

H. B. 2528

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(By Delegates Ellington, Nelson, E., Gearheart, Householder, Overington, Howell, Border, Rowan, Shott, Phillips, R., Sobonya)

[Introduced February 19, 2013; referred to the Committee on Roads and Transportation then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended, relating to prohibiting the Division of Motor Vehicles from issuing instruction permits to applicants who have not successfully passed drug tests; and permitting a level two intermediate licensee to be issued a level three full Class E license if he or she has successfully passed a drug test.

Be it enacted by the Legislature of West Virginia:

That §17B-2-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-3a. Graduated driver's license.

(a) Any person under the age of eighteen may not operate a motor vehicle unless he or she has obtained a graduated driver's license in accordance with the three-level graduated driver's license system described in the following provisions.

1 (b) Any person under the age of twenty-one, regardless of
2 class or level of licensure, who operates a motor vehicle with any
3 measurable alcohol in his or her system is subject to ~~the~~
4 ~~provisions of~~ section two, article five, chapter seventeen-c of
5 this code and section two, article five-a of said chapter. Any
6 person under the age of eighteen, regardless of class or licensure
7 level, is subject to the mandatory school attendance and
8 satisfactory academic progress provisions of section eleven,
9 article eight, chapter eighteen of this code.

10 (c) *Level one instruction permit.* -- An applicant who is
11 fifteen years or older meeting all other requirements prescribed in
12 this code may be issued a level one instruction permit.

13 (1) *Eligibility.* -- The division shall not issue a level one
14 instruction permit unless the applicant:

15 (A) Presents a completed application, as prescribed by ~~the~~
16 ~~provisions of~~ section six of this article, and which is accompanied
17 by a writing, duly acknowledged, consenting to the issuance of the
18 graduated driver's license and executed by a parent or guardian
19 entitled to custody of the applicant;

20 (B) Presents a certified copy of a birth certificate issued by
21 a state or other governmental entity responsible for vital records
22 unexpired, or a valid passport issued by the United States
23 government evidencing that the applicant meets the minimum age
24 requirement and is of verifiable identity;

1 (C) Passes the vision and written knowledge examination and
2 completes the driving under the influence awareness program, as
3 prescribed in section seven of this article;

4 (D) Presents a driver's eligibility certificate or otherwise
5 shows compliance with ~~the provisions of~~ section eleven, article
6 eight, chapter eighteen of this code; ~~and~~

7 (E) Pays a fee of \$5, which shall permit the applicant two
8 attempts at the written knowledge test; and

9 (F) Passes a drug test designed to detect illegal consumption
10 of controlled substances.

11 (2) *Terms and conditions of instruction permit.* -- A level one
12 instruction permit issued under ~~the provisions of~~ this section is
13 valid until thirty days after the date the applicant attains the
14 age of eighteen and is not renewable. However, any permit holder
15 who allows his or her permit to expire prior to successfully
16 passing the road skills portion of the driver examination, and who
17 has not committed any offense which requires the suspension,
18 revocation or cancellation of the instruction permit, may reapply
19 for a new instruction permit under ~~the provisions of~~ section six of
20 this article. The division shall immediately revoke the permit
21 upon receipt of a second conviction for a moving violation of
22 traffic regulations and laws of the road or violation of the terms
23 and conditions of a level one instruction permit, which convictions
24 have become final unless a greater penalty is required by this

1 section or any other provision of this code. Any person whose
2 instruction permit has been revoked is disqualified from retesting
3 for a period of ninety days. However, after the expiration of
4 ninety days, the person may retest if otherwise eligible. In
5 addition to all other provisions of this code for which a driver's
6 license may be restricted, suspended, revoked or canceled, the
7 holder of a level one instruction permit may only operate a motor
8 vehicle under the following conditions:

9 (A) Under the direct supervision of a licensed driver, twenty-
10 one years of age or older, or a driver's education or driving
11 school instructor who is acting in an official capacity as an
12 instructor, who is fully alert and unimpaired, and the only other
13 occupant of the front seat. The vehicle may be operated with no
14 more than two additional passengers, unless the passengers are
15 family members;

16 (B) Between the hours of five a.m. and ten p.m.;

17 (C) All occupants must use safety belts in accordance with ~~the~~
18 ~~provisions of~~ section forty-nine, article fifteen, chapter
19 seventeen-c of this code;

20 (D) Without any measurable blood alcohol content, in
21 accordance with ~~the provisions of~~ subsection (h), section two,
22 article five, chapter seventeen-c of this code; and

23 (E) Maintains current school enrollment and is making
24 satisfactory academic progress or otherwise shows compliance with

1 ~~the provisions of~~ section eleven, article eight, chapter eighteen
2 of this code.

3 (F) A holder of a level one instruction permit who is under
4