

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

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for

House Bill 2871

By Delegates Funkhouser, Hornby, Holstein, Masters,
W. Clark, Kump, Chiarelli, Hillenbrand, Mallow, Horst,
and Roop

[Reported March 4, 2025, from the Committee on the
Judiciary]

1 A BILL to amend and reenact §14-2A-3 of the Code of West Virginia, 1931, as amended, related to
2 updating definitions to “criminally injurious conduct”; also to amend and reenact §17B-1A-1
3 of the Code of West Virginia, 1931, as amended, relating to the driver’s license compact
4 and clarifying that any conviction for an offense in another jurisdiction for the crimes
5 contained within §17C-5-1 shall be subject to revocation; also to amend and reenact §17B-
6 3-5 of the Code of West Virginia, 1931, as amended, relating to update that a conviction of
7 any offense contained within 17C-5-1 shall be subject to revocation; also to amend and
8 reenact §17C-5-1 of the Code of West Virginia, 1931, as amended, relating to adding an
9 embryo as a protected person and subject to the protections of this section, establishing
10 the crimes of vehicular homicide, aggravated vehicular homicide, vehicular homicide in a
11 school zone, vehicular homicide in a construction zone, and establishing fines and
12 penalties related thereto, and establishing the nexus between a conviction of any of these
13 offenses and the revocation of a person’s driver’s license; also to amend and reenact
14 §17C-5-3 of the Code of West Virginia, 1931, as amended, relating to reckless driving and
15 updating and enhancing the fines and penalties relating thereto; also to amend and
16 reenact §17C-14-15 of the Code of West Virginia, 1931, as amended, relating to amending
17 the electronically distracted driving act to clarify that a person convicted of causing the
18 death of another due to a violation shall now be guilty of vehicular homicide; also to amend
19 and reenact §17E-1-13 of the Code of West Virginia, 1931, as amended, relating to
20 updating the commercial drivers license process to clarify that a conviction of an offense in
21 17C-5-1 shall disqualify a person from a commercial driver’s license; also to amend and
22 reenact §20-7-18a of the Code of West Virginia, 1931, as amended, relating to establishing
23 the crimes of homicide by operation of motorized watercraft, aggravated homicide by
24 operation of motorized watercraft, establishing fines and criminal penalties, and
25 suspension of privileges to operate a motorboat or other motorized vessel upon conviction;
26 also to amend and reenact §33-6A-1 of the Code of West Virginia, 1931, as amended,

27 relating to cancellation and nonrenewal of automobile insurance premiums and updating to
28 reflect the newly established crimes contained in §17C-5-1 of this code; also to amend and
29 reenact §33-6A-1 of the Code of West Virginia, 1931, as amended, relating to clarifying
30 that a conviction for a crime in the newly created §17C-5-1 of this code shall constitute a
31 basis for failure to renew an outstanding automobile liability or physical damage insurance
32 policy which has been in existence for two consecutive years; also to amend and reenact
33 §49-1-207 of the Code of West Virginia, 1931, as amended, relating to updating that
34 definitions in court actions involving juveniles to clarify that newly created criminal
35 provisions contained in §17C-5-1 are defined as a "Violation of a traffic law of West
36 Virginia"; also to amend and reenact §61-2-30 of the Code of West Virginia, 1931, as
37 amended, relating to recognition of an embryo or fetus as a distinct unborn victim of certain
38 crimes of violence against the person and clarifying that this section shall now apply to the
39 criminal offenses contained in §17C-5-1 of this code.

Be it enacted by the Legislature of West Virginia:

CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-3. Definitions.

1 As used in this article, the term:

2 (a) "Claimant" means any of the following persons, whether residents or nonresidents of
3 this state, who claim an award of compensation under this article:

4 (1) A victim, except the term "victim" does not include a nonresident of this state where the
5 criminally injurious act did not occur in this state;

6 (2) A dependent, spouse, or minor child of a deceased victim or, if the deceased victim is a
7 minor, the parents, legal guardians, and siblings of the victim;

(3) A third person, other than a collateral source, who legally assumes or voluntarily pays the obligations of a victim or a victim's dependent when the obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim;

(4) A person who is authorized to act on behalf of a victim, dependent, or a third person who is not a collateral source including, but not limited to, assignees, persons holding power of attorney or others who hold authority to make or submit claims in place of or on behalf of a victim, a dependent, or third person who is not a collateral source and if the victim, dependent, or third person who is not a collateral source is a minor or other legally incompetent person, their duly qualified fiduciary; and

(5) A person who is a secondary victim in need of mental health counseling due to the person's exposure to the crime committed whose award may not exceed \$5,000.

(b) "Collateral source" means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received or that is readily available to him or her from any of the following sources:

(1) The offender, including restitution received from the offender pursuant to an order by a court sentencing the offender or placing him or her on probation following a conviction in a criminal case arising from the criminally injurious act for which a claim for compensation is made;

(2) The government of the United States or its agencies, a state or its political subdivisions, or an instrumentality of two or more states;

(3) Social Security, Medicare, and Medicaid;

(4) State-required, temporary, nonoccupational disability insurance or other disability insurance;

(5) Workers' compensation;

(6) Wage continuation programs of an employer;

(7) Proceeds of a contract of insurance payable to the victim or claimant for loss that was sustained because of the criminally injurious conduct;

(8) A contract providing prepaid hospital and other health care services or benefits for disability; and

(9) That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim which exceeds \$25,000.

(c) "Criminally injurious conduct" means conduct that occurs or is attempted in this state, or in any state not having a victim compensation program, which poses a substantial threat of personal injury or death and is punishable by fine or imprisonment. "Criminally injurious conduct" also includes criminally injurious conduct committed outside of the United States against a resident of this state. "Criminally injurious conduct" does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle unless the person engaging in the conduct intended to cause personal injury or death or committed ~~negligent homicide~~ any offense contained within §17C-5-1 of this code, driving under the influence of alcohol, controlled substances or drugs, leaving the scene of the accident, or reckless driving.

(d) "Dependent" means an individual who received over half of his or her support from the victim. For the purpose of making this determination there shall be taken into account the amount of support received from the victim as compared to the entire amount of support the individual received from all sources including self-support. The term support includes, but is not limited to, food, shelter, clothing, medical and dental care and education. The term dependent includes a child of the victim born after his or her death.

(e) "Economic loss" means economic detriment consisting only of allowable expense, work loss, and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependents economic loss and a dependents replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment. For purposes of this article, the term economic loss includes a lost scholarship as defined in this section.

(f) "Allowable expense" includes the following:

(1) Reasonable charges incurred or to be incurred for reasonably needed medical care, including products, services, and accommodations related to medical and psychological care, prosthetic devices, eye glasses, dentures, rehabilitation, and other remedial treatment and care but does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home, or other institution engaged in providing nursing care and related services which is in excess of a reasonable and customary charge for semiprivate accommodations unless accommodations other than semiprivate accommodations are medically required;

(2) A total charge not in excess of \$10,000 for expenses in any way related to funerals, cremations and burials;

(3) Victim relocation costs not to exceed \$4,500;

(4) Reasonable travel expenses not to exceed \$5,000 for a claimant to attend court proceedings conducted for the prosecution of the offender;

(5) Reasonable travel expenses for a claimant to return a person who is a minor or incapacitated adult who has been unlawfully removed from this state to another state or country if the removal constitutes a crime under the laws of this state which may not exceed \$2,000 for expenses to another state or \$3,000 to another country; and

(6) Reasonable travel expenses for the transportation of a victim to and from a medical facility.

