

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**ENROLLED**

## **House Bill 4535**

BY DELEGATE SUMMERS, FOSTER, PAYNTER,

THOMPSON, HONAKER AND CROUSE

[Passed March 11, 2022; in effect ninety days from passage.]



1 AN ACT to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended; to  
2 amend and reenact §17B-3-6 of said code; and to amend and reenact §18-8-11 of said  
3 code, all relating to motor vehicle licensing; modifying requirements for a graduated  
4 driver's license; granting Division of Motor Vehicles authority to restrict and revoke a  
5 driver's license for certain reasons; allowing any person whose driver's license is  
6 suspended, restricted, or revoked after hearing with the Commissioner of the Division of  
7 Motor Vehicles to seek judicial review; removing requirement to deny a license or  
8 instruction permit to any person under 18 who does not meet one of certain academic  
9 related requirements; removing provisions pertaining to the provision of a driver's eligibility  
10 certificate; and replacing suspension of license with requiring restriction of license to  
11 driving for work or medical purposes or educational or religious pursuits whenever a  
12 student at least 15 but less than 17 years of age withdraws from school or fails to maintain  
13 satisfactory academic progress.

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

## **CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSE.**

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

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

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

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

8 of this code: *Provided*, That a person may otherwise be eligible for a restricted license or  
9 instruction permit pursuant to §18-8-11.

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

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

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

17 (B) Presents a certified copy of a birth certificate issued by a state or other governmental  
18 entity responsible for vital records unexpired, or a valid passport issued by the United States  
19 government evidencing that the applicant meets the minimum age requirement and is of verifiable  
20 identity;

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

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

28 (2) *Terms and conditions of instruction permit.* — A level one instruction permit issued  
29 under this section is valid until 30 days after the date the applicant attains the age of 18 and is  
30 not renewable: *Provided*, That for an applicant who is an active member of any branch of the  
31 United States military, a level one instruction permit issued under the provisions of this section is  
32 valid until 180 days after the date the applicant attains the age of 18. However, any permit holder  
33 who allows his or her permit to expire prior to successfully passing the road skills portion of the

34 driver examination, and who has not committed any offense which requires the suspension,  
35 revocation, or cancellation of the instruction permit, may reapply for a new instruction permit under  
36 §17B-2-6 of this code. The division shall immediately revoke the permit upon receipt of a second  
37 conviction for a moving violation of traffic regulations and laws of the road or violation of the terms  
38 and conditions of a level one instruction permit, which convictions have become final unless a  
39 greater penalty is required by this section or any other provision of this code. Any person whose  
40 instruction permit has been revoked is disqualified from retesting for a period of 90 days. However,  
41 after the expiration of 90 days, the person may retest if otherwise eligible. A holder of a level one  
42 instruction permit who is under the age of 18 years may not use a wireless communication device  
43 while operating a motor vehicle, unless the use of the wireless communication device is for  
44 contacting a 9-1-1 system. In addition to all other provisions of this code for which a driver's  
45 license may be restricted, suspended, revoked, or canceled, the holder of a level one instruction  
46 permit may only operate a motor vehicle under the following conditions:

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

52 (B) The permit holder is operating the vehicle between the hours of 5 a.m. and 10 p.m.;

53 (C) All occupants use safety belts in accordance with §17C-15-49 of this code;

54 (D) The permit holder is operating the vehicle without any measurable blood alcohol  
55 content, in accordance with §17C-5-2(h) of this code; and

56 (E) The permit holder maintains current school enrollment and is making satisfactory  
57 academic progress or otherwise shows compliance with §18-8-11 of this code: *Provided*, That a  
58 person may otherwise be eligible for a restricted license or instruction permit pursuant to §18-8-  
59 11.

