

Senate Bill No. 328

(By Senators Beach, Klempa and Plymale)

[Introduced January 27, 2011; referred to the Committee on Transportation and Infrastructure; then to the Committee on the Judiciary; and then to the Committee on Finance.]

A BILL to amend and reenact §17E-1-3, §17E-1-6, §17E-1-9, §17E-1-10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-17 and §17E-1-20 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §17E-1-14a, all relating to the issuance, disqualification, suspension and revocation of driver's licenses and privilege to operate a commercial motor vehicle; adding definitions; creating the offense of operating a commercial motor vehicle while texting; providing penalties and exceptions; providing civil penalties for motor carriers who require or allow a driver to operate a commercial motor vehicle while texting; providing that a driver is disqualified from operating a commercial motor

vehicle upon conviction for operating a commercial motor vehicle when texting; clarifying that out-of-service orders may pertain to a driver, commercial motor vehicle or a motor carrier operation; providing that the licensed driver accompanying a driver holding an instruction permit must be alert and unimpaired; adding additional certifications to the application and the face of a commercial driver's license; providing for additional requirements related to maintenance and verification of medical certification status; and prohibiting the division from issuing or renewing a commercial driver's license to a person who does not possess a valid medical certification status.

Be it enacted by the Legislature of West Virginia:

That §17E-1-3, §17E-1-6, §17E-1-9, §17E-1-10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-17 and §17E-1-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §17E-1-14a, all to read as follows:

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-3. Definitions.

- 1 Notwithstanding any other provision of this code, the
- 2 following definitions apply to this article:

3 (1) "Alcohol" means:

4 (A) Any substance containing any form of alcohol, includ-
5 ing, but not limited to, ethanol, methanol, propenyl and
6 isopropanol;

7 (B) Beer, ale, port or stout and other similar fermented
8 beverages, including sake or similar products, of any name
9 or description containing one half of one percent or more of
10 alcohol by volume, brewed or produced from malt, wholly or
11 in part, or from any substitute for malt;

12 (C) Distilled spirits or that substance known as ethyl
13 alcohol, ethanol or spirits of wine in any form including all
14 dilutions and mixtures thereof from whatever source or by
15 whatever process produced; or

16 (D) Wine of not less than one half of one percent of alcohol
17 by volume.

18 (2) "Alcohol concentration" means:

19 (A) The number of grams of alcohol per one hundred
20 milliliters of blood;

21 (B) The number of grams of alcohol per two hundred ten
22 liters of breath; ~~or~~

23 (C) The number of grams of alcohol per sixty-seven
24 milliliters of urine; or

25 (D) The number of grams of alcohol per eighty-six millili-
26 ters of serum.

27 (3) “At fault traffic accident” means, for the purposes of
28 waiving the road test, a determination of fault by the official
29 filing the accident report ~~of fault~~ as evidenced by an indica-
30 tion of contributing circumstances in the accident report.

31 (4) “Commercial driver’s license” means a license or an
32 instruction permit issued in accordance with the require-
33 ments of this article to an individual which authorizes the
34 individual to drive a class of commercial motor vehicle.

35 (5) “Commercial driver’s license information system” is the
36 information system established pursuant to the Federal
37 Commercial Motor Vehicle Safety Act to serve as a clearing-
38 house for locating information related to the licensing and
39 identification of commercial motor vehicle drivers.

40 (6) “Commercial driver instruction permit” means a permit
41 issued pursuant to subsection (d), section nine of this article.

42 (7) “Commercial motor vehicle” means a motor vehicle
43 designed or used to transport passengers or property:

44 (A) If the vehicle has a gross combination vehicle weight
45 rating of twenty-six thousand one pounds or more inclusive

46 of a towed unit(s) with a gross vehicle weight rating of more
47 than ten thousand pounds;

48 (B) If the vehicle has a gross vehicle weight rating of ~~more~~
49 ~~than~~ twenty-six thousand one pounds or more;

50 (C) If the vehicle is designed to transport sixteen or more
51 passengers, including the driver; or

52 (D) If the vehicle is of any size and transporting hazardous
53 materials as defined in this section.

54 (8) "Commissioner" means the Commissioner of Motor
55 Vehicles of this state.

56 (9) "Controlled substance" means any substance classified
57 under the provisions of chapter sixty-a of this code, the
58 Uniform Controlled Substances Act, and includes all
59 substances listed on Schedules I through V, inclusive, of
60 article two of said chapter, ~~sixty-a, as they are~~ as revised.

61 The term "controlled substance" also has the meaning such
62 term has under 21 U.S.C. §802.6 and includes all substances
63 listed on Schedules I through V of 21 C.F.R. §1308 as they
64 may be amended by the United States Department of Justice.

65 (10) "Conviction" means an unvacated adjudication of
66 guilt; a determination that a person has violated or failed to
67 comply with the law in a court of original jurisdiction or by

68 an authorized administrative tribunal or proceeding; an
69 unvacated forfeiture of bail or collateral deposited to secure
70 the persons appearance in court; a plea of guilty or nolo
71 contendere accepted by the court or the payment of a fine or
72 court cost or violation of a condition of release without bail
73 regardless of whether or not the penalty is rebated, sus-
74 pended, or probated.

75 (11) "Division" means the Division of Motor Vehicles.

76 (12) "Disqualification" means any of the following three
77 actions:

78 (A) The suspension, revocation, or cancellation of a driver's
79 license by the state or jurisdiction of issuance.

80 (B) Any withdrawal of a person's privilege to drive a
81 commercial motor vehicle by a state or other jurisdiction as
82 the result of a violation of state or local law relating to motor
83 vehicle traffic control other than parking or vehicle weight
84 except as to violations committed by a special permittee on
85 the coal resource transportation system or vehicle defect
86 violations.

87 (C) A determination by the Federal Motor Carrier Safety
88 Administration that a person is not qualified to operate a
89 commercial motor vehicle under 49 C.F.R. Part §391 (2004).

90 (13) "Drive" means to drive, operate or be in physical
91 control of a motor vehicle in any place open to the general
92 public for purposes of vehicular traffic. For the purposes of
93 sections twelve, thirteen and fourteen of this article, "drive"
94 includes operation or physical control of a motor vehicle
95 anywhere in this state.

96 (14) "Driver" means ~~any~~ a person who drives, operates or
97 is in physical control of a commercial motor vehicle in any
98 place open to the general public for purposes of vehicular
99 traffic or who is required to hold a commercial driver's
100 license.

101 (15) "Driver's license" means a license issued by a state to
102 an individual which authorizes the individual to drive a
103 motor vehicle of a specific class.