(g) "Work loss" means loss of income from work that the injured person would have performed if he or she had not been injured and expenses reasonably incurred or to be incurred by him or her to obtain services in lieu of those he or she would have performed for income. "Work loss" is reduced by income from substitute work actually performed or to be performed by him or her or by income he or she would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake. "Work loss" includes loss of income from work by the parent or legal guardian of a minor victim who must miss work to take care of the minor victim. "Work loss" also includes loss of income from work by the claimant, the

victim, or the parent or legal guardian of a minor victim who must miss work to attend court proceedings conducted for the prosecution of the offender.

(h) "Replacement services loss" means expenses reasonably incurred or to be incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed for the benefit of himself or herself or his or her family if he or she had not been injured. "Replacement services loss" does not include services an injured person would have performed to generate income.

(i) "Dependents' economic loss" means loss after a victim's death of contributions or things of economic value to his or her dependents but does not include services they would have received from the victim if he or she had not suffered the fatal injury. This amount is reduced by expenses avoided by the dependent due to the victim's death.

(j) "Dependents' replacement service loss" means loss reasonably incurred or to be incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he or she had not suffered the fatal injury. This amount is reduced by expenses avoided due to the victim's death, but which are not already subtracted in calculating a dependent's economic loss.

(k) "Victim" means the following:

A person who suffers personal injury or death as a result of any one of the following:

(A) Criminally injurious conduct;

(B) The good faith effort of the person to prevent criminally injurious conduct; or

(C) The good faith effort of the person to apprehend a person that the injured person has observed engaging in criminally injurious conduct or who the injured person has reasonable cause to believe has engaged in criminally injurious conduct immediately prior to the attempted apprehension.

(l) "Contributory misconduct" means any conduct of the claimant or of the victim through whom the claimant claims an award that is unlawful or intentionally tortious and that, without

112 regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal
113 relationship to the criminally injurious conduct that is the basis of the claim and includes the
114 voluntary intoxication of the claimant, either by the consumption of alcohol or the use of any
115 controlled substance, when the intoxication has a causal connection or relationship to the injury
116 sustained.

117 (m) "Lost scholarship" means a scholarship, academic award, stipend, student loan, or
118 other monetary scholastic assistance which had been awarded, conferred upon, or obtained by a
119 victim in conjunction with a post-secondary school educational program and which the victim is
120 unable to receive or use, in whole or in part, due to injuries received from criminally injurious
121 conduct.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 1A. DRIVER LICENSE COMPACT.

§17B-1A-1. Authorization.

1 Pursuant to authority granted by an act of the eighty-fifth Congress of the United States,
2 being public law six hundred eighty-four, approved August 20, 1958, the Governor of this state is
3 hereby authorized and directed to execute a compact on behalf of the State of West Virginia with
4 all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I. FINDINGS AND DECLARATION OF POLICY.

6 (a) The party states find that:

7 (1) The safety of their streets and highways is materially affected by the degrees of
8 compliance with state laws and local ordinances relating to the operation of motor vehicles.

9 (2) Violation of such a law or ordinance is evidence that the violator engages in conduct
10 which is likely to endanger the safety of persons and property.

11 (3) The continuance in force of a license to drive is predicated upon compliance with laws
12 and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is
13 operated.

14 (b) It is the policy of each of the party states to:

15 (1) Promote compliance with the laws, ordinances and administrative rules and regulations
16 relating to the operation of motor vehicles by their operators in each of the jurisdictions where such
17 operators drive motor vehicles.

18 (2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and
19 equitable by considering the overall compliance with motor vehicle laws, ordinances and
20 administrative rules and regulations as a condition precedent to the continuance or issuance of
21 any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in
22 any of the party states.

23 ARTICLE II. DEFINITIONS.

24 As used in this compact:

25 (a) "State" means a state, territory or possession of the United States, the District of
26 Columbia or the Commonwealth of Puerto Rico.

27 (b) "Home state" means the state which has issued and has the power to suspend or
28 revoke the use of the license or permit to operate a motor vehicle.

29 (c) "Conviction" means a conviction of any offense related to the use or operation of a
30 motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or
31 regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a
32 person charged with having committed any such offense, and which conviction or forfeiture is
33 required to be reported to the licensing authority.

34 ARTICLE III. REPORTS OF CONVICTION.

35 The licensing authority of a party state shall report each conviction of a person from
36 another party state occurring within its jurisdiction to the licensing authority of the home state of the

licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and shall include any special findings made in connection therewith.

ARTICLE IV. EFFECT OF CONVICTION.

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) ~~Manslaughter or negligent homicide, homicide, or any offense contained within §17C-5-1 of this code,~~ resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury to another.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subsection (a) of this article, such party state shall construe the denominations and descriptions appearing in subsection (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

ARTICLE V. APPLICATIONS FOR NEW LICENSES.

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrender such license.

ARTICLE VI. APPLICABILITY OF OTHER LAWS.

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

ARTICLE VII. COMPACT ADMINISTRATOR AND
INTERCHANGE OF INFORMATION.

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his or her state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII. ENTRY INTO FORCE AND WITHDRAWAL.

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX. CONSTRUCTION AND SEVERABILITY.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-5. Grounds for mandatory revocation of license by department.

The department shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses, when such conviction has become final: *Provided*, That if the convicted driver had not reached his or her nineteenth birthday at the time of the conduct for which the license is revoked under this

section, the license shall be revoked until the driver's nineteenth birthday, or the applicable statutory period of revocation, whichever is longer:

(1) ~~Manslaughter or negligent homicide, homicide, or any offense contained within §17C-5-1 of this code,~~ resulting from the operation of a motor vehicle;

(2) Any felony in the commission of which a motor vehicle is used;

(3) Failure to stop and render aid as required under the laws of this state in the event of involvement in a motor vehicle accident resulting in the death or personal injury of another;

(4) Perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(5) Conviction, or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of twenty-four months;

(6) Driving under the influence of alcohol, controlled substances or other drugs outside the State of West Virginia which conviction is under a municipal ordinance or statute of the United States or any other state of an offense which has the same elements as an offense described in ~~section two, article five, chapter seventeen-c~~ §17C-5-2 of this code; and

(7) Nothing herein shall prohibit the department from exercising its authority to revoke or suspend a person's license to drive a motor vehicle in this state, as provided in ~~chapter seventeen-c~~

Chapter 17C of this code.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-1. Negligent Vehicular homicide; aggravated vehicular homicide; vehicular homicide in a school zone; vehicular homicide in a construction zone; penalties; revocation of driving privileges upon conviction.

