

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 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;

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

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

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

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

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

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

27 (3) Social Security, Medicare, and Medicaid;

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

30 (5) Workers' compensation;

31 (6) Wage continuation programs of an employer;

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

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

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

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

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

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

59 (f) "Allowable expense" includes the following:

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

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

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

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

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

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

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

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

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

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

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

102 (k) "Victim" means the following:

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

104 (A) Criminally injurious conduct;

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

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

110 (l) "Contributory misconduct" means any conduct of the claimant or of the victim through
111 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

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

42 ARTICLE IV. EFFECT OF CONVICTION.

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

47 (1) ~~Manslaughter or negligent homicide, homicide, or any offense contained within §17C-~~
48 5-1 of this code, resulting from the operation of a motor vehicle;

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

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

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

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

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

63 ARTICLE V. APPLICATIONS FOR NEW LICENSES.

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

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

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

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

78 ARTICLE VI. APPLICABILITY OF OTHER LAWS.

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

83 ARTICLE VII. COMPACT ADMINISTRATOR AND
84 INTERCHANGE OF INFORMATION.

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

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

91 ARTICLE VIII. ENTRY INTO FORCE AND WITHDRAWAL.

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

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

99 ARTICLE IX. CONSTRUCTION AND SEVERABILITY.

100 This compact shall be liberally construed so as to effectuate the purposes thereof. The
101 provisions of this compact shall be severable and if any phrase, clause, sentence or provision of
102 this compact is declared to be contrary to the Constitution of any party state or of the United States
103 or the applicability thereof to any government, agency, person or circumstance is held invalid, the
104 validity of the remainder of this compact and the applicability thereof to any government, agency,
105 person or circumstance shall not be affected thereby. If this compact shall be held contrary to the
106 Constitution of any state party thereto, the compact shall remain in full force and effect as to the
107 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.

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

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

7 (1) ~~Manslaughter or negligent homicide,~~ homicide, or any offense contained within §17C-
8 5-1 of this code, resulting from the operation of a motor vehicle;

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

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

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

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

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

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

22 e 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.

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

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

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

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

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

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

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

26 (2) deliberately proceeds to act with indifference to the high probability of injury to or the
27 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

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

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

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

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

12 (A) A cellular telephone;

13 (B) A portable telephone;

14 (C) A text-messaging device;

15 (D) A personal digital assistant;

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

18 (F) A handheld global positioning system receiver;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

90 (5) Any driver who causes serious physical harm to another person as the proximate result
91 of committing a violation of this section is guilty of a misdemeanor and shall be fined not less than
92 \$500 nor more than \$1,000, or confined in jail up to 120 days, or both fined and confined, and such
93 driver shall have his or her license to operate a motor vehicle revoked by the Commissioner of the
94 Division of Motor Vehicles for a period of one year; and

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

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

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

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

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

110 (l) This section shall not apply to:

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

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

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

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

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

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

125 (n) The amendments to this section adopted during the regular session of the Legislature
126 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.

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

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

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

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

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

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

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

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

23 (8) When a person is arrested for driving with a suspended or revoked driver's license for
24 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

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

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

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

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

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

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

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

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

38 (C) For a first conviction or for refusal to submit to any designated secondary chemical test
39 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.

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

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

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

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

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

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

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

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

139 (1) Speeding excessively involving any speed of 15 miles per hour or more above the
140 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

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

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

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

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

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

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

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

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

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

193 (4) Following the vehicle ahead too closely;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

258 (9) Driving a commercial motor vehicle while engaged in texting and convicted pursuant to
259 §17E-1-14a of this code or similar law of this or any other jurisdiction or 49 C. F. R. §392.80;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

357 (g) In accordance with the provisions of 49 U. S. C. §313119(a)(19)(2004), and 49 C. F. R.
358 §384.226 (2004), notwithstanding the provisions of §61-11-25 of this code, no record of conviction,
359 revocation, suspension, or disqualification related to any type of motor vehicle traffic control
360 offense, other than a parking violation, of a commercial driver's license holder or a person
361 operating a commercial motor vehicle may be masked, expunged, deferred, or be subject to any
362 diversion program.

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

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

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

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

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

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

390 (m) In accordance with the provisions of 49 C. F. R. §383.73(g), the division shall disqualify
391 a driver's privilege to operate a commercial motor vehicle if the division determines that the
392 licensee has falsified any information or certifications required under the provisions of 49 C. F. R.
393 383 Subpart J or 49 C. F. R. §383.71(a) for 60 days in addition to any other penalty prescribed by
394 this code.

395 (n) Lifetime Disqualification Without Reinstatement.—

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

401 (2) Human trafficking violations — An individual who uses a commercial motor vehicle in
402 committing a felony involving an act or practice described in paragraph (9) of section 103 of the
403 Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102(9)) is disqualified from operating a
404 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.

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

6 (b) Any person convicted of ~~negligent homicide shall be punished by imprisonment in the~~
7 ~~county or regional jail for not more than one year or by fine of not less than \$100 nor more than~~
8 ~~\$1,000, or by both fine and imprisonment~~ homicide by operation of motorized watercraft shall be
9 guilty of a felony and upon conviction, shall be committed to the custody of the Division of
10 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;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

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

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

5 "Court" means the circuit court of the county with jurisdiction of the case or the judge in
6 vacation unless otherwise specifically provided.

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

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

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

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

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

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

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

31 “Violation of a traffic law of West Virginia” means a violation of chapter ~~seventeen-a,~~
32 ~~seventeen-b, seventeen-c or seventeen-d~~ 17A, 17B, 17C, or 17D of this code, except a violation of
33 ~~section one or two, article four, chapter seventeen-c~~ §17C-4-1 or §17C-4-2 of this code relating to
34 hit and run, or ~~section one, two or three, article five of that chapter~~ §17C-5-1, §17C-5-2, or §17C-5-
35 3 of this code, relating, respectively, to ~~negligent homicide~~ vehicular homicide, aggravated

36 vehicular homicide, vehicular homicide in a school zone, vehicular homicide in a construction
37 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.

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

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

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

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

13 (c) For purposes of enforcing the provisions of §20-7-18a, §61-2-1, §61-2-4, §61-2-7, §61-
14 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)
15 of this code, a pregnant woman and the embryo or fetus she is carrying in the womb constitute
16 separate and distinct victims.

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

18 (1) Acts committed during a legal abortion to which the pregnant woman, or a person
19 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.