104 (16) "Electronic device" includes, but is not limited to, a
105 cellular telephone, personal digital assistant, pager or any
106 other device used to input, write, send, receive, or read text.

107 ~~(16)~~ (17) "Employee" means ~~any~~ an operator of a commer-
108 cial motor vehicle, including full time, regularly employed
109 drivers, casual, intermittent or occasional drivers, leased
110 drivers and independent, owner-operator contractors ~~(while~~
111 ~~in the course of~~ when operating a commercial motor vehicle,

112 who are either directly employed by or under lease to drive
113 a commercial motor vehicle for an employer.

114 ~~(17)~~ (18) “Employer” means ~~any~~ a person, including the
115 United States, a state or a political subdivision of a state,
116 who owns or leases a commercial motor vehicle or assigns a
117 person to drive a commercial motor vehicle.

118 ~~(18)~~ (19) “Endorsement” means an authorization to a
119 person to operate certain types of commercial motor vehicles.

120 ~~(19)~~ (20) “Farm vehicle” includes a motor vehicle or
121 combination vehicle registered to ~~the~~ a farm owner or entity
122 operating the farm and used exclusively in the transportation
123 of agricultural or horticultural products, livestock, poultry
124 and dairy products from the farm or orchard on which they
125 are raised or produced to markets, processing plants, packing
126 houses, canneries, railway shipping points and cold storage
127 plants and in the transportation of agricultural or horticul-
128 tural supplies and machinery to the farms or orchards to be
129 used on the farms or orchards.

130 ~~(20)~~ (21) “Farmer” includes an owner, tenant, lessee,
131 occupant or person in control of the premises used substan-
132 tially for agricultural or horticultural pursuits who is at least

133 eighteen years of age with two years licensed driving
134 experience.

135 ~~(21)~~ (22) “Farmer vehicle driver” means the person em-
136 ployed and designated by the “farmer” to drive a “farm
137 vehicle” as long as driving is not his or her sole or principal
138 function on the farm and who is at least eighteen years of age
139 with two years licensed driving experience.

140 ~~(22)~~ (23) “Felony” means an offense under state or federal
141 law that is punishable by death or imprisonment for a term
142 exceeding one year.

143 ~~(23)~~ (24) “Gross combination weight rating (GCWR)”
144 means the value specified by the manufacturer as the loaded
145 weight of a combination, articulated vehicle. In the absence
146 of a value specified by the manufacturer, GCWR will be
147 determined by adding the ~~GVWR~~ gross vehicle weight rating
148 (GVWR) of the power unit and the total weight of the towed
149 unit and ~~any load thereon.~~ load, if any.

150 ~~(24)~~ (25) “Gross vehicle weight rating (GVWR)” means the
151 value specified by the manufacturer as the loaded weight of
152 a single vehicle. In the absence of a value specified by the
153 manufacturer, the GVWR will be determined by the total
154 weight of the vehicle and ~~any load thereon.~~ load, if any.

155 ~~(25)~~ (26) “Hazardous materials” means any material that
156 has been designated as hazardous under 49 U.S.C. §5103 and
157 is required to be placarded under subpart F of 49 C.F.R.,Part
158 §172 or any quantity of a material listed as a select agent or
159 toxin in 42 C.F.R.,Part §73.

160 ~~(26)~~ (27) “Imminent hazard” means existence of a condition
161 that presents a substantial likelihood that death, serious
162 illness, severe personal injury or a substantial endangerment
163 to health, property or the environment may occur before the
164 reasonably foreseeable completion date of a formal proceed-
165 ing begun to lessen the risk of that death, illness, injury or
166 endangerment.

167 ~~(27)~~ (28) “Issuance of a license” means the completion of a
168 transaction signifying that the applicant has met all the
169 requirements ~~incumbent in qualifying to qualify~~ to qualify for, includ-
170 ing, but not limited to: The initial issuance of a driver’s
171 license, the renewal of a driver’s license, the issuance of a
172 duplicate license as a replacement to a lost or stolen driver’s
173 license, the transfer of any level of driving privileges includ-
174 ing the privilege of operating a commercial motor vehicle
175 from another state or jurisdiction, the changing of driver’s
176 license class, restrictions or endorsements or the change of

177 any other information pertaining to an applicant either
178 appearing on the face of a driver's license or within the
179 driver record of the licensee maintained by the division.

180 ~~(28)~~ (29) "Motor vehicle" means every vehicle which is self-
181 propelled and every vehicle which is propelled by electric
182 power obtained from overhead trolley wires but not operated
183 upon rails.

184 ~~(29)~~ (30) "Noncommercial motor vehicle" means a motor
185 vehicle or combination of motor vehicles not defined by the
186 term "commercial motor vehicle".

187 ~~(30)~~ (31) "Out-of-service order" means a ~~temporary~~
188 ~~prohibition against driving a commercial motor vehicle as a~~
189 ~~result of a determination by a law-enforcement officer, a~~
190 declaration by an authorized enforcement officer of a
191 federal, state, Canadian, Mexican, county or local jurisdic-
192 tion including any special agent of the Federal Motor Carrier
193 Safety Administration that a driver, a commercial motor
194 vehicle, or a motor carrier operation is out of service pursu-
195 ant to 49 C.F.R. §§386.72, 392.5, 395.13, 396.9 or compatible
196 laws or the North American uniform out-of-service criteria
197 that an imminent hazard exists.

198 ~~(31)~~ (32) "Violation of an out-of-service order" means:

199 (A) The operation of a commercial motor vehicle during the
200 period the driver was placed out-of-service; ~~or~~

201 (B) The operation of a commercial motor vehicle by a
202 driver after the vehicle was placed out-of-service and before
203 the required repairs are made; or

204 (C) The operation of any commercial vehicle by a motor
205 carrier operation after the carrier has been placed out of
206 service.

207 ~~(32)~~(33) “School bus” means a commercial motor vehicle
208 used to transport ~~preprimary~~, preprimary, primary or
209 secondary school students from home-to-school, from school-
210 to-home or to and from school sponsored events. School bus
211 does not include a bus used as a common carrier.