(a) When the death of any person, including an embryo or fetus as defined in §61-2-30 of this code, other than the person operating the motor vehicle, ensues within one year as a the

proximate result of injury ~~received~~ caused by the driving of any motor vehicle anywhere in this state by any person in reckless disregard ~~of~~ for the safety of others, the person so operating such vehicle shall be guilty of ~~negligent~~ vehicular homicide by recklessness.

(b) Any person convicted of ~~negligent~~ vehicular homicide shall be ~~punished by imprisonment for not more than one year or by fine of not less than \$100 nor more than \$1,000, or by both such fine and imprisonment.~~ guilty of a misdemeanor and upon conviction, shall be fined not less than \$1,000 nor more than \$10,000, confined in the jail for not more than one year, or both fined and confined.

~~(c) The commissioner shall revoke the license or permit to drive and any nonresident operating privilege of any person convicted of negligent homicide.~~

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, when the death of a person, including an embryo or fetus as defined in §61-2-30 of this code, other than the person operating the motor vehicle, occurs within one year as the proximate result of injury caused by the operation of any motor vehicle in this state in deliberate disregard for the safety of others, the person so operating such motor vehicle is guilty of the offense of aggravated vehicular homicide and upon conviction he or she shall be fined not more than \$20,000, or imprisoned in a state correctional facility for a definite term of years of not less than one nor more than five years, or both fined and imprisoned.

(d) For the purposes of this section, a person who acts with deliberate disregard for the safety of others if he or she has knowledge of facts or intentionally disregards facts that create high probability of injury to the safety or others and:

(1) deliberately proceeds to act in conscious or intentional disregard of the high degree of probability of injury to the safety of others; or

(2) deliberately proceeds to act with indifference to the high probability of injury to or the safety of others.

28 (e) When the death of any person, including an embryo or fetus as defined in §61-2-30 of
29 this code, other than the person operating the motor vehicle, ensues within one year as the
30 proximate result of injury caused by the driving of any vehicle in a school zone, as set forth in
31 §17C-6-1 of this code, during school recess or while children are going to or leaving school during
32 opening or closing hours, by any person in reckless disregard for the safety of others, the person
33 so operating such vehicle shall be guilty of vehicular homicide in a school zone.

34 (f) Any person convicted of vehicular homicide in a school zone shall be guilty of a felony
35 and upon conviction, shall be fined not less than \$2,500 nor more than \$5,000, or imprisoned in a
36 state correctional facility for a definite term of years of not less than two nor more than 10 years or,
37 or both fined and imprisoned.

38 (g) When the death of any person, including an embryo or fetus as defined in §61-2-30 of
39 this code, other than the person operating the motor vehicle, ensues within one year as the
40 proximate result of injury caused by the driving of any vehicle where street or highway construction
41 work is being performed consistent with the provisions of §17C-3-4b of this code, by any person in
42 reckless disregard for the safety of others, the person so operating such vehicle shall be guilty of
43 vehicular homicide in a construction zone.

44 (h) Any person convicted of vehicular homicide in a construction zone shall be guilty of a
45 felony and upon conviction, shall be fined not less than \$2,500 nor more than \$5,000, or
46 imprisoned in a state correctional facility for a definite term of years of not less than two nor more
47 than 10 years or, or both.

48 (i) The commissioner shall revoke the license or permit to drive and any nonresident
49 operating privilege of any person convicted of any offense contained within this section of this
50 code.

§17C-5-3. Reckless driving; penalties.

1 (a) Any person who drives any vehicle upon any street or highway, or upon any residential
2 street, or in any parking area, or upon the ways of any institution of higher education, whether

public or private, or upon the ways of any state institution, or upon the property of any county boards of education, or upon any property within the state park and public recreation system established by the Director of the Division of Natural Resources pursuant to ~~section three, article four, chapter twenty~~ §20-4-3 of this code in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(b) The provisions of subsection (a) of this section shall not apply to those areas which have been temporarily closed for racing sport events or which may be set aside by the Director of the Division of Natural Resources within the state park and recreation system for exclusive use by motorcycles or other recreational vehicles.

(c) Every person convicted of reckless driving is guilty of a misdemeanor and, upon a first conviction thereof, shall be confined in jail for a period of not less than five days nor more than ninety days, or fined not less than \$25 nor more than \$500, or both, and upon conviction of a second or subsequent conviction thereof, shall be confined in jail not less than ten days nor more than six months, or fined not less than \$50 nor more than \$1,000, or both.

(d) Notwithstanding the provisions of subsection (c) of this section, any person convicted of a violation of subsection (a) of this section who in doing so proximately causes another to suffer serious bodily injury shall, upon conviction, be confined in jail not less than ~~ten~~ 30 days nor more than ~~six months~~ one year or fined not less than \$50 nor more than \$1,000, or both.

(e) For purposes of subsection (d) of this section, "serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

ARTICLE	14.	MISCELLANEOUS	RULES.
§17C-14-15.Electronically	Distracted	Driving	Act.

(a) Definitions — As used in this section:

(1) "Smartwatch" means a wearable computer that provides a local touchscreen for daily use, associated with applications, and connected to a cellular or Wi-Fi network;

(2) "Stand-alone electronic device" means a portable device other than a wireless telecommunications device which stores audio or video data files to be retrieved on demand by a user;

(3) "Utility services" means and includes electric, natural gas, water, wastewater, cable, telephone, or telecommunications services, or the repair, location, relocation, improvement, or maintenance of utility poles, transmission structures, pipes, wires, fibers, cables, easements, rights-of-way, or associated infrastructure;

(4) "Wireless telecommunications device" means one of the following portable devices:

(A) A cellular telephone;

(B) A portable telephone;

(C) A text-messaging device;

(D) A personal digital assistant;

(E) A stand-alone computer including, but not limited to, a tablet, laptop, or notebook computer;

(F) A handheld global positioning system receiver;

(G) A device capable of displaying a video, movie, broadcast television image, or visual image;

(H) Any substantially similar portable wireless device that is used to initiate or receive communication, information, or data;

(I) "Wireless telecommunications device" does not include a smartwatch, any type of radio including but not limited to, radios used by first responders or school bus operators; citizens band radio or radio hybrid; commercial two-way radio communication device or its functional equivalent; subscription-based emergency communication device; prescribed medical device; amateur or

ham radio device, or any built-in vehicle equipment for security, navigation, communications, or remote diagnostics; and

(5) "Voice-operated or hands-free feature or function" means a feature or function that allows a person to use a wireless telecommunications device without the use of either hand, except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.

(b) The driver of a school bus shall not use or operate a wireless telecommunications device or two-way radio while loading or unloading passengers.

(c) The driver of a school bus shall not use or operate a wireless telecommunications device while the bus is in motion nor while stationary in traffic nor at a traffic control signal, unless that device is being used in a similar manner as a two-way radio to allow live communication between the driver and school officials or public safety officials.

(d) A driver shall exercise due care in operating a motor vehicle on the highways of this state and shall not engage in any actions involving any stand-alone electronic device or wireless telecommunications device that distracts such driver from the safe operation of the vehicle.