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

63 (1) *Eligibility.* — The division may not issue a level two intermediate driver's license unless  
64 the applicant:

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

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

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

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

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

79 (2) *Terms and conditions of a level two intermediate driver's license.* — A level two  
80 intermediate driver's license issued under the provisions of this section expires 30 days after the  
81 applicant attains the age of 18, or until the licensee qualifies for a level three full Class E license,  
82 whichever comes first. A holder of a level two intermediate driver's license who is under the age  
83 of 18 years shall not use a wireless communication device while operating a motor vehicle, unless  
84 the use of the wireless communication device is for contacting a 9-1-1 system. In addition to all  
85 other provisions of this code for which a driver's license may be restricted, suspended, revoked,

86 or canceled, the holder of a level two intermediate driver's license may only operate a motor  
87 vehicle under the following conditions:

88 (A) The licensee operates a vehicle unsupervised between the hours of 5 a.m. and 10  
89 p.m.;

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

93 (i) Lawful employment;

94 (ii) A school-sanctioned activity;

95 (iii) A religious event; or

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

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

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

106 (E) The licensee operates a vehicle without any measurable blood alcohol content in  
107 accordance with §17C-5-2(h) of this code;

108 (F) The licensee maintains current school enrollment and is making satisfactory academic  
109 progress or otherwise shows compliance with §18-8-11 of this code: *Provided*, That a person may  
110 otherwise be eligible for a restricted license or instruction permit pursuant to §18-8-11.

111 (G) Upon the first conviction for a moving traffic violation or a violation of §17B-2-3a(d)(2)  
112 of this code of the terms and conditions of a level two intermediate driver's license, the licensee  
113 shall enroll in an approved driver improvement program unless a greater penalty is required by  
114 this section or by any other provision of this code; and

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

120 (H) Upon the second conviction for a moving traffic violation or a violation of the terms and  
121 conditions of the level two intermediate driver's license, the Division of Motor Vehicles shall revoke  
122 or suspend the licensee's privilege to operate a motor vehicle for the applicable statutory period  
123 or until the licensee's 18th birthday, whichever is longer, unless a greater penalty is required by  
124 this section or any other provision of this code. Any person whose driver's license has been  
125 revoked as a level two intermediate driver, upon reaching the age of 18 years and if otherwise  
126 eligible, may reapply for an instruction permit, then a driver's license in accordance with §17B-2-  
127 5, §17B-2-6 and §17B-2-7 of this code.

128 (e) *Level three, full Class E license.* — The level three license is valid until 30 days after  
129 the date the licensee attains his or her 21st birthday. A holder of a level three driver's license who  
130 is under the age of 18 years shall not use a wireless communication device while operating a  
131 motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1  
132 system. Unless otherwise provided in this section or any other section of this code, the holder of  
133 a level three full Class E license is subject to the same terms and conditions as the holder of a  
134 regular Class E driver's license.

135 A level two intermediate licensee whose privilege to operate a motor vehicle has not been  
136 suspended, revoked, or otherwise canceled and who meets all other requirements of the code



137 may be issued a level three full Class E license without further examination or road skills testing  
138 if the licensee:

139 (1) Has reached the age of 17 years;

140 (2) Presents a completed application as prescribed by §17B-2-6 of this code;

141 (3) Has held the level two intermediate license conviction free for the 12-month period  
142 immediately preceding the date of the application;

143 (4) Has completed any driver improvement program required under §17B-2-3a(d)(2)(G) of  
144 this code; and

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

148 (f) A person violating the provisions of the terms and conditions of a level one instruction  
149 permit, level two intermediate driver's license, or level three license is guilty of a misdemeanor  
150 and, upon conviction thereof, shall for the first offense be fined \$25; for a second offense be fined  
151 \$50; and for a third or subsequent offense be fined \$75.

### **ARTICLE 3. CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSES.**

#### **§17B-3-6. Authority of division to suspend, restrict, or revoke license; hearing.**

1 (a) The division is hereby authorized to suspend, restrict, or revoke the driver's license of  
2 any person without preliminary hearing upon a showing by its records or other sufficient evidence  
3 that the licensee:

4 (1) Has committed an offense for which mandatory revocation of a driver's license is  
5 required upon conviction;

6 (2) Has by reckless or unlawful operation of a motor vehicle, caused or contributed to an  
7 accident resulting in the death or personal injury of another or property damage;

8           (3) Has been convicted with such frequency of serious offenses against traffic regulations  
9 governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for  
10 the safety of other persons on the highways;

11           (4) Is an habitually reckless or negligent driver of a motor vehicle;

12           (5) Is incompetent to drive a motor vehicle;

13           (6) Has committed an offense in another state which if committed in this state would be a  
14 ground for suspension or revocation;

15           (7) Has failed to pay or has defaulted on a plan for the payment of all costs, fines,  
16 forfeitures, or penalties imposed by a magistrate court or municipal court within 90 days, as  
17 required by §50-3-2a of this code or §8-10-2a of this code;

