WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2806

By Delegate Foster

[Introduced January 19, 2023; Referred to the Committee on Technology and Infrastructure then the Judiciary]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17B-2-10a, relating to an occupational limited license.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-10a. Occupational limited license.

(a) *Issuance.* --

(1) The division shall issue an occupational limited license under the provisions of this section to a driver whose operating privileges have been suspended for a violation of this chapter and is not prohibited under any other provision in this section. If the underlying reason for the suspension was caused by violations committed while the driver was operating a commercial motor vehicle, the driver may not be issued an occupational limited license for the purpose of operating a commercial motor vehicle. The division shall prohibit the issuance of an occupational limited license when disqualified from doing so under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. §§31100 *et seq.*) or the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. §§521 *et seq.*).

(2) The division may not issue an occupational limited license to drivers whose operating privileges have been recalled, canceled, or revoked.

(b) *Petition*. --

(1) The applicant for an occupational limited license shall file a petition with the division, by certified mail, setting forth in detail the need for operating a motor vehicle. The petition shall be on a form prescribed by the division and shall identify the specific motor vehicle or vehicles the petitioner seeks permission to operate. The petition shall include an explanation as to why the operation of a motor vehicle is essential to the petitioner’s occupation, work, trade, treatment, or study or the petitioner’s ability to travel to and from petitioner’s occupation, work, trade, treatment, or study. The petition shall identify the petitioner’s employer, educational institution, or treatment facility, as appropriate, and shall include proof of financial responsibility covering all vehicles which the petitioner requests to be allowed to operate. The division shall promulgate rules in accordance with the provisions of §29A-3-1 *et seq*. of this code to require additional information as well as additional evidence to verify the information contained in the petition.

(2) The petitioner shall surrender his driver’s license. If the petitioner’s driver’s license has been lost or stolen, the petitioner shall submit an application for a replacement license, along with the proper fee. If the petitioner is a nonresident licensed driver, the petitioner shall submit an acknowledgment of suspension in lieu of a driver’s license. If the petitioner’s license has expired, the petitioner shall submit an application for renewal, along with the appropriate fee. All fines, costs, and restoration fees must be paid at the time of petition.

(3) Consistent with the provisions of this section, the division shall issue an occupational limited license to the applicant within 20 days of receipt of the petition.

(4)(i) A person whose operating privilege has been suspended for a conviction of driving while operating privilege is suspended or revoked may not petition for an occupational limited license unless division records show that the suspension for a conviction occurred only as the result of:

(A) A suspension for failure to respond to a citation imposed under the suspension of operating privilege for failure to respond to citation to enforcement agreements;

(B) A suspension for failure to undergo a special examination imposed relating to school, examination or hearing on accumulation of points or excessive speeding;

(C) A suspension for failure to attend a division hearing; or

(D) A suspension that occurred as a result of a suspension for nonpayment of judgments, payments sufficient to satisfy judgments or installment payment of judgments.

(ii) The petition may not be filed until three months have been served for the suspension under §17B-3-5 of this code.

(c) *Fee. --* The fee for applying for an occupational limited license is $65. This fee is nonrefundable, and no other fee may be required: *Provided*, That any fee or cost required for the installation of an ignition interlock device mandated by §17C-5-3a of this code or any other provisions of this code or any rule of the code of state regulations shall be allowed.

(d) *Unauthorized issuance*. -- The division shall prohibit issuance of an occupational limited license to:

(1) A driver who is not licensed to drive by this or any other state.

(2) Any person who is required by this code to take an examination and who has failed to take and pass such an examination.

(3) Any person who has an unsatisfied judgment against him or her as the result of a motor vehicle operation under §8-10-2a or §50-3-2a of this code, until such judgment has been satisfied or an installment agreement has been entered into to satisfy the judgment and the financial responsibility of such person has been established.

(4) Any person applying for an occupational limited license to operate a commercial motor vehicle whose commercial driver’s license privilege is disqualified under the provisions of section §17E-1-13 of this code (relating to disqualification).

(5) Any person who, at the time he or she applies for an occupational limited license, has previously been granted such a privilege within the period of five years next preceding such application.

(6) Except as set forth in subdivision (3) of subsection (d) of this section, any person whose operating privilege has been suspended for a violation relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages unless the suspension imposed has been fully served: *Provided*, That an occupational limited license may be issued to a petitioner applicant whose operating privilege has been suspended so long as the use of an ignition interlock device is as set forth in §17C-5-3a of this code or any other provisions of this code or any rule of the code of state regulations is required as a condition of the occupational limited license.

(7) For a conviction of any offense involving the possession, sale, delivery, offering for sale, holding for sale or giving away of any controlled substance under the laws of the United States, this state or any other state: *Provided*, That for convictions of possession without intent to distribute, an occupational limited license may be issued to a petitioner applicant whose operating privilege has been suspended so long as the use of an ignition interlock device is as set forth in §17C-5-3a of this code or any other provisions of this code or any rule of the code of state regulations is required as a condition of the occupational limited license;

(8) Any person whose operating privilege has been suspended or revoked as the result of a conviction of or as a result of a court order in conjunction with an adjudication of delinquency or the granting of a consent decree for any offense under the following provisions, unless the suspension or revocation has been fully served:

(i) Meeting or overtaking school bus;

(ii) Racing on highways; or

(iii) Any violation relating to serious traffic offenses or relating to accidents and accident reports.

