C) For a third or subsequent conviction of any combina-  
427 tion of offenses in this subsection within a three-year  
428 period, a driver is disqualified from operating a commer-  
429 cial motor vehicle for one year.

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

434 (A) For the first conviction, a driver is disqualified from  
435 operating a commercial motor vehicle for a period of sixty  
436 days;

437 (B) For a second conviction of any combination of  
438 offenses in this subsection within a three-year period, a  
439 driver is disqualified from operating a commercial motor  
440 vehicle for one hundred twenty days; and

441 (C) For a third or subsequent conviction of any combina-  
442 tion of offenses in this subsection within a three-year  
443 period, a driver is disqualified from operating a commer-  
444 cial motor vehicle for one year.

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

449 (A) For the first conviction, a driver is disqualified from  
450 operating a commercial motor vehicle for a period of sixty  
451 days;

452 (B) For a second conviction of any combination of  
453 offenses in this subsection within a three-year period, the  
454 driver is disqualified from operating a commercial motor  
455 vehicle for one hundred twenty days; and

456 (C) For a third or subsequent conviction of any combina-  
457 tion of offenses in this subsection within a three-year  
458 period, a driver is disqualified from operating a commer-  
459 cial motor vehicle for one year.

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

464 (A) For the first conviction, a driver is disqualified from  
465 operating a commercial motor vehicle for a period of sixty  
466 days;

467 (B) For a second conviction of any combination of  
468 offenses in this subsection within a three-year period, a

469 driver is disqualified from operating a commercial motor  
470 vehicle for one hundred twenty days; and

471 (C) For a third or subsequent conviction of any combina-  
472 tion of offenses in this subsection within a three-year  
473 period, a driver is disqualified from operating a commer-  
474 cial motor vehicle for one year.

475 (5) Failing to obey a traffic control device or the direc-  
476 tions of an enforcement official at the crossing in accor-  
477 dance with the provisions of section one, article twelve,  
478 chapter seventeen-c of this code; or

479 (A) For the first conviction, a driver is disqualified from  
480 operating a commercial motor vehicle for a period of sixty  
481 days;

482 (B) For a second conviction of any combination of  
483 offenses in this subsection within a three-year period, a  
484 driver is disqualified from operating a commercial motor  
485 vehicle for one hundred twenty days; and

486 (C) For a third or subsequent conviction of any combina-  
487 tion of offenses in this subsection within a three-year  
488 period, a driver is disqualified from operating a commer-  
489 cial motor vehicle for one year.

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

494 (A) For the first conviction, a driver is disqualified from  
495 operating a commercial motor vehicle for a period of sixty  
496 days;

497 (B) For a second conviction of any combination of  
498 offenses in this subsection within a three-year period, a  
499 driver is disqualified from operating a commercial motor  
500 vehicle for one hundred twenty days; and

501 (C) For a third or subsequent conviction of any combina-  
502 tion of offenses in this subsection within a three-year  
503 period, a driver is disqualified from operating a commer-  
504 cial motor vehicle for one year.

505 (e) Any person who is convicted of violating an out-of-  
506 service order while operating a commercial motor vehicle  
507 is disqualified for the following periods of time if:

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

510 (A) For the first conviction of violating an out-of-service  
511 order while operating a commercial motor vehicle, a driver  
512 is disqualified from operating a commercial motor vehicle  
513 for one hundred eighty days.

514 (B) For a second conviction in a separate incident within  
515 a ten-year period for violating an out of service order  
516 while operating a commercial motor vehicle, a driver is  
517 disqualified from operating a commercial motor vehicle  
518 for two years.

519 (C) For a third or subsequent conviction in a separate  
520 incident within a ten-year period for violating an out-of-  
521 service order while operating a commercial motor vehicle,  
522 a driver is disqualified from operating a commercial motor  
523 vehicle for three years.

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

529 (A) For the first conviction of violating an out of service  
530 order while operating a commercial motor vehicle, a driver  
531 is disqualified from operating a commercial motor vehicle  
532 for one hundred eighty days.

533 (B) For a second conviction in a separate incident within  
534 a ten-year period for violating an out-of-service order  
535 while operating a commercial motor vehicle, a driver  
536 is disqualified from operating a commercial motor vehicle  
537 for three years.

538 (C) For a third or subsequent conviction in a separate  
539 incident within a ten-year period for violating an out-of-  
540 service order while operating a commercial motor vehicle,  
541 a driver is disqualified from operating a commercial motor  
542 vehicle for three years.

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

546 (g) In accordance with the provisions of 49 U.S.C.  
547 §313119(a)(19)(2004), and 49 C.F.R §384.226 (2004), and  
548 notwithstanding the provisions of section twenty-five,  
549 article eleven, chapter sixty-one of this code, no record of  
550 conviction, revocation, suspension or disqualification  
551 related to any type of motor vehicle traffic control offense,  
552 other than a parking violation, of a commercial driver's  
553 license holder or a person operating a commercial motor  
554 vehicle may be masked, expunged, deferred, or be subject  
555 to any diversion program.