(e) While operating a motor vehicle on any street, highway, or property open to the public for vehicular traffic in this state, no driver may:

(1) Physically hold or support, with any part of his or her body, a wireless communication device or stand-alone electronic device: *Provided*, That such prohibition shall not apply to the wearing of a smartwatch;

(2) Write, send, or read any text-based communication including, but not limited to, a text message, instant message, e-mail, or social media interaction on a wireless telecommunications device or stand-alone electronic device: *Provided*, That such prohibition shall not apply to a voice-operated or hands-free communication feature which is automatically converted by such device to be sent as a message in a written form;

(3) Make any communication involving a wireless telecommunications device, including a phone call, voice message, or one-way voice communication: *Provided*, That such prohibition shall not apply to a voice operated or hands-free communication feature or function;

(4) Engage in any form of electronic data retrieval or electronic data communication on a wireless telecommunications device or stand-alone electronic device;

(5) Manually enter letters, numbers, or symbols into any website, search engine, or application on a wireless telecommunications device or stand-alone electronic device;

(6) Watch a video or movie on a wireless telecommunications device or standalone electronic device other than watching data related to the navigation of such vehicle;

(7) Record, post, send, or broadcast video, including a video conference on a wireless telecommunications device or stand-alone electronic device: *Provided*, That such prohibition does not apply to electronic devices used for the sole purpose of continuously recording or broadcasting video within or outside of the motor vehicle; or

(8) Actively play any game on a wireless telecommunications device or stand-alone electronic device.

(f) While operating a commercial motor vehicle on any highway of this state, no driver may:

(1) Use more than a single button on a wireless telecommunications device to initiate or terminate a voice communication; or

(2) Reach for a wireless telecommunications device or stand-alone electronic device in such a manner that requires the driver to:

(A) No longer be in a seated driving position; or

(B) No longer be properly restrained by a safety belt.

(g) Each violation of this section shall constitute a separate offense.

(h) It is a misdemeanor for any driver to violate any of the provisions of this section. Every driver convicted of a misdemeanor for a violation of any of the provisions of this section shall be punished as follows:

(1) For a first conviction with no prior conviction of and no plea of no contest accepted to a charge of violating this section within the previous 24-month period, as measured from the date of any prior conviction or plea, a fine of not more than \$100;

(2) For a second conviction within a 24-month period, as measured from the date of any prior conviction or plea, a fine of not more than \$200;

(3) For a third or subsequent conviction within a 24-month period, as measured from the date of any prior conviction or plea:

(A) A fine of not more than \$350;

(B) Three points on the driver's record maintained by the Division of Motor Vehicles; and

(C) At the court's discretion, suspension of the driver's license for a period of 90 days;

(4) Any driver who causes physical harm to property as the proximate result of committing a violation of this section is guilty of a misdemeanor punishable up to 30 days in jail or a fine not less than \$100 and not more than \$500;

(5) Any driver who causes serious physical harm to another person as the proximate result of committing a violation of this section is guilty of a misdemeanor and shall be fined not less than \$500 nor more than \$1,000, or confined in jail up to 120 days, or both fined and confined, and such driver shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year; and

(6) Any driver who causes the death of another as the proximate result of committing a violation of this section is guilty of ~~negligent homicide~~ vehicular homicide and shall be punished in accordance with §17C-5-1 (a) of this code.

(i) The Department of Transportation shall cause to be erected signs upon any highway entering the state of West Virginia on which a welcome to West Virginia sign is posted, and any other highway where the Division of Highways deems appropriate, posted at a distance of not more than one mile from each border crossing, each sign to bear an inscription clearly

communicating to motorists entering the state that texting, or the use of a wireless communication device without hands-free equipment, is illegal within this state.

(j) Nothing contained in this section shall be construed to authorize seizure of a cell phone or electronic device by any law-enforcement agency.

(k) No policy providing liability coverage for personal lines insurance shall contain a provision which may be used to deny coverage or exclude payment of any legal damages recoverable by law for injuries proximately caused by a violation of this section, as long as such amounts are within the coverage limits of the insured.

(l) This section shall not apply to:

(1) Drivers reporting to state, county, or local authorities a traffic accident, medical emergency, fire, an actual or potential criminal or delinquent act, or a road condition that causes an immediate and serious traffic or safety hazard;

(2) An employee or contractor of a utility services provider acting within the scope of his or her employment while responding to a utility emergency;

(3) A driver operating a commercial vehicle while using a mobile data terminal that transmits and receives data;

(4) A law-enforcement officer, firefighter, emergency medical services personnel, ambulance driver, or other similarly employed public safety first responder during the performance of his or her official duties; or

(5) While in a motor vehicle that is lawfully parked.

(m) This section does not supersede the provisions of §17B-2-3a of this code, or any more restrictive provisions for drivers of commercial motor vehicles prescribed either by the provisions of §17E-1-1 *et seq.* of this code or by federal law or rule.

(n) The amendments to this section adopted during the regular session of the Legislature in 2023, shall be known as the Robin W. Ames Memorial Act.

ARTICLE 19. PARTIES, PROCEDURE UPON ARREST AND REPORTS IN CRIMINAL

CASES.

§17C-19-3. When person arrested must be taken immediately before a magistrate or court.

(a) Whenever any person is arrested for any violation of this chapter punishable as a misdemeanor, the arrested person shall be immediately taken before a magistrate or court within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made, in any of the following cases:

(1) When a person arrested demands an immediate appearance before a magistrate or court;

(2) When the person is arrested upon a charge of ~~negligent homicide~~ alleging a misdemeanor criminal offense contained in §17C-5-1 of this code;

(3) When the person is arrested upon a charge of driving while under the influence of alcohol, or under the influence of any controlled substance, or under the influence of any other drug, or under the combined influence of alcohol and any controlled substance or any other drug;

(4) When the person is arrested upon a charge of failure to stop in the event of an accident causing death, personal injury or damage to property;

(5) When the person is arrested upon a charge of violating section fourteen, article seventeen of this chapter relating to weight violations, except as otherwise provided in that section;

(6) When the person arrested is a resident of a state that has not entered into a nonresident violator compact with this state;

(7) In any other event when the person arrested refuses to accept the written notice to appear in court as his or her promise to appear in court or to comply with the terms of the written notice to appear in court as provided in section four of this article; and

(8) When a person is arrested for driving with a suspended or revoked driver's license for miscellaneous reasons. *Provided*, That when a person is arrested for driving with a suspended or

25 revoked driver's license for miscellaneous reasons, the arresting officer may issue a charge by
26 citation if a magistrate or judge is not on duty or reasonably available.

27 (b) When the person arrested is a resident of a state that has entered into a nonresident
28 violator compact with this state, the arresting officer shall issue the person a written notice as
29 provided for in section four of this article and may not take the person immediately before a
30 magistrate or court, except under the terms of the compact or under the circumstances set forth in
31 subsection (a) of this section.

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

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-13. Disqualification.

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

5 (1) For the purposes of determining first and subsequent violations of the offenses listed in
6 this section, each conviction resulting from a separate incident includes convictions for offenses
7 committed in a commercial motor vehicle or a noncommercial motor vehicle.