(9) Any person whose operating privilege is currently suspended for failure to respond to a citation.

(10) Any person whose operating privilege is currently suspended pursuant to proof of financial responsibility following violation, to proof of financial responsibility following an accident or required financial responsibility.

(11) Any person whose operating privilege is currently suspended for failure to attend and satisfactorily complete a driver improvement course or failure to attend a hearing.

(12) Any person whose operating privilege has been suspended for a conviction unless division records show that the suspension for a conviction occurred only as a result of:

(i) A suspension for failure to respond to a citation;

(ii) A suspension for failure to undergo a special examination; or

(iii) A suspension for failure to attend a hearing.

(13) Any person whose operating privilege has been suspended under an interjurisdictional agreement as the result of a conviction or adjudication if the conviction or adjudication for an equivalent offense in this state would have prohibited the issuance of an occupational limited license.

(14) Any person whose operating privilege has been suspended as the result of a conviction of a violation relating to removal or falsification of identification number,  relating to dealing in vehicles with removed or falsified numbers, relating to dealing in titles and plates for stolen vehicles, relating to false application for certificate of title or registration or relating to altered, forged, or counterfeit documents and plates unless the suspension has been fully served.

(15) Any person whose operating privilege has been suspended for conviction or adjudication of delinquency based on a violation relating to homicide by vehicle or relating to homicide by vehicle while driving under influence.

(e) *Suspension eligibility related to Title 18 violation. --* An individual whose operating privilege has been suspended for a violation of §60-7-12a of this code shall be eligible for an occupational limited license unless the individual has previously violated §60-7-12a of this code.

(f) *Offenses committed during a period for which an occupational limited license has been issued. --* Any driver who has been issued an occupational limited license and as to whom the division receives a report of conviction of an offense for which the penalty is a cancellation, disqualification, recall, suspension, or revocation of operating privileges or a report relating to mandatory sentencing shall have the occupational limited license recalled, and the driver shall surrender the limited license to the division or its agents.

(g) *Restrictions.* -- A driver who has been issued an occupational limited license shall observe the following:

(1) The driver shall operate a designated vehicle only:

(A) Between the driver’s place of residence and place of employment or study and as necessary in the course of employment or conducting a business or pursuing a course of study where the operation of a motor vehicle is a requirement of employment or of conducting a business or of pursuing a course of study.

(B) To and from a place for scheduled or emergency medical examination or treatment. This subparagraph includes treatment relating to driving after imbibing alcohol or utilizing drugs.

(2) A driver who has been issued an occupational limited license may not operate a school bus.

(3) The operating privilege of a driver who has been issued an occupational limited license remains under suspension or revocation except when operating a motor vehicle in accordance with the conditions of issuance or restrictions of the occupational limited license.

(4) Any person who violates the conditions of issuance or restrictions of the occupational limited license is guilty of a misdemeanor and, upon conviction thereof, shall be fined $200 and, upon receipt of a certified record of conviction, the division shall recall the limited license.

(h) A driver who has been issued an occupational limited license shall possess a completed occupational limited license affidavit on a form prescribed by the division at all times when operating a motor vehicle. The driver shall exhibit the completed form upon demand by a police officer. The affidavit shall indicate that the driver is operating the motor vehicle at a time and between places in accordance with the restrictions of this section. An occupational limited license affidavit shall contain information required by rules which may be proposed by the division under the provisions of §29A-3-1 *et seq*. of this code. The driver is not required to possess a completed occupational limited license affidavit when operating a motor vehicle to a location for emergency medical treatment.

(i) *Changes in condition. --* A driver who is granted an occupational limited license shall immediately inform the division in writing of any change in the conditions under which that driver applied for the occupational limited license, including loss of employment, change of employment, or change in location of employment. Upon failure to give prompt notice of any changes or if the conditions for the limited license no longer exist, the division shall recall the occupational limited license.

(j) *Appeal from denial or recall of occupational limited license. --* Any driver who is denied an occupational limited license or whose occupational limited license is recalled may file with the division a petition for a hearing under the provisions of §29A-5-1 *et seq*. of this code. The division may charge a reasonable fee based on the cost to the division for conducting such a hearing. The appeal shall not operate as an automatic supersedeas. If an administrative hearing officer orders a supersedeas in any appeal, the petitioner shall earn no credit towards serving the suspension for which the petitioner was granted an occupational limited license. An appeal from a decision of an administrative hearing officer may be taken in the manner provided in §29A-6-1 *et seq.* of this code.

NOTE: The purpose of this bill is to provide for an occupational limited driver’s license.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.