212 ~~(33)~~ (34) “Serious traffic violation” means conviction for
213 any of the following offenses when operating a commercial
214 motor vehicle:

215 (A) Excessive speeding involving any single offense for any
216 speed of fifteen miles per hour or more above the posted
217 limits;

218 (B) Reckless driving as defined in section three, article five,
219 chapter seventeen-c of this code and careless or negligent
220 driving, including, but not limited to, the offenses of driving

221 a commercial motor vehicle in willful or wanton disregard
222 for the safety of persons or property;

223 (C) Erratic or improper traffic lane changes including, but
224 not limited to, passing a school bus when prohibited,
225 improper lane changes and other passing violations;

226 (D) Following the vehicle ahead too closely;

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

229 (F) Driving a commercial motor vehicle without a commer-
230 cial driver's license in the driver's possession. However, any
231 person who provides proof to the law-enforcement agency
232 that issued the citation, by the date the person must appear
233 in court or pay any fine for such violation, that the person
234 held a valid commercial driver's license on the date the
235 citation was issued, shall not be guilty of this offense;

236 (G) Driving a commercial motor vehicle without the proper
237 class of commercial driver's license ~~and~~ or endorsements for
238 the specific vehicle group being operated or for the passen-
239 gers or type of cargo being transported;

240 (H) A violation of state or local law relating to motor
241 vehicle traffic control, other than a parking violation, arising
242 in connection with a fatal traffic accident; or

243 (I) Any other serious violations determined by the United
244 States Secretary of Transportation.

245 (J) Vehicle defects are excluded as serious traffic violations
246 except as to violations committed by a special permittee on
247 the coal resource transportation road system.

248 ~~(34)~~ (35) “State” means a state of the United States and the
249 District of Columbia or a province or territory of Canada or
250 a state or federal agency of the United Mexican States.

251 ~~(35)~~ (36) “State of domicile” means the state where a person
252 has his or her true, fixed and permanent home and principle
253 residence and to which he or she has the intention of return-
254 ing whenever absent in accordance with chapter seventeen-
255 a, article three, section one-a.

256 ~~(36)~~ (37) “Suspension, revocation or cancellation” of a
257 driver’s license or a commercial driver’s license means the
258 privilege to operate any type of motor vehicle on the roads
259 and highways of this state is withdrawn.

260 ~~(37)~~ (38) “Tank vehicle” means any commercial motor
261 vehicle that is designed to transport any liquid or gaseous
262 materials within a tank that is either permanently or
263 temporarily attached to the vehicle or the chassis. These
264 vehicles include, but are not limited to, cargo tanks and

265 portable tanks as defined in 49 C. F. R. Part 171 (1998).
266 ~~However,~~ This definition does not include portable tanks
267 having a rated capacity under one thousand gallons.

268 (39) "Texting" means manually entering alphanumeric text
269 into or reading text from an electronic device.

270 (A) This action includes, but is not limited to, short
271 messaging service, e-mailing, instant messaging and a
272 command or request to access a World Wide Web page or
273 engaging in any other form of electronic text retrieval or
274 entry for present or future communication.

275 (B) Texting does not include:

276 (i) Reading, selecting or entering a telephone number, an
277 extension number or voicemail retrieval codes and com-
278 mands into an electronic device for the purpose of initiating
279 or receiving a phone call or using voice commands to initiate
280 or receive a telephone call;

281 (ii) Inputting, selecting or reading information on a global
282 positioning system or navigation system; or

283 (iii) Using a device capable of performing multiple func-
284 tions including, but not limited to, fleet management sys-
285 tems, dispatching devices, smart phones, citizen band radios

286 or music players for a purpose that is not otherwise prohib-
287 ited by this section

288 ~~(38)~~ (40) “Transportation Security Administration” means
289 the United States Department of Homeland Security Trans-
290 portation Security Administration.

291 ~~(39)~~ (41) “United States” means the fifty states and the
292 District of Columbia.

293 (42) “Valid or Certified Medical Certification Status”
294 means that an applicant or driver has a current medical
295 evaluation or determination by a licensed physician that the
296 applicant or driver meets the minimum federal motor carrier
297 safety administration physical qualifications within the
298 prescribed time frames pursuant 49 CFR Part §391. Not-
299 certified means that an applicant or driver does not have a
300 current medical evaluation or has not been certified by a
301 licensed physician as meeting the minimum federal motor
302 carrier safety administration physical qualifications pursu-
303 ant 49 CFR Part §391.

304 ~~(40)~~ (43) “Vehicle Group” means a class or type of vehicle
305 with certain operating characteristics.

§17E-1-6. Employer responsibilities.

1 (a) Each employer shall require the applicant to provide
2 the information specified in section five of this article.

3 (b) No employer may knowingly allow, permit, require or
4 authorize a driver to drive a commercial motor vehicle
5 during any period in which the driver:

6 (1) Has a driver's license suspended, revoked or canceled
7 by a state; has lost the privilege to drive a commercial motor
8 vehicle in a state or has been disqualified from driving a
9 commercial motor vehicle;

10 (2) Has more than one driver's license at one time;

11 (3) ~~Or~~ The commercial motor vehicle he or she is driving or
12 the motor carrier operation is subject to an out-of-service
13 order;

14 (4) Is in violation of federal, state or local law or regulation
15 pertaining to railroad highway grade crossings; or

16 (5) Is in violation of any provision of 49 C.F.R., Part § 382
17 related to controlled substances and alcohol use and testing.

18 (c) No employer may require or allow a driver to operate a
19 commercial motor vehicle while texting.

20 ~~(c)~~ (d) The division shall impose a civil penalty in addition
21 to any penalty required under the provisions of section
22 twenty-five of this article on any employer who knowingly

23 allows, permits, requires or authorizes a driver to drive a
24 commercial motor vehicle in violation of subdivision (3) or
25 (4) of subsection (b) or subsection (c) of this section.

26 (1) If the conviction is for a violation of subdivision (3), of
27 subsection (b) of this section, the penalty is \$2,750.

28 (2) If the conviction is for a violation of subdivision (4), of
29 subsection (b) of this section, the penalty shall be no more
30 than \$25,000.

§17E-1-9. Commercial driver's license qualification standards.

1 (a) No person may be issued a commercial driver's license
2 unless that person is a resident of this state and has passed
3 a knowledge and skills test for driving a commercial motor
4 vehicle which complies with minimum federal standards
5 established by federal regulations enumerated in 49 C.F.R.
6 Part § 383, Subparts G and H (2004) and has satisfied all
7 other requirements of the Federal Motor Carrier Safety
8 Improvement Act of 1999 in addition to other requirements
9 imposed by state law or federal regulations.

10 (b) Third party testing. The commissioner may authorize a
11 person, including an agency of this or another state, an
12 employer, private individual or institution, department,
13 agency or instrumentality of local government, to administer

14 the skills test specified by this section ~~Provided, That:~~ so
15 long as:

16 (1) The test is the same which would otherwise be adminis-
17 tered by the state; and

18 (2) The party has entered into an agreement with the state
19 ~~which that~~ that complies with the requirements of 49 C.F.R., part
20 § 383.75.