8 (2) Any person disqualified from operating a commercial motor vehicle for life under the
9 provisions of this chapter for offenses described in subdivisions (1), (2), (3), (4) and (6), subsection
10 (b) of this section is eligible for reinstatement of privileges to operate a commercial motor vehicle
11 after 10 years and after completion of the Safety and Treatment Program or other appropriate
12 program prescribed by the division. Any person whose lifetime disqualification has been amended
13 under the provisions of this subdivision, and who is subsequently convicted of a disqualifying
14 offense described in subdivisions (1) through (7), inclusive, subsection (b) of this section, is not

eligible for reinstatement. Any person disqualified from operating a commercial motor vehicle for life under subsection (n) of this section is not eligible for reinstatement.

(3) Any person who committed a disqualifying offense contained in paragraph (B) or (E), subdivision (1), subsection (b) of this section prior to obtaining a commercial driver's license, and who committed the disqualifying offense more than 10 years before he or she applied for a commercial driver's license, and who has completed the Safety and Treatment Program or other appropriate program prescribed by the division, shall be considered to have served the period of disqualification and is eligible to obtain a commercial driver's license so long as all other eligibility requirements contained in §17E-1-9 and §17E-1-10 of this code are satisfied.

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

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

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

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

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

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

(C) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be

40 placarded under 49 C. F. R. Part §172, Subpart F, a driver is disqualified from operating a
41 commercial motor vehicle for a period of three years.

42 (D) For a second conviction or for refusal to submit to any designated secondary chemical
43 test in a separate incident of any combination of offenses in this subsection while operating a
44 commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for
45 life.

46 (E) For a second conviction or refusal to submit to any designated secondary chemical test
47 in a separate incident of any combination of offenses in this subsection while operating a
48 noncommercial motor vehicle, a commercial motor vehicle license holder is disqualified from
49 operating a commercial motor vehicle for life.

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

52 (A) For a first conviction or for refusal to submit to any designated secondary chemical test
53 while operating a commercial motor vehicle, a driver is disqualified from operating a commercial
54 motor vehicle for one year.

55 (B) For a first conviction or for refusal to submit to any designated secondary chemical test
56 while operating a commercial motor vehicle transporting hazardous materials required to be
57 placarded under 49 C. F. R. Part §172, Subpart F, a driver is disqualified from operating a
58 commercial motor vehicle for three years.

59 (C) For a second conviction or refusal to submit to any designated secondary chemical test
60 in a separate incident of any combination of offenses in this subsection while operating a
61 commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for
62 life.

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

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

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

71 (C) For the first conviction or for refusal to submit to any designated secondary chemical
72 test while operating a commercial motor vehicle transporting hazardous materials required to be
73 placarded under 49 C. F. R. Part §172, Subpart F (2004), a driver is disqualified from operating a
74 commercial motor vehicle for a period of three years.

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

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

83 (4) Leaving the scene of an accident;

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

86 (B) For the first conviction while operating a noncommercial motor vehicle, a commercial
87 driver's license holder is disqualified for one year.

88 (C) For the first conviction while operating a commercial motor vehicle transporting
89 hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F (2004), a
90 driver is disqualified from operating a commercial motor vehicle for a period of three years.

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

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

97 (5) Using a motor vehicle in the commission of any felony as defined in §17E-1-3 of this
98 code; except as set forth specifically in subsection (n) of this section;

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

101 (B) For the first conviction while operating a noncommercial motor vehicle, a commercial
102 driver's license holder is disqualified from operating a commercial motor vehicle for one year.

103 (C) For the first conviction while operating a commercial motor vehicle transporting
104 hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F (2004), a
105 driver is disqualified from operating a commercial motor vehicle for a period of three years.

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

109 (E) For a second conviction in a separate incident of any combination of offenses in this
110 subsection while operating a noncommercial motor vehicle, a commercial motor vehicle license
111 holder is disqualified from operating a commercial motor vehicle for life.

112 (6) Operating a commercial motor vehicle when, as a result of prior violations committed
113 operating a commercial motor vehicle, the driver's privilege to operate a motor vehicle has been
114 suspended, revoked, or canceled, or the driver's privilege to operate a commercial motor vehicle
115 has been disqualified.

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

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

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

(7) Causing a fatality through the negligent operation of a commercial motor vehicle, the operation of a commercial motor vehicle in reckless disregard for the safety of others, or the operation of a commercial motor vehicle in deliberate disregard for the safety of others, including, but not limited to, the crimes of motor vehicle manslaughter, homicide, ~~and negligent homicide~~ vehicular homicide, aggravated vehicular homicide, vehicular homicide in a school zone, vehicular homicide in a construction zone as defined in §17B-3-5, and §17C-5-1 of this code;

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

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

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

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

(1) Speeding excessively involving any speed of 15 miles per hour or more above the posted speed limit;

141 (A) For a second conviction of any combination of offenses in this subsection in a separate
142 incident within a three-year period while operating a commercial motor vehicle, a driver is
143 disqualified from operating a commercial motor vehicle for a period of 60 days.

144 (B) For a second conviction of any combination of offenses in this section in a separate
145 incident within a three-year period while operating a noncommercial motor vehicle, if the
146 conviction results in the suspension, revocation, or cancellation of the commercial driver's license
147 holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified
148 from operating a commercial motor vehicle for a period of 60 days.

149 (C) For a third or subsequent conviction of any combination of the offenses in this
150 subsection in a separate incident in a three-year period while operating a commercial motor
151 vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 120 days.

152 (D) For a third or subsequent conviction of any combination of offenses in this subsection
153 in a separate incident within a three-year period while operating a noncommercial motor vehicle, if
154 the conviction results in the suspension, revocation, or cancellation of the commercial driver's
155 license holder's privilege to operate any motor vehicle, a commercial driver's license holder shall
156 be disqualified from operating a commercial motor vehicle for a period of 120 days.

157 (2) Reckless driving as defined in §17C-5-3 of this code, careless or negligent driving,
158 including, but not limited to, the offenses of driving a motor vehicle in willful or wanton disregard for
159 the safety of persons or property;

160 (A) For a second conviction of any combination of offenses in this subsection in a separate
161 incident within a three-year period while operating a commercial motor vehicle, a driver is
162 disqualified from operating a commercial motor vehicle for a period of 60 days.

163 (B) For a second conviction of any combination of offenses in this section in a separate
164 incident within a three-year period while operating a noncommercial motor vehicle, if the
165 conviction results in the suspension, revocation, or cancellation of the commercial driver's license

holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 120 days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

(3) Making improper or erratic traffic lane changes;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 120 days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's

license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

(4) Following the vehicle ahead too closely;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 120 days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

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

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the

conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 120 days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial motor vehicle license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

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

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 120 days.