556 (h) Notwithstanding any provision in this code to the  
557 contrary, the division may not issue any temporary driving  
558 permit, work-only driving permit or hardship license or  
559 permit that authorizes a person to operate a commercial  
560 motor vehicle when his or her privilege to operate any  
561 motor vehicle has been revoked, suspended, disqualified or  
562 otherwise canceled for any reason.

563 (i) In accordance with the provisions of 49 C.F.R.  
564 §391.15(b), a driver is disqualified from operating a  
565 commercial motor vehicle for the duration of any suspen-  
566 sion, revocation or cancellation of his or her driver's

567 license or privilege to operate a motor vehicle by this state  
568 or by any other state or jurisdiction until the driver  
569 complies with the terms and conditions for reinstatement  
570 set by this state or by another state or jurisdiction.

571 (j) In accordance with the provisions of 49 C.F.R. 353.52  
572 (2006), the division shall immediately disqualify a driver's  
573 privilege to operate a commercial motor vehicle upon a  
574 notice from the Assistant Administrator of the Federal  
575 Motor Carrier Safety Administration that the driver poses  
576 an imminent hazard. Any disqualification period imposed  
577 under the provisions of this subsection shall be served  
578 concurrently with any other period of disqualification if  
579 applicable.

580 (k) In accordance with the provisions of 49 C.F.R.  
581 1572.11(a), the division shall immediately disqualify a  
582 driver's privilege to operate a commercial motor vehicle if  
583 the driver fails to surrender his or her driver's license with  
584 a hazardous material endorsement to the division upon  
585 proper notice by the division to the driver that the division  
586 received notice from the Department of Homeland Security  
587 Transportation Security Administration of an initial  
588 determination of threat assessment and immediate revoca-  
589 tion that the driver does not meet the standards for  
590 security threat assessment provided in 49 C.F.R. 1572.5.  
591 The disqualification remains in effect until the driver  
592 either surrenders the driver's license to the division or  
593 provides the division with an affidavit attesting to the fact  
594 that the driver has lost or is otherwise unable to surrender  
595 the license.

**§17E-1-25. Penalties.**

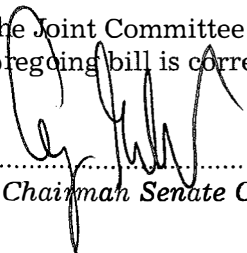
1 (a) It is a misdemeanor for any person to violate any of  
2 the provisions of this chapter unless the violation is by this  
3 chapter or other law of this state, declared to be a felony.

4 (b) Unless another penalty is provided in this chapter or  
5 by the laws of this state, every person convicted of a

6 misdemeanor for the violation of any provisions of this  
7 chapter shall be fined not less than \$100 nor more than  
8 \$1,000, or confined for not more than six months in jail, or  
9 both fined and confined, except that for the second  
10 violation of section seven of this article and, upon convic-  
11 tion thereof, the offender shall be fined not less than \$500  
12 nor more than \$2,000 or confined for not less than six  
13 months nor more than nine months in jail, or both fined  
14 and confined. For the third or any subsequent conviction  
15 for violation of section seven of this article, upon convic-  
16 tion thereof, the offender shall be fined not less than one  
17 \$1,000 nor more than \$2,500, or confined for not less than  
18 nine months nor more than one year in the county jail, or  
19 both fined and confined.

20 (c) The division shall impose a civil penalty, in addition  
21 to any penalty required under the provisions of this  
22 section on any driver who is convicted of violating subsec-  
23 tion (e), section thirteen of this article. The penalty shall  
24 be \$2,500 for the first offense and \$5,000 for each subse-  
25 quent offense.

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

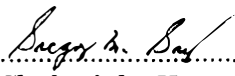
  
.....  
*Chairman Senate Committee*

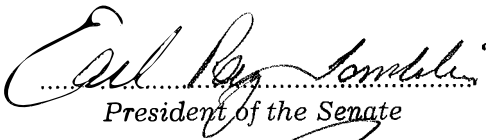
  
.....  
*Chairman House Committee*

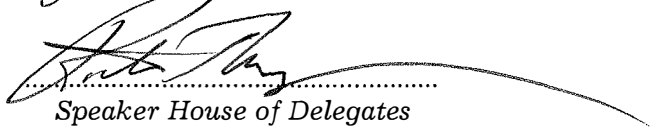
Originated in the Senate.

In effect ninety days from passage.

  
.....  
*Clerk of the Senate*

  
.....  
*Clerk of the House of Delegates*

  
.....  
*President of the Senate*

  
.....  
*Speaker House of Delegates*

The within *is approved* ..... this the *2nd*  
Day of *April* ....., 2010.

  
.....  
*Governor*



PRESENTED TO THE  
GOVERNOR

APR 01 2010

Time 11:30am