21 (c) Indemnification of driver examiners. No person who has
22 been officially trained and certified by the state as a driver
23 examiner, who administers a driving test, and no other
24 person, firm or corporation by whom or with which that
25 person is employed or is in any way associated, may be
26 criminally liable for the administration of the tests or civilly
27 liable in damages to the person tested or other persons or
28 property unless for gross negligence or willful or wanton
29 injury.

30 (d) The commissioner may waive the skills test specified in
31 this section for a commercial driver license applicant who
32 meets the requirements of 49 C.F.R. part § 383.77 and ~~those~~
33 the requirements specified by the commissioner.

34 (e) A commercial driver's license or commercial driver's
35 instruction permit may not be issued to a person while the

36 person is subject to a disqualification from driving a com-
37 mercial motor vehicle, when the person does not possess a
38 valid or current medical certification status or while the
39 person's driver's license is suspended, revoked or canceled in
40 any state. ~~nor may~~ A commercial driver's license may not be
41 issued by any other state unless the person first surrenders
42 all such licenses to the division.

43 (f) Commercial driver's instruction permit may be issued as
44 follows:

45 (1) ~~A commercial driver's instruction permit may be issued~~
46 To an individual who holds a valid Class E or Class D
47 driver's license ~~who~~ and has passed the vision and written
48 tests required for issuance of a commercial driver's license.

49 (2) The commercial instruction permit may not be issued
50 for a period to exceed six months. Only one renewal or
51 reissuance may be granted within a two-year period. The
52 holder of a commercial driver's instruction permit may drive
53 a commercial motor vehicle on a highway only when accom-
54 panied by the holder of a commercial driver's license valid
55 for the type of vehicle driven, who is twenty-one years of age
56 or older, who is alert and unimpaired and who occupies a

57 seat beside the individual for the purpose of giving instruc-
58 tion or testing.

59 (3) ~~A commercial driver's instruction permit may only be~~
60 ~~issued~~ Only to a person who is at least eighteen years of age
61 and has held a graduated Class E, Class E or Class D license
62 for at least two years.

63 (4) The applicant for a commercial driver's instruction
64 permit shall also be otherwise qualified to hold a commercial
65 driver's license.

§17E-1-10. Application for commercial driver's license.

1 (a) The application for a commercial driver's license or
2 commercial driver's instruction permit must include at least
3 the following:

4 (1) The full name and current mailing and residential
5 address of the person;

6 (2) A physical description of the person including sex,
7 height, weight and eye color;

8 (3) Date of birth;

9 (4) The applicant's social security number;

10 (5) The person's signature;

11 (6) The person's color photograph;

12 (7) Certifications including those required by 49 C.F.R.
13 Part § 383.71(a)(2004);

14 (8) Any other information required by the commissioner;
15 ~~and~~

16 (9) A consent to release driving record information; and

17 (10) Certification stating that the applicant is:

18 (A) Engaged in interstate commerce and subject to 49
19 C.F.R. Part §391 standards;

20 (B) Engaged in interstate commerce but excepted from 49
21 C.F.R. Part §391 standards;

22 (C) Engaged in intrastate commerce and subject to state
23 medical standards; or

24 (D) Engaged in intrastate commerce but not subject to state
25 medical standards.

26 (b) When a licensee changes his or her name, mailing
27 address or residence, or when a licensee's classifications,
28 endorsements, or restrictions or medical certification status
29 changes; the licensee shall submit an application for a
30 duplicate license and obtain a duplicate driver's license
31 displaying the updated information.

32 (c) No person who has been a resident of this state for
33 thirty days or more may drive a commercial motor vehicle

34 under the authority of a commercial driver's license issued
35 by another jurisdiction.

§17E-1-11. Commercial driver's license.

1 The commercial driver's license shall be marked "commer-
2 cial driver's license" or "CDL" and, ~~shall be~~, to the maxi-
3 mum extent practicable, tamper proof. It must include, but
4 not be limited to, the following information:

5 (a) The name and residential address of the person;

6 (b) The person's color photograph;

7 (c) A physical description of the person including sex,
8 height, weight, and eye color;

9 (d) Date of birth;

10 (e) The person's signature;

11 (f) The class or type of commercial motor vehicle or
12 vehicles which the person is authorized to drive together
13 with any endorsement(s) and or restriction(s);

14 (g) The name of this state; ~~and~~

15 (h) The dates between which the license is valid; and

16 (i) Any information required by the Federal Motor Carrier
17 Safety Administration concerning the driver's valid or
18 current medical certification status.

§17E-1-12. Classifications, endorsements and restrictions.

1 (a) Commercial driver's licenses may be issued with the
2 following classifications:

3 (1) *Class A combination vehicle.* — Any combination of
4 vehicles with a gross combined vehicle weight rating of
5 twenty-six thousand one pounds or more, provided the gross
6 vehicle weight rating of the vehicle being towed is in excess
7 of ten thousand pounds.

8 (2) *Class B heavy straight vehicle.* — Any single vehicle
9 with a gross vehicle weight rating of twenty-six thousand
10 one pounds or more and any vehicle towing a vehicle not in
11 excess of ten thousand pounds.

12 (3) *Class C small vehicle.* — Any single vehicle or combina-
13 tion vehicle that does not fall under either Class A or Class
14 B but are:

15 (A) Vehicles designed to transport sixteen or more passen-
16 gers, including the driver; and

17 (B) Vehicles used in the transportation of hazardous
18 materials which requires the vehicle to be placarded under
19 49 C.F.R. Part §172, Subpart F (2004).

20 (4) Each applicant who desires to operate a vehicle in a
21 classification different from the class in which the applicant

22 is authorized is required to retake and pass all related tests
23 except the following:

24 (A) A driver who has passed the knowledge and skills test
25 for a combination vehicle in Class A may operate a heavy
26 straight vehicle in Class B or a small vehicle in Class C
27 provided he or she possesses the required endorsements; and

28 (B) A driver who has passed the knowledge and skills test
29 for a vehicle in Class B may operate any small vehicle in
30 Class C provided he or she possesses the required endorse-
31 ments.