(7) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession except that any person who provides proof of possession of a commercial driver's license to the enforcement agency that issued the citation by the court appearance or fine payment deadline is not guilty of this offense;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

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

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

(9) Driving a commercial motor vehicle while engaged in texting and convicted pursuant to §17E-1-14a of this code or similar law of this or any other jurisdiction or 49 C. F. R. §392.80;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

(d) Any person convicted of operating a commercial motor vehicle in violation of any federal, state, or local law or ordinance pertaining to railroad crossing violations described in subdivisions (1) through (6), inclusive, of this subsection is disqualified from operating a commercial motor vehicle for the period of time specified;

(1) Failing to slow down and check that the tracks are clear of an approaching train, if not required to stop in accordance with the provisions of §17C-12-3 of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for 120 days; and

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

(2) Failing to stop before reaching the crossing, if the tracks are not clear, if not required to stop in accordance with the provisions of §17C-12-1 of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for 120 days; and

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

(3) Failing to stop before driving onto the crossing, if required to stop in accordance with the provisions of §17C-12-3 of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, the driver is disqualified from operating a commercial motor vehicle for 120 days; and

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

(4) Failing to have sufficient space to drive completely through the crossing without stopping in accordance with the provisions of §17C-12-3 of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for 120 days; and

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

(5) Failing to obey a traffic control device or the directions of an enforcement official at the crossing in accordance with the provisions of §17C-12-1 of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for 120 days; and

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

(6) Failing to negotiate a crossing because of insufficient undercarriage clearance in accordance with the provisions of §17C-12-3 of this code.

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for 120 days; and

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

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

(1) If convicted of violating a driver or vehicle out-of-service order while transporting nonhazardous materials;

(A) For the first conviction of violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for 180 days.

(B) For a second conviction in a separate incident within a 10-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for two years.

(C) For a third or subsequent conviction in a separate incident within a 10-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for three years.

(2) If convicted of violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F (2004) or while operating a vehicle designed to transport 16 or more passengers including the driver;

(A) For the first conviction of violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for 180 days.

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

(C) For a third or subsequent conviction in a separate incident within a 10-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for three years.

(f) After disqualifying, suspending, revoking, or canceling a commercial driver's license, the division shall update its records to reflect that action within 10 days.

(g) In accordance with the provisions of 49 U. S. C. §313119(a)(19)(2004), and 49 C. F. R. §384.226 (2004), notwithstanding the provisions of §61-11-25 of this code, no record of conviction, revocation, suspension, or disqualification related to any type of motor vehicle traffic control offense, other than a parking violation, of a commercial driver's license holder or a person operating a commercial motor vehicle may be masked, expunged, deferred, or be subject to any diversion program.

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

(i) In accordance with the provisions of 49 C. F. R. §391.15(b), a driver is disqualified from operating a commercial motor vehicle for the duration of any suspension, revocation, or

cancellation of his or her driver's license or privilege to operate a motor vehicle by this state or by any other state or jurisdiction until the driver complies with the terms and conditions for reinstatement set by this state or by another state or jurisdiction.

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

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

(l) In accordance with 49 C. F. R. §391.41, a driver is disqualified from operating a commercial motor vehicle if the driver is not physically qualified to operate a commercial motor vehicle or does not possess a valid medical certification status.

(m) In accordance with the provisions of 49 C. F. R. §383.73(g), the division shall disqualify a driver's privilege to operate a commercial motor vehicle if the division determines that the licensee has falsified any information or certifications required under the provisions of 49 C. F. R. 383 Subpart J or 49 C. F. R. §383.71(a) for 60 days in addition to any other penalty prescribed by this code.

(n) Lifetime Disqualification Without Reinstatement.—

(1) Controlled substance violations — An individual who uses a commercial motor vehicle in committing a felony involving manufacturing, distributing, or dispensing a controlled substance, or involving possession with intent to manufacture, distribute, or dispense a controlled substance is disqualified from operating a commercial motor vehicle for life and is not eligible for reinstatement.

(2) Human trafficking violations — An individual who uses a commercial motor vehicle in committing a felony involving an act or practice described in paragraph (9) of section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102(9)) is disqualified from operating a commercial motor vehicle for life and is not eligible for reinstatement.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-18a. Negligent Homicide by operation of motorized watercraft; aggravated homicide by operation of motorized watercraft; penalties; suspension of privileges to operate a motorboat or other motorized vessel upon conviction.

(a) When the death of any person, including an embryo or fetus as defined in §61-2-30 of this code, ensues within one year as a proximate result of injury ~~received~~ caused by operating any motorboat, jet ski or other motorized vessel anywhere in this state by any person in reckless disregard ~~of~~ for the safety of others, the person so operating the motorboat, jet ski or other motorized vessel is guilty of negligent homicide by operation of motorized watercraft.

(b) Any person convicted of ~~negligent homicide shall be punished by imprisonment in the county or regional jail for not more than one year or by fine of not less than \$100 nor more than \$1,000, or by both fine and imprisonment~~ homicide by operation of motorized watercraft shall be guilty of a felony and upon conviction, shall be committed to the custody of the Division of Corrections and Rehabilitation for a definite term of years of not less than one nor more than five

11 years or, in the discretion of the court, confined in the regional jail for not more than one year, or
12 fined not less than \$1,000 nor more than \$10,000, or both.

13 (c) The director shall suspend the privilege to operate a motorboat or other motorized
14 vessel in this state for a period of five years from the date of conviction. Notwithstanding the
15 provisions of this section, when the death of a person, including an embryo or fetus as defined in
16 §61-2-30 of this code, other than the person operating the motorboat, jet ski or other motorized
17 vessel occurs within one year as the proximate result of injury caused by the operation of any
18 motorboat, jet ski or other motorized vessel in this state in deliberate disregard for the safety of
19 others, the person so operating such motorboat, jet ski or other motorized vessel is guilty of the
20 offense of aggravated homicide by use of motorized watercraft and upon conviction he or she shall
21 be fined not more than \$20,000 or imprisoned in a state correctional facility for not less than two
22 nor more than 10 years, or both fined and imprisoned.

1 (d) For the purposes of this section, a person who acts with deliberate disregard for the
2 safety of others if he or she has knowledge of facts or intentionally disregards facts that create high
3 probability of injury to the safety or others and:

4 (1) deliberately proceeds to act in conscious or intentional disregard of the high degree of
5 probability of injury to the safety of others; or

6 (2) deliberately proceeds to act with indifference to the high probability of injury to or the
7 safety of others;

8 (e) The director shall suspend the privilege to operate a motorboat or other motorized
9 vessel in this state for a period of five years from the date of conviction.

CHAPTER 33. INSURANCE.

