

SB 556

FILED

2009 MAY -8 PM 4: 55

**WEST VIRGINIA LEGISLATURE**

SECRETARY OF STATE

**SEVENTY-NINTH LEGISLATURE**

**REGULAR SESSION, 2009**



**ENROLLED**

**Senate Bill No. 556**

(BY SENATORS WHITE AND STOLLINGS)

[Passed April 11, 2009; in effect ninety days from passage.]

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## Senate Bill No. 556

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AN ACT to amend and reenact §8-11-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17B-3-6 of said code, all relating to driver education courses; allowing proof of a completed defensive driving course to rescind pending license suspension; and expanding the time which judgement can be withheld by a municipal judge while a licensee completes a driver education course.

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

That §8-11-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17B-3-6 of said code be amended and reenacted, all to read as follows:

**ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES  
AND ORDINANCE PROCEDURES.**

**§8-11-5. Prejudgment alternative disposition of certain traffic offenses.**

1 (a) Municipal courts are hereby authorized to establish  
2 a prejudgment alternative disposition procedure for traffic  
3 offenses over which the court has jurisdiction.

4 (b) Under a prejudgment disposition procedure autho-  
5 rized by subsection (a) of this section, if a person is found  
6 guilty of a traffic offense, the municipal court may, with  
7 the person's consent, withhold for a reasonable time not to  
8 exceed one hundred eighty days the entry of a judgment of  
9 conviction so that the person may attend a driver safety  
10 education course designated by the municipal court. If the  
11 person attends said course, the municipal court, if satisfied  
12 with the person's participation in the course, shall,  
13 without entering a judgment of conviction, dismiss the  
14 proceeding against the person.

15 (c) It shall be a condition of any prejudgment alterna-  
16 tive disposition authorized by the provisions of this section  
17 that the person pay any fine assessed by the court and pay  
18 all fees and costs required to be paid by any provision of  
19 this code where a person is convicted of a criminal traffic  
20 offense. No municipal court shall utilize any prejudgment  
21 alternative disposition procedure unless it collects such  
22 fees and costs as are required by any provision of this code  
23 and transmits the moneys collected as required by law. No  
24 municipal court shall utilize any prejudgment alternative  
25 disposition procedure unless it conforms with the require-  
26 ments of this section.

27 (d) The procedure authorized by the provisions of this  
28 section shall not be available to any person who:

29 (1) Holds a commercial driver's license issued by this  
30 state in accordance with chapter seventeen-e of this code,  
31 or who holds a commercial driver's license issued by any  
32 other state or jurisdiction;

33 (2) Is arrested while operating a commercial motor  
34 vehicle as defined in chapter seventeen-e of this code; or

35 (3) Is arrested for driving under the influence of alcohol  
36 or drugs or any other offense for which a mandatory  
37 period of confinement in jail is required.

**ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LI-  
CENSES.**

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

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

5 (1) Has committed an offense for which mandatory  
6 revocation of a driver's license is required upon convic-  
7 tion;

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

12 (3) Has been convicted with such frequency of serious  
13 offenses against traffic regulations governing the move-  
14 ment of vehicles as to indicate a disrespect for traffic laws  
15 and a disregard for the safety of other persons on the  
16 highways;

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

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

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

23 (7) Has failed to pay or has defaulted on a plan for the  
24 payment of all costs, fines, forfeitures or penalties imposed

25 by a magistrate court or municipal court within ninety  
26 days, as required by section two-a, article three, chapter  
27 fifty of this code or section two-a, article ten, chapter  
28 eight of this code;

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

33 (9) Is under the age of eighteen and has withdrawn  
34 either voluntarily or involuntarily due to misconduct from  
35 a secondary school or has failed to maintain satisfactory  
36 academic progress, as provided in section eleven, article  
37 eight, chapter eighteen of this code; or

38 (10) Has failed to pay overdue child support or comply  
39 with subpoenas or warrants relating to paternity or child  
40 support proceedings, if a circuit court has ordered the  
41 suspension of the license as provided in article five-a,  
42 chapter forty-eight-a of this code and the Child Support  
43 Enforcement Division has forwarded to the division a copy  
44 of the court order suspending the license, or has forwarded  
45 its certification that the licensee has failed to comply with  
46 a new or modified order that stayed the suspension and  
47 provided for the payment of current support and any  
48 arrearage due.

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

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

55 (2) The license was suspended under the provisions of  
56 subdivision (8), subsection (a) of this section and the  
57 person having his or her license suspended has appeared

58 in court and has prevailed against the motor vehicle  
59 violations charged; or

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

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

71 (d) Upon suspending the driver's license of any person  
72 as hereinbefore in this section authorized, the division  
73 shall immediately notify the licensee in writing, sent by  
74 certified mail, return receipt requested, to the address  
75 given by the licensee in applying for license, and upon his  
76 or her request shall afford him or her an opportunity for  
77 a hearing as early as practical within not to exceed twenty  
78 days after receipt of such request in the county wherein  
79 the licensee resides unless the division and the licensee  
80 agree that such hearing may be held in some other county.  
81 Upon such hearing the commissioner or his or her duly  
82 authorized agent may administer oaths and may issue  
83 subpoenas for the attendance of witnesses and the produc-  
84 tion of relevant books and papers and may require a  
85 reexamination of the licensee. Upon such hearing the  
86 division shall either rescind its order of suspension or,  
87 good cause appearing therefor, may extend the suspension  
88 of such license or revoke such license. The provisions of  
89 this subsection providing for notice and hearing are not  
90 applicable to a suspension under subdivision (10), subsec-  
91 tion (a) of this section.

92 (e) Notwithstanding the provisions of legislative rule 91  
93 CSR 5, the division may, upon completion of an approved  
94 defensive driving course, deduct three points from a  
95 licensee's point accumulation provided the licensee has not  
96 reached fourteen points. If a licensee has been notified of  
97 a pending thirty-day driver's license suspension based on  
98 the accumulation of twelve or thirteen points, the licensee  
99 may submit proof of completion of an approved defensive  
100 driving course to deduct three points and rescind the  
101 pending license suspension: *Provided*, That the licensee  
102 submits proof of prior completion of the course and  
103 payment of the reinstatement fee in accordance with  
104 section nine, article three of this chapter to the division  
105 prior to the effective date of the suspension.

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

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is approved* this the *10*  
*Day*  
Day of ....., 2009.

*[Signature]*  
.....  
Governor



PRESENTED TO THE  
GOVERNOR

MAY 7 2009

Time 11:20am