32 (b) *Endorsements and restrictions.* — The commissioner
33 upon issuing a commercial driver's license may impose
34 endorsements and ~~or~~ restrictions determined by the commis-
35 sioner to be appropriate to assure the safe operation of a
36 specific class, type or category of motor vehicle or a specifi-
37 cally equipped motor vehicle and to comply with 49 U.S.C.,
38 et seq., and 49 C.F.R. §383.93 (2004) including, but not
39 limited to, endorsements or restrictions to operate:

40 (1) Double or triple trailers which requires successful
41 completion of a knowledge test;

42 (2) Passenger vehicles which requires successful comple-
43 tion of a knowledge and skills test;

44 (3) Tank vehicles which requires successful completion of
45 a knowledge test;

46 (4) Vehicles used for the transportation of hazardous
47 materials as defined in section three of this article which
48 requires the completion of a knowledge test and a back-
49 ground security risk check in accordance with 49 C.F.R.
50 §1572.5(2004);

51 (5) School buses which requires successful completion of a
52 knowledge and skills test unless the applicant meets the
53 criteria for waiver of the skills test in accordance with 49
54 C.F.R. §383.123(b)(2004); or

55 (6) Vehicles equipped with air brakes which requires the
56 completion of a skills test.

57 (c) *Applicant record check.* — Before issuing a commercial
58 driver's license, the commissioner shall obtain driving record
59 and medical certification status information through the
60 commercial driver's license information system, the national
61 driver register and from each state in which the person has
62 been licensed.

63 (d) *Notification of license issuance.* — Within ten days after
64 issuing a commercial driver's license, the commissioner shall
65 notify the commercial driver's license information system of

66 ~~that fact, providing the issuance and provide~~ all information
67 required to ensure identification of the person.

68 (e) *Expiration of license.* –

69 (1) Every commercial driver's license issued to persons who
70 have attained their twenty-first birthday expires on the
71 applicant's birthday in those years in which the applicant's
72 age is evenly divisible by five. Except as provided in subdivi-
73 sion (2) of this subsection, no commercial driver's license
74 may be issued for less than three years nor more than seven
75 years. ~~and~~ The commercial driver's license shall be renewed
76 by the applicant's birthday and is valid for a period of five
77 years, expiring on the applicant's birthday and in a year in
78 which the applicant's age is evenly divisible by five. No
79 commercial driver's license with a hazardous materials
80 endorsement may be issued for more than five years.

81 (2) Every commercial driver's license issued to persons who
82 have not attained their twenty-first birthday expires thirty
83 days after the applicant's birthday in the year in which the
84 applicant attains the age of twenty-one years.

85 (3) Commercial driver's licenses held by any person in the
86 Armed Forces which expire while that person is on active

87 duty remains valid for thirty days from the date on which
88 that person reestablishes residence in West Virginia.

89 (4) Any person applying to renew a commercial driver's
90 license which has been expired for six months or more shall
91 follow the procedures for an initial issuance of a commercial
92 driver's license, including the testing provisions.

93 (5) Any commercial driver's license held by a person who
94 does not possess a valid or current medical certification
95 status is no longer valid for the operation of a commercial
96 motor vehicle and is downgraded to the appropriate
97 licensure level commensurate with the licensee's qualifica-
98 tions regardless of the expiration date or indicated class on
99 the face of the license within the time frames prescribed by
100 49 CFR §383.73(j).

101 (f) When applying for renewal of a commercial driver's
102 license, the applicant shall complete the application form
103 and provide updated information and required certifications.

104 (g) If the applicant wishes to obtain or retain a hazardous
105 materials endorsement, the applicant shall comply with a
106 background check in accordance with 49 U.S.C. §5103a and
107 49 C.F.R. Part §1572 (2004) and subject to the following:

108 (1) The applicant is a citizen of the United States or a
109 lawful permanent resident of the United States;

110 (2) The applicant completes the application prescribed by
111 the division and submits fingerprints in a form and manner
112 prescribed by the division and the United States Department
113 of Homeland Security Transportation Security Administra-
114 tion at the time of application or at any other time in
115 accordance with 49 C.F.R. §1572.5(2004);

116 (3) The applicant pays all fees prescribed by the Transpor-
117 tation Security Administration or its agent and the division;

118 (4) The applicant has not been adjudicated as a mental
119 defective or committed to a mental institution as prescribed
120 in 49 C.F.R. §1572.109(2004);

121 (5) The applicant has not committed a disqualifying
122 criminal offense as described in 49 C.F.R. §1572.103(2004);

123 (6) The applicant has passed the Transportation Security
124 Administration security threat assessment and the division
125 has received a final notification of threat assessment or
126 notification of no security threat from the Transportation
127 Security Administration. ~~Provided, That any~~ An appeal of
128 ~~any~~ a decision, determination or ruling of the Federal Bureau

129 of Investigation or the Transportation Security Agency shall
130 be directed to that agency; and

131 (7) The applicant has successfully passed the written test
132 for the issuance or renewal of a hazardous material endorse-
133 ment.

§17E-1-13. Disqualification.

1 (a) A person may not operate a commercial motor vehicle
2 if his or her privilege to operate a commercial motor vehicle
3 is disqualified under the provisions of the Federal Motor
4 Carrier Safety Improvement Act of 1999, (~~public law 106-159~~
5 ~~§1740~~), 49 C.F.R. Part §383, Subpart D (2004) or in accor-
6 dance with the provisions of this section.

7 (1) For the purposes of determining first and subsequent
8 violations of the offenses listed in this section, each convic-
9 tion ~~for any offense listed in this section~~ resulting from a
10 separate incident includes convictions for offenses commit-
11 ted in a commercial motor vehicle or a noncommercial motor
12 vehicle.

13 (2) Any person disqualified from operating a commercial
14 motor vehicle for life under the provisions of this chapter for
15 offenses described in subsection (b,) subdivisions (4) and (6)
16 of this section is eligible for reinstatement of privileges to

17 operate a commercial motor vehicle after ten years and after
18 completion of the Safety and Treatment Program or other
19 appropriate program prescribed by the division. Any person
20 whose lifetime disqualification has been amended under the
21 provisions of this subdivision and who is subsequently
22 convicted of a disqualifying offense described in subsection
23 (b), subdivisions (1) through (8) of this section, is not eligible
24 for reinstatement.

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

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

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

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

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

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

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

54 (D) For a second conviction or for refusal to submit to any
55 designated secondary chemical test in a separate incident of
56 any combination of offenses in this subsection while operat-
57 ing a commercial motor vehicle, a driver is disqualified from
58 operating a commercial motor vehicle for life.

59 (E) For a second conviction or refusal to submit to any
60 designated secondary chemical test in a separate incident of
61 any combination of offenses in this subsection while operat-
62 ing a noncommercial motor vehicle, a commercial motor
63 vehicle license holder is disqualified from operating a
64 commercial motor vehicle for life.