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

1 (a) No insurer once having issued or delivered a policy providing automobile liability
2 insurance for a private passenger automobile may, after the policy has been in effect for sixty days,
3 or in case of renewal effective immediately, issue or cause to issue a notice of cancellation during
4 the term of the policy except for one or more of the reasons specified in this section:

5 (1) The named insured fails to make payments of premium for the policy or any installment
6 of the premium when due;

7 (2) The policy is obtained through material misrepresentation;

8 (3) The insured violates any of the material terms and conditions of the policy;

9 (4) The named insured or any other operator, either residing in the same household or who
10 customarily operates an automobile insured under the policy:

11 (A) Has had his or her operator's license suspended or revoked during the policy period
12 including suspension or revocation for failure to comply with the provisions of article five-a, chapter
13 seventeen-c of this code regarding consent for a chemical test for intoxication: *Provided, That*
14 when a license is suspended for sixty days by the Commissioner of the Division of Motor Vehicles
15 because a person drove a motor vehicle while under the age of twenty-one years with an alcohol
16 concentration in his or her blood of two hundredths of one percent or more, by weight, but less than
17 eight hundredths of one percent, by weight, pursuant to subsection (l), section two of said article,
18 the suspension may not be grounds for cancellation; or

19 (B) Is or becomes subject to epilepsy or heart attacks and the individual cannot produce a
20 certificate from a physician testifying to his or her ability to operate a motor vehicle; or

21 (5) The named insured or any other operator, either residing in the same household or who
22 customarily operates an automobile insured under such policy, is convicted of or forfeits bail during
23 the policy period for any of the following reasons:

24 (A) Any felony, or assault, involving the use of a motor vehicle;

25 (B) ~~Negligent homicide arising out of the operation of a motor vehicle~~ Any offense
26 contained within §17C-5-1 of this code;

(C) Operating a motor vehicle while under the influence of alcohol or of any controlled substance or while having an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;

(D) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting it as required by law;

(E) Theft of a motor vehicle or the unlawful taking of a motor vehicle;

(F) Making false statements in an application for a motor vehicle operator's license; or

(G) Three or more moving traffic violations committed within a period of twelve months, each of which results in three or more points being assessed on the driver's record by the Division of Motor Vehicles, whether or not the insurer renewed the policy without knowledge of all such violations. Notice of any cancellation made pursuant to this subsection shall be mailed to the named insured either during the current policy period or during the first full policy period following the date that the third moving traffic violation is recorded by the Division of Motor Vehicles.

(b) Except as provided in subsections (c) and (d), no insurer may cancel a policy of automobile liability insurance without first giving the insured thirty days' notice of its intention to cancel. Notice of cancellation shall either be sent by first class mail to the named insured at the address supplied on the application for insurance, or by email or other electronic means if at the request of the policyholder in accordance with the Uniform Electronic Transactions Act as codified in chapter thirty-nine-a of this code, and shall state the effective date of the cancellation and provide a written explanation of the specific reason for the cancellation.

(c) If, pursuant to subsection (a) of this section, an insurer cancels a policy of automobile liability insurance for the failure of the named insured to make payments of premium for the policy or any installment of the premium when due, then the insurer shall first give the insured at least fourteen days' notice of its intention to cancel. Notice of cancellation shall be sent by first class mail to the named insured at the address supplied on the application for insurance, or by email or other electronic means if at the request of the policyholder in accordance with the Uniform

Electronic Transactions Act as codified in chapter thirty-nine-a of this code, and shall state the effective date of the cancellation and provide a written explanation of the specific reason for the cancellation. The notice period provided herein shall begin to run on the date mailed and payment shall be deemed accomplished by depositing in first class mail valid payment on or before the expiration date of the fourteen day notice period.

(d) If a named insured fails to make the initial payment of premium or any initial installment of the premium after the initial issuance of an automobile liability insurance policy, the insurance policy is voidable from the effective date and time the policy was issued: *Provided*, That the insurer shall send the insured written notice that the policy will be voided absent payment within ten days of any amounts due under the terms of the policy. Such notice shall either be sent by first class mail to the named insured at the address supplied on the application for insurance, or by email or other electronic means if at the request of the policyholder in accordance with the Uniform Electronic Transactions Act as codified in chapter thirty-nine-a of this code, and shall explain the specific reason for the voidance.

§33-6A-4. Advance notice of nonrenewal required; assigned risk policies; reasons for nonrenewal; hearing and review after nonrenewal.

(a) No insurer shall fail to renew an outstanding automobile liability or physical damage insurance policy unless the nonrenewal is preceded by at least forty-five days advance notice to the named insured of the insurer's election not to renew the policy: *Provided*, That subject to this section, nothing contained in this article shall be construed to prevent an insurer from refusing to issue an automobile liability or physical damage insurance policy upon application to the insurer, nor shall any provision of this article be construed to prevent an insurer from refusing to renew a policy upon expiration, except as to the notice requirements of this section, and except further as to those applicants lawfully submitted pursuant to the West Virginia assigned risk plan.

(b) An insurer may not fail to renew an outstanding automobile liability or physical damage insurance policy which has been in existence for two consecutive years or longer except for the following reasons:

(1) The named insured fails to make payments of premium for the policy or any installment of the premium when due;

(2) The policy is obtained through material misrepresentation;

(3) The insured violates any of the material terms and conditions of the policy;

(4) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy:

(A) Has had his or her operator's license suspended or revoked during the policy period; or

(B) Is or becomes subject to a physical or mental condition that prevents the insured from operating a motor vehicle, and the individual cannot produce a certificate from a physician testifying to his or her ability to operate a motor vehicle;

(5) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy, is convicted of or forfeits bail during the policy period for any of the following reasons:

(A) Any felony, or assault, involving the use of a motor vehicle;

(B) ~~Negligent homicide arising out of the operation of a motor vehicle~~ Any offense contained within §17C-5-1 of this code;

(C) Operating a motor vehicle while under the influence of intoxicating liquor or of any narcotic drug;

(D) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting it as required by law;

(E) Theft of a motor vehicle or the unlawful taking of a motor vehicle; or

(F) Making false statements in an application for a motor vehicle operator's license;

(6) The named insured or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy, is convicted of or forfeits bail during the policy period for two or more moving traffic violations committed within a period of twelve months, each of which results in three or more points being assessed on the driver's record by the Division of Motor Vehicles, whether or not the insurer renewed the policy without knowledge of all of the violations: *Provided*, That an insurer that makes an election pursuant to section four-b of this article to issue all nonrenewal notices pursuant to this section, may nonrenew an automobile liability or physical damage insurance policy if the named insured, or any other operator, either residing in the same household or who customarily operates an automobile insured under the policy is convicted of or forfeits bail during the policy period for two or more moving traffic violations committed within a period of twenty-four months, each of which occurs on or after July 1, 2004, and after the date that the insurer makes an election pursuant to section four-b of this article, and results in three or more points being assessed on the driver's record by the Division of Motor Vehicles, whether or not the insurer renewed the policy without knowledge of all of the violations. Notice of any nonrenewal made pursuant to this subdivision shall be mailed to the named insured either during the current policy period or during the first full policy period following the date that the second moving traffic violation is recorded by the Division of Motor Vehicles;

(7) The named insured or any other operator either residing in the same household or who customarily operates an automobile insured under the policy has had a second at-fault motor vehicle accident within a period of twelve months, whether or not the insurer renewed the policy without knowledge of all of the accidents: *Provided*, That an insurer that makes an election pursuant to section four-b of this article to issue all nonrenewal notices pursuant to this section, may nonrenew an automobile liability or physical damage insurance policy under this subsection if the named insured or any other operator either residing in the same household or who customarily operates an automobile insured under such policy has had two at-fault motor vehicle accidents within a period of thirty-six months, each of which occurs after July 1, 2004, and after the date that

the insurer makes an election pursuant to section four-b of this article, and results in a claim paid by the insurer for each accident, whether or not the insurer renewed the policy without knowledge of all of the accidents. Notice of any nonrenewal made pursuant to this subsection shall be mailed to the named insured either during the current policy period or during the first full policy period following the date of the second accident; or

(8) The insurer ceases writing automobile liability or physical damage insurance policies throughout the state after submission to and approval by the commissioner of a withdrawal plan or discontinues operations within the state pursuant to a withdrawal plan approved by the commissioner.