18           (8) Has failed to appear or otherwise respond before a magistrate court or municipal court  
19 when charged with a motor vehicle violation as defined in section three-a of this article;

20           (9) Is under the age of 17 and has withdrawn either voluntarily or involuntarily due to  
21 misconduct from a secondary school or has failed to maintain satisfactory academic progress, as  
22 provided in §18-8-11 of this code; or

23           (10) Has failed to pay overdue child support or comply with subpoenas or warrants relating  
24 to paternity or child support proceedings, if a circuit court has ordered the suspension of the  
25 license as provided in §48A-5A-1 *et seq.* of this code and the Child Support Enforcement Division  
26 has forwarded to the division a copy of the court order suspending the license, or has forwarded  
27 its certification that the licensee has failed to comply with a new or modified order that stayed the  
28 suspension and provided for the payment of current support and any arrearage due.

29           (b) The driver's license of any person having his or her license suspended shall be  
30 reinstated if:

31           (1) The license was suspended under the provisions of subdivision (7), subsection (a) of  
32 this section and the payment of costs, fines, forfeitures, or penalties imposed by the applicable  
33 court has been made;

34           (2) The license was suspended under the provisions of subdivision (8), subsection (a) of  
35 this section and the person having his or her license suspended has appeared in court and has  
36 prevailed against the motor vehicle violations charged; or

37           (3) The license was suspended under the provisions of subdivision (10), subsection (a) of  
38 this section and the division has received a court order restoring the license or a certification by  
39 the Child Support Enforcement Division that the licensee is complying with the original support  
40 order or a new or modified order that provides for the payment of current support and any  
41 arrearage due.

42           (c) Any reinstatement of a license under subdivision (1), (2) or (3), subsection (b) of this  
43 section shall be subject to a reinstatement fee designated in section nine of this article.

44           (d) Upon suspending, or restricting the driver's license of any person as hereinbefore in  
45 this section authorized, the division shall immediately notify the licensee in writing, sent by  
46 certified mail, return receipt requested, to the address given by the licensee in applying for license,  
47 and upon his or her request shall afford him or her an opportunity for a hearing as early as practical  
48 within not to exceed 20 days after receipt of such request in the county wherein the licensee  
49 resides unless the division and the licensee agree that such hearing may be held in some other  
50 county. Upon such hearing the commissioner or his or her duly authorized agent may administer  
51 oaths and may issue subpoenas for the attendance of witnesses and the production of relevant  
52 books and papers and may require a reexamination of the licensee. Upon such hearing the  
53 division shall either rescind its order of suspension, or restriction or, good cause appearing  
54 therefor, may extend the suspension, or restriction of such license or revoke such license. The  
55 provisions of this subsection providing for notice and hearing are not applicable to a suspension  
56 under subdivision (10), subsection (a) of this section. Any person whose driver's license is  
57 suspended, restricted, or revoked after hearing with the commissioner may seek judicial review  
58 of the final order or decision in accordance with §29A-5-4 of this code.

59 (e) Notwithstanding the provisions of legislative rule 91 CSR 5, the division may, upon  
60 completion of an approved defensive driving course, deduct three points from a licensee's point  
61 accumulation provided the licensee has not reached 14 points. If a licensee has been notified of  
62 a pending 30-day driver's license suspension based on the accumulation of 12 or 13 points, the  
63 licensee may submit proof of completion of an approved defensive driving course to deduct three  
64 points and rescind the pending license suspension: *Provided*, That the licensee submits proof of  
65 prior completion of the course and payment of the reinstatement fee in accordance with section  
66 nine, article three of this chapter to the division prior to the effective date of the suspension.

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 18. COMPULSORY SCHOOL ATTENDANCE.**

#### **§18-8-11. School attendance and satisfactory academic progress as conditions of licensing for privilege of operation of motor vehicle.**