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

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

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

78 (C) For a second conviction or refusal to submit to any
79 designated secondary chemical test in a separate incident of
80 any combination of offenses in this subsection while operat-

81 ing a commercial motor vehicle, a driver is disqualified from
82 operating a commercial motor vehicle for life.

83 (3) Refusing to submit to any designated secondary chemi-
84 cal test required by the provisions of this code or the provi-
85 sions of 49 C.F.R. §383.72 (2004);

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

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

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

101 (D) For a second conviction or refusal to submit to any
102 designated secondary chemical test in a separate incident of

103 any combination of offenses in this subsection while operat-
104 ing a commercial motor vehicle, a driver is disqualified from
105 operating a commercial motor vehicle for life.

106 (E) For a second conviction or refusal to submit to any
107 designated secondary chemical test in a separate incident of
108 any combination of offenses in this subsection while operat-
109 ing a noncommercial motor vehicle, a commercial driver's
110 license holder is disqualified from operating a commercial
111 motor vehicle for life.

112 (4) Leaving the scene of an accident;

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

116 (B) For the first conviction while operating a noncommer-
117 cial motor vehicle, a commercial driver's license holder is
118 disqualified for one year.

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

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

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

133 (5) Using a motor vehicle in the commission of any felony
134 as defined in section three, article one of this chapter
135 ~~Provided, except~~ that the commission of any felony involving
136 the manufacture, distribution or dispensing of a controlled
137 substance or possession with intent to manufacture, distrib-
138 ute or dispense a controlled substance falls under the
139 provisions of subdivision eight of this subsection;

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

143 (B) For the first conviction while operating a noncommer-
144 cial motor vehicle, a commercial driver's license holder is

145 disqualified from operating a commercial motor vehicle for
146 one year.

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

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

156 (E) For a second conviction in a separate incident of any
157 combination of offenses in this subsection while operating a
158 noncommercial motor vehicle, a commercial motor vehicle
159 license holder is disqualified from operating a commercial
160 motor vehicle for life.

161 (6) Operating a commercial motor vehicle when, as a result
162 of prior violations committed operating a commercial motor
163 vehicle, the driver's privilege to operate a motor vehicle has
164 been suspended, revoked or canceled or the driver's privilege
165 to operate a commercial motor vehicle has been disqualified.

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

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

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

178 (7) Causing a fatality through the negligent operation of a
179 commercial motor vehicle, including, but not limited to, the
180 crimes of motor vehicle manslaughter, homicide and negli-
181 gent homicide as defined in section five, article three,
182 chapter seventeen-b, and section one, article five, chapter
183 seventeen-c of this code;

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

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

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

196 (8) Using a motor vehicle in the commission of any felony
197 involving the manufacture, distribution or dispensing of a
198 controlled substance or possession with intent to manufac-
199 ture, distribute or dispense a controlled substance, a driver
200 is disqualified from operating a commercial motor vehicle for
201 life and ~~shall not be~~ is not eligible for reinstatement.

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

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

206 (A) For a second conviction of any combination of offenses
207 in this subsection in a separate incident within a three year
208 period while operating a commercial motor vehicle, a driver

209 is disqualified from operating a commercial motor vehicle for
210 a period of sixty days.

211 (B) For a second conviction of any combination of offenses
212 in this section in a separate incident within a three-year
213 period while operating a noncommercial motor vehicle, if the
214 conviction results in the suspension, revocation or cancella-
215 tion of the commercial driver's license holder's privilege to
216 operate any motor vehicle, a commercial driver's license
217 holder is disqualified from operating a commercial motor
218 vehicle for a period of sixty days.

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

224 (D) For a third or subsequent conviction of any combina-
225 tion of offenses in this subsection in a separate incident
226 within a three- year period while operating a noncommercial
227 motor vehicle, if the conviction results in the suspension,
228 revocation or cancellation of the commercial driver's license
229 holder's privilege to operate any motor vehicle, a commercial
230 driver's license holder shall be disqualified from operating a

231 commercial motor vehicle for a period of one hundred twenty
232 days.

233 (2) Reckless driving as defined in section three, article five,
234 chapter seventeen-c of this code, careless, or negligent
235 driving including, but not limited to, the offenses of driving
236 a motor vehicle in willful or wanton disregard for the safety
237 of persons or property;

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

243 (B) For a second conviction of any combination of offenses
244 in this section in a separate incident within a three-year
245 period while operating a noncommercial motor vehicle, if the
246 conviction results in the suspension, revocation or cancella-
247 tion of the commercial driver's license holder's privilege to
248 operate any motor vehicle, a commercial driver's license
249 holder is disqualified from operating a commercial motor
250 vehicle for a period of sixty days.

251 (C) For a third or subsequent conviction of any combina-
252 tion of the offenses in this subsection in a separate incident

253 in a three- year period while operating a commercial motor
254 vehicle, a driver is disqualified from operating a commercial
255 motor vehicle for a period of one hundred twenty days.

256 (D) For a third or subsequent conviction of any combina-
257 tion of offenses in this subsection in a separate incident
258 within a three- year period while operating a noncommercial
259 motor vehicle, if the conviction results in the suspension,
260 revocation or cancellation of the commercial driver's license
261 holder's privilege to operate any motor vehicle, a commercial
262 driver's license holder is disqualified from operating a
263 commercial motor vehicle for a period of one hundred twenty
264 days.

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

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

271 (B) For a second conviction of any combination of offenses
272 in this section in a separate incident within a three-year
273 period while operating a noncommercial motor vehicle, if the
274 conviction results in the suspension, revocation, or cancella-

275 tion of the commercial driver's license holder's privilege to
276 operate any motor vehicle, a commercial driver's license
277 holder is disqualified from operating a commercial motor
278 vehicle for a period of sixty days.

279 (C) For a third or subsequent conviction of any combina-
280 tion of the offenses in this subsection in a separate incident
281 in a three- year period while operating a commercial motor
282 vehicle, a driver is disqualified from operating a commercial
283 motor vehicle for a period of one hundred twenty days.

284 (D) For a third or subsequent conviction of any combina-
285 tion of offenses in this subsection in a separate incident
286 within a three-year period while operating a noncommercial
287 motor vehicle, if the conviction results in the suspension,
288 revocation or cancellation of the commercial driver's license
289 holder's privilege to operate any motor vehicle, a commercial
290 driver's license holder is disqualified from operating a
291 commercial motor vehicle for a period of one hundred twenty
292 days.