(c) An insurer that makes an election pursuant to section four-b of this article to issue all nonrenewal notices pursuant to this section shall not fail to renew an automobile liability or physical damage insurance policy when an operator other than the named insured has violated the provisions of subdivision (6) or (7), subsection (b) of this section, if the named insured, by restrictive endorsement, specifically excludes the operator who violated the provision. An insurer issuing a nonrenewal notice informing the named insured that the policy will be nonrenewed for the reason that an operator has violated the provisions of subdivision (6) or (7), subsection (b) of this section, shall at that time inform the named insured of his or her option to specifically exclude the operator by restrictive endorsement and shall further inform the named insured that upon obtaining the restrictive endorsement, the insurer will renew the policy or rescind the nonrenewal absent the existence of any other basis for nonrenewal set forth in this section.

(d) A notice provided under this section shall state the specific reason or reasons for nonrenewal and shall advise the named insured that nonrenewal of the policy for any reason is subject to a hearing and review as provided for in section five of this article. Cost of the hearing shall be assessed against the losing party but shall not exceed \$75. The notice must also advise the insured of possible eligibility for insurance through the West Virginia assigned risk plan.

(e) Notwithstanding the provisions of subsection (a) of this section, the insurer shall reinstate any automobile liability or physical damage insurance policy that has not been renewed due to the insured's failure to pay the renewal premium when due if:

(1) None of the other grounds for nonrenewal as set forth in this section exist; and

(2) The insured makes an application for reinstatement within forty-five days of the original expiration date of the policy. If a policy is reinstated as provided for in this paragraph, then the coverage afforded shall not be retroactive to the original expiration date of the policy: *Provided*, That such policy shall be effective on the reinstatement date at the current premium levels offered by the company and shall not be afforded the protections of this section relating to renewal of an outstanding automobile liability or physical damage insurance policy that has been in existence for at least two consecutive years.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-207. Definitions related to court actions.

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, court actions, except in those instances where a different meaning is provided or the context in which the word is used clearly indicates that a different meaning is intended.

“Court” means the circuit court of the county with jurisdiction of the case or the judge in vacation unless otherwise specifically provided.

“Court appointed special advocate (CASA) program” means a community organization that screens, trains and supervises CASA volunteers to advocate for the best interests of children who are involved in abuse and neglect proceedings section one hundred two, article three of this chapter.

“Extrajudicial Statement” means any utterance, written or oral, which was made outside of court.

“Juvenile referee” means a magistrate appointed by the circuit court to perform the functions expressly prescribed for a referee under the provisions of this chapter.

“Multidisciplinary team” means a group of professionals and paraprofessionals representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited to, medical, educational, childcare and law-enforcement personnel, social workers, psychologists and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and follow-up for both parents and children.

“Community team” means a multidisciplinary group which addresses the general problem of child abuse and neglect in a given community and may consist of several multidisciplinary teams with different functions.

“Res gestae” means a spontaneous declaration made by a person immediately after an event and before the person has had an opportunity to conjure a falsehood.

“Valid court order” means an order issued by a court of competent jurisdiction relating to a child brought before the court and who is the subject of that order. Prior to the entry of the order the child shall have received the full due process rights guaranteed to that child or juvenile by the Constitutions of the United States and the State of West Virginia.

“Violation of a traffic law of West Virginia” means a violation of chapter ~~seventeen-a, seventeen-b, seventeen-c or seventeen-d~~ 17A, 17B, 17C, or 17D of this code, except a violation of ~~section one or two, article four, chapter seventeen-c~~ §17C-4-1 or §17C-4-2 of this code relating to hit and run, or ~~section one, two or three, article five of that chapter~~ §17C-5-1, §17C-5-2, or §17C-5-3 of this code, relating, respectively, to ~~negligent homicide~~ vehicular homicide, aggravated

vehicular homicide, vehicular homicide in a school zone, vehicular homicide in a construction zone, driving under the influence of alcohol, controlled substances or drugs and reckless driving.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-30. Recognizing an embryo or fetus as a distinct unborn victim of certain crimes of violence against the person.

(a) This section may be known and cited as the Unborn Victims of Violence Act.

(b) For the purposes of this article, the following definitions shall apply: *Provided*, That these definitions only apply for purposes of prosecution of unlawful acts under this section and may not otherwise be used: (i) To create or to imply that a civil cause of action exists; or (ii) for purposes of argument in a civil cause of action, unless there has been a criminal conviction under this section.

(1) "Embryo" means the developing human in its early stages. The embryonic period commences at fertilization and continues to the end of the embryonic period and the beginning of the fetal period, which occurs eight weeks after fertilization or ten weeks after the onset of the last menstrual period.

(2) "Fetus" means a developing human that has ended the embryonic period and thereafter continues to develop and mature until termination of the pregnancy or birth.

(c) For purposes of enforcing the provisions of §20-7-18a, §61-2-1, §61-2-4, §61-2-7, §61-2-9(a), §61-2-9(c), §61-2-10, §61-2-10b, 61-2-28(a), and §17C-5-1, §17C-5-2(b), or §17C-5-2(c) of this code, a pregnant woman and the embryo or fetus she is carrying in the womb constitute separate and distinct victims.

(d) Exceptions. — The provisions of this section do not apply to:

(1) Acts committed during a legal abortion to which the pregnant woman, or a person authorized by law to act on her behalf, consented or for which the consent is implied by law;

20 (2) Acts or omissions by medical or health care personnel during or as a result of medical
21 or health-related treatment or services, including, but not limited to, medical care, abortion,
22 diagnostic testing or fertility treatment;

23 (3) Acts or omissions by medical or health care personnel or scientific research personnel
24 in performing lawful procedures involving embryos that are not in a stage of gestation in utero;

25 (4) Acts involving the use of force in lawful defense of self or another, but not an embryo or
26 fetus; and

27 (5) Acts or omissions of a pregnant woman with respect to the embryo or fetus she is
28 carrying.

29 (e) For purposes of the enforcement of the provisions of this section, a violation of the
30 provisions of article two-i, chapter sixteen of this code shall not serve as a waiver of the protection
31 afforded by the provisions of subdivision (1), subsection (d) of this section.

32 (f) Other convictions not barred. — A prosecution for or conviction under this section is not
33 a bar to conviction of or punishment for any other crime committed by the defendant arising from
34 the same incident.

NOTE: The purpose of this bill is to update the code and the law on negligent homicide and creating felony offenses related to causing deaths by operating a motor vehicle and other necessary code cleanup.

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