1 (a) Whenever a student at least 15 but less than 17 years of age, except as provided in  
2 subsection (e) of this section, withdraws from school, the attendance director or chief  
3 administrator shall notify the Division of Motor Vehicles of the student's withdrawal no later than  
4 five days from the date of the withdrawal. Within five days of receipt of the notice, the Division of  
5 Motor Vehicles shall send notice to the student that the student's instruction permit or license to  
6 operate a motor vehicle will be restricted to driving for work or medical purposes or educational  
7 or religious pursuits under the provisions of §17B-3-6 of this code on the 30th day following the  
8 date the notice was sent unless documentation of compliance with the provisions of this section  
9 is received by the Division of Motor Vehicles before that time. The notice shall also advise the  
10 student that he or she is entitled to a hearing before the county superintendent of schools or his  
11 or her designee or before the appropriate private school official concerning whether the student's  
12 withdrawal from school was due to a circumstance or circumstances beyond the control of the  
13 student. If restricted, the division may not reinstate an instruction permit or license until the student

14 returns to school and shows satisfactory academic progress or until the student attains 17 years  
15 of age.

16 (b) Whenever a student at least 15 but less than 17 years of age is enrolled in a secondary  
17 school and fails to maintain satisfactory academic progress, the attendance director or chief  
18 administrator shall follow the procedures set out in subsection (a) of this section to notify the  
19 Division of Motor Vehicles. Within five days of receipt of the notice, the Division of Motor Vehicles  
20 shall send notice to the student that the student's instruction permit or license will be restricted to  
21 driving for work or medical purposes or educational or religious pursuits under the provisions of  
22 §17B-3-6 of this code on the 30th day following the date the notice was sent unless documentation  
23 of compliance with the provisions of this section is received by the Division of Motor Vehicles  
24 before that time. The notice shall also advise the student that he or she is entitled to a hearing  
25 before the county superintendent of schools or his or her designee or before the appropriate  
26 private school official concerning whether the student's failure to make satisfactory academic  
27 progress was due to a circumstance or circumstances beyond the control of the student. Once  
28 the restriction is ordered, the division may not reinstate an instruction permit or license until the  
29 student shows satisfactory academic progress or until the student attains 17 years of age.

30 (c) Upon written request of a student, within 10 days of receipt of a notice of restriction as  
31 provided by this section, the Division of Motor Vehicles shall afford the student the opportunity for  
32 an administrative hearing. The scope of the hearing shall be limited to determining if there is a  
33 question of improper identity, incorrect age, or some other clerical error.

34 (d) For the purposes of this section:

35 (1) "Withdrawal" is defined as more than 10 consecutive or 15 total days unexcused  
36 absences during a school year, or suspension pursuant to §18A-5-1a(a) and §18A-5-1a(b) of this  
37 code.

38           (2) "Satisfactory academic progress" means the attaining and maintaining of grades  
39 sufficient to allow for graduation and course work in an amount sufficient to allow graduation in  
40 five years or by age 19, whichever is earlier.

41           (3) "Circumstances outside the control of the student" shall include, but not be limited to,  
42 medical reasons, familial responsibilities, and the necessity of supporting oneself or another.

43           (4) Suspension or expulsion from school or imprisonment in a jail or a West Virginia  
44 correctional facility is not a circumstance beyond the control of the student.

45           (e) Whenever the withdrawal from school of the student, the student's failure to enroll in a  
46 course leading to or to obtain a GED or high school diploma, or the student's failure to make  
47 satisfactory academic progress is due to a circumstance or circumstances beyond the control of  
48 the student, or the withdrawal from school is for the purpose of transfer to another school as  
49 confirmed in writing by the student's parent or guardian, no notice shall be sent to the Division of  
50 Motor Vehicles to restrict the student's motor vehicle operator's license and if the student is  
51 applying for a license, the attendance director or chief administrator shall provide the student with  
52 documentation to present to the Division of Motor Vehicles to excuse the student from the  
53 provisions of this section. The school district superintendent (or the appropriate school official of  
54 any private secondary school) with the assistance of the county attendance director and any other  
55 staff or school personnel shall be the sole judge of whether any of the grounds for restriction of a  
56 license as provided by this section are due to a circumstance or circumstances beyond the control  
57 of the student.

58           (f) The state board shall promulgate rules necessary for uniform implementation of this  
59 section among the counties and as may otherwise be necessary for the implementation of this  
60 section. The rule may not include attainment by a student of any certain grade point average as  
61 a measure of satisfactory progress toward graduation.

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

.....  
*Chairman, House Committee*

.....  
*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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

.....  
*Clerk of the Senate*

.....  
*Speaker of the House of Delegates*

.....  
*President of the Senate*

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The within ..... this the.....  
day of ....., 2022.

.....  
*Governor*