293 (4) Following the vehicle ahead too closely;

294 (A) For a second conviction of any combination of offenses
295 in this subsection in a separate incident within a three-year
296 period while operating a commercial motor vehicle, a driver

297 is disqualified from operating a commercial motor vehicle for
298 a period of sixty days.

299 (B) For a second conviction of any combination of offenses
300 in this section in a separate incident within a three-year
301 period while operating a noncommercial motor vehicle, if the
302 conviction results in the suspension, revocation, or cancella-
303 tion of the commercial driver's license holder's privilege to
304 operate any motor vehicle, a commercial driver's license
305 holder is disqualified from operating a commercial motor
306 vehicle for a period of sixty days.

307 (C) For a third or subsequent conviction of any combina-
308 tion of the offenses in this subsection in a separate incident
309 in a three- year period while operating a commercial motor
310 vehicle, a driver is disqualified from operating a commercial
311 motor vehicle for a period of one hundred twenty days.

312 (D) For a third or subsequent conviction of any combina-
313 tion of offenses in this subsection in a separate incident
314 within a three- year period while operating a noncommercial
315 motor vehicle, if the conviction results in the suspension,
316 revocation or cancellation of the commercial driver's license
317 holder's privilege to operate any motor vehicle, a commercial
318 driver's license holder is disqualified from operating a

319 commercial motor vehicle for a period of one hundred twenty
320 days.

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

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

329 (B) For a second conviction of any combination of offenses
330 in this section in a separate incident within a three-year
331 period while operating a noncommercial motor vehicle, if the
332 conviction results in the suspension, revocation, or cancella-
333 tion of the commercial driver's license holder's privilege to
334 operate any motor vehicle, a commercial driver's license
335 holder is disqualified from operating a commercial motor
336 vehicle for a period of sixty days.

337 (C) For a third or subsequent conviction of any combina-
338 tion of the offenses in this subsection in a separate incident
339 in a three- year period while operating a commercial motor

340 vehicle, a driver is disqualified from operating a commercial
341 motor vehicle for a period of one hundred twenty days.

342 (D) For a third or subsequent conviction of any combina-
343 tion of offenses in this subsection in a separate incident
344 within a three- year period while operating a noncommercial
345 motor vehicle, if the conviction results in the suspension,
346 revocation or cancellation of the commercial driver's license
347 holder's privilege to operate any motor vehicle, a commercial
348 motor vehicle license holder is disqualified from operating a
349 commercial motor vehicle for a period of one hundred twenty
350 days.

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

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

358 (B) For a third or subsequent conviction of any combina-
359 tion of the offenses in this subsection in a separate incident
360 in a three-year period while operating a commercial motor

361 vehicle, a driver is disqualified from operating a commercial
362 motor vehicle for a period of one hundred twenty days.

363 (7) Driving a commercial motor vehicle without a commer-
364 cial driver's license in the driver's possession ~~provided~~
365 except that any person who provides proof of possession of
366 a commercial driver's license to the enforcement agency that
367 issued the citation by the court appearance or fine payment
368 deadline ~~shall not be~~ is not guilty of this offense;

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

375 (B) For a third or subsequent conviction of any combina-
376 tion of the offenses in this subsection in a separate incident
377 in a three- year period while operating a commercial motor
378 vehicle, a commercial driver's license holder is disqualified
379 from operating a commercial motor vehicle for a period of
380 one hundred twenty days.

381 (8) Driving a commercial motor vehicle without the proper
382 class of commercial driver's license or the proper endorse-

383 ments for the specific vehicle group being operated or for the
384 passengers or type of cargo being transported;

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

391 (B) For a third or subsequent conviction of any combina-
392 tion of the offenses in this subsection in a separate incident
393 in a three- year period while operating a commercial motor
394 vehicle, a commercial driver's license holder is disqualified
395 from operating a commercial motor vehicle for a period of
396 one hundred twenty days.

397 (9) Driving a commercial motor vehicle while engaged in
398 texting and convicted pursuant to section fourteen-a of this
399 article or similar law of this or any other jurisdiction or 49
400 CFR §392.80;

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

405 operating a commercial motor vehicle for a period of sixty
406 days.

407 (B) For a third or subsequent conviction of any combina-
408 tion of the offenses in this subsection in a separate incident
409 in a three- year period while operating a commercial motor
410 vehicle, a commercial driver's license holder is disqualified
411 from operating a commercial motor vehicle for a period of
412 one hundred twenty days.

413 (d) Any person convicted of operating a commercial motor
414 vehicle in violation of any federal, state or local law or
415 ordinance pertaining to ~~any of the~~ railroad crossing viola-
416 tions described in subdivisions (1) through (6) of this subsec-
417 tion, is disqualified from operating a commercial motor
418 vehicle for the period of time specified;

419 (1) Failing to slow down and check that the tracks are clear
420 of an approaching train, if not required to stop in accordance
421 with the provisions of section three, article twelve, chapter
422 seventeen-c of this code;

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

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

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

434 (2) Failing to stop before reaching the crossing, if the
435 tracks are not clear, if not required to stop, in accordance
436 with the provisions of section one, article twelve, chapter
437 seventeen-c of this code;

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

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

445 (C) For a third or subsequent conviction of any combina-
446 tion of offenses in this subsection within a three-year period,

447 a driver is disqualified from operating a commercial motor
448 vehicle for one year.

449 (3) Failing to stop before driving onto the crossing, if
450 required to stop in accordance with the provisions of section
451 three, article twelve, chapter seventeen-c of this code;

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

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

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

463 (4) Failing to have sufficient space to drive completely
464 through the crossing without stopping in accordance with
465 the provisions of section three, article twelve, chapter
466 seventeen-c of this code;

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

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

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

478 (5) Failing to obey a traffic control device or the directions
479 of an enforcement official at the crossing in accordance with
480 the provisions of section one, article twelve, chapter
481 seventeen-c of this code; ~~or~~

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

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

489 (C) For a third or subsequent conviction of any combina-
490 tion of offenses in this subsection within a three-year period,

491 a driver is disqualified from operating a commercial motor
492 vehicle for one year.

493 (6) Failing to negotiate a crossing because of insufficient
494 undercarriage clearance in accordance with the provisions of
495 section three, article twelve, chapter seventeen-c of this
496 code.

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

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

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

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

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

513 (A) For the first conviction of violating an out-of-service
514 order while operating a commercial motor vehicle, a driver
515 is disqualified from operating a commercial motor vehicle for
516 one hundred eighty days.

517 (B) For a second conviction in a separate incident within a
518 ten-year period for violating an out of service order while
519 operating a commercial motor vehicle, a driver is disquali-
520 fied from operating a commercial motor vehicle for two
521 years.

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

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

532 (A) For the first conviction of violating an out of service
533 order while operating a commercial motor vehicle, a driver

534 is disqualified from operating a commercial motor vehicle for
535 one hundred eighty days.

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

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

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

549 (g) In accordance with the provisions of 49 U.S.C.
550 §313119(a)(19)(2004), and 49 C.F.R §384.226 (2004), ~~and~~
551 notwithstanding the provisions of section twenty-five, article
552 eleven, chapter sixty-one of this code, no record of convic-
553 tion, revocation, suspension or disqualification related to any
554 type of motor vehicle traffic control offense, other than a
555 parking violation, of a commercial driver's license holder or

556 a person operating a commercial motor vehicle may be
557 masked, expunged, deferred or be subject to any diversion
558 program.

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

566 (i) In accordance with the provisions of 49 C.F.R.
567 §391.15(b), a driver is disqualified from operating a commer-
568 cial motor vehicle for the duration of any suspension,
569 revocation or cancellation of his or her driver's license or
570 privilege to operate a motor vehicle by this state or by any
571 other state or jurisdiction until the driver complies with the
572 terms and conditions for reinstatement set by this state or by
573 another state or jurisdiction.

574 (j) In accordance with the provisions of 49 C.F.R. 353.52
575 (2006), the division shall immediately disqualify a driver's
576 privilege to operate a commercial motor vehicle upon a
577 notice from the Assistant Administrator of the Federal Motor

578 Carrier Safety Administration that the driver poses an
579 imminent hazard. Any disqualification period imposed under
580 the provisions of this subsection shall be served concurrently
581 with any other period of disqualification if applicable.

582 (k) In accordance with the provisions of 49 C.F.R.
583 1572.11(a), the division shall immediately disqualify a
584 driver's privilege to operate a commercial motor vehicle if
585 the driver fails to surrender his or her driver's license with
586 a hazardous material endorsement to the division upon
587 proper notice by the division to the driver that the division
588 received notice from the Department of Homeland Security
589 Transportation Security Administration of an initial deter-
590 mination of threat assessment and immediate revocation that
591 the driver does not meet the standards for security threat
592 assessment provided in 49 C.F.R. 1572.5. The disqualification
593 remains in effect until the driver either surrenders the
594 driver's license to the division or provides the division with
595 an affidavit attesting to the fact that the driver has lost or is
596 otherwise unable to surrender the license.

597 (l) In accordance with 49 C.F.R §391.41, a driver is disqual-
598 ified from operating a commercial motor vehicle if the driver
599 is not physically qualified to operate a commercial motor

600 vehicle or does not possess a valid medical certification
601 status.

602 (m) In accordance with the provisions of 49 C.F.R.
603 §383.73(g), the division shall disqualify a driver's privilege
604 to operate a commercial motor vehicle if the division deter-
605 mines that the licensee has falsified any information or
606 certifications required under the provisions of 49 C.F.R. 383
607 Subpart J or 49 C.F.R. §383.71a for sixty days in addition to
608 any other penalty prescribed by this code.

§17E-1-14a. Commercial Drivers Prohibited From Texting.

1 (a) No commercial driver may engage in texting while
2 driving a commercial motor vehicle.

3 (b) No motor carrier may allow or require its drivers to
4 engage in texting while driving a commercial motor vehicle.

5 (c) For the purposes of this section only, and unless a more
6 restrictive prohibition is prescribed in this code, driving
7 means operating a commercial motor vehicle with the motor
8 running, including while temporarily stationed because of
9 traffic, a traffic control device or other momentary delays.
10 Driving does not include operating a commercial motor
11 vehicle with or without the motor running when the driver
12 moved the vehicle to the side of or off a highway, as defined

13 in 49 CFR 390.5, and halted in a location where the vehicle
14 can safely remain stationary.

15 (d) Texting while driving is permissible by drivers of
16 commercial motor vehicles when necessary to communicate
17 with law-enforcement officials or other emergency services.

§17E-1-17. Driving record information to be furnished.

1 Subject to the provisions of article two-a, chapter
2 seventeen-a of this code, the commissioner shall furnish full
3 information regarding the driving record of any person:

4 (a) To the driver license administrator of any other state ~~or~~
5 ~~province or territory of Canada~~ of the United States and the
6 District of Columbia or a province or territory of Canada or
7 a state or federal agency of the United Mexican States
8 requesting that information;

9 (b) To any motor carrier employer or prospective motor
10 carrier employer;

11 (c) To the United States Secretary of Transportation; and

12 (d) To the driver: ~~Provided, That~~ Nothing in this section
13 ~~shall be construed to prevent~~ prevents an insurer from
14 obtaining a standard driving record issued in accordance
15 with section two, article two, chapter seventeen-d of this
16 code.

§17E-1-20. Reciprocity.

1 (a) Notwithstanding any law to the contrary, a person may
2 drive a commercial motor vehicle if the person has a com-
3 mercial driver's license by any state of the United States and
4 the District of Columbia or a province or territory of Canada
5 or a state or federal agency of the United Mexican States in
6 accordance with the minimum federal standards for the
7 issuance of commercial motor vehicle driver licenses if the
8 license is not suspended, revoked or canceled, ~~and~~ if the
9 person is not disqualified from driving a commercial motor
10 vehicle or not subject to an "out-of-service" order.

11 (b) The commissioner is authorized to suspend, revoke or
12 cancel the privilege to operate a motor vehicle or disqualify
13 the privilege to operate a commercial motor vehicle of any
14 resident of this state or of a nonresident upon receiving
15 notice of the conviction of such person in another state of an
16 offense ~~therein~~ which, if committed in this state, would be
17 grounds for the suspension, revocation or cancellation of the
18 privilege to operate a motor vehicle or the disqualification of
19 the privilege to operate a commercial motor vehicle.

(NOTE: The purpose of this bill is to conform West Virginia law concerning the issuance and maintenance of commercial driver's licenses with federal law and rule. The focus of these changes is to codifying requirements that CDL drivers maintain current medical certification and that they meet minimum federal medical standards for operating commercial motor vehicles as well as prohibiting drivers from texting when operating a commercial motor vehicle.

§17E-1-14a is new; therefore, strike-throughs and underscoring have been omitted.

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

TRANSPORTATION AND INFRASTRUCTURE
COMMITTEE AMENDMENT

On page eighteen, section six-d, line twenty-nine, after "(b)" by inserting the words "or subsection (c)".

JUDICIARY COMMITTEE AMENDMENT

On page fifty-nine, section fourteen-a, by striking out all of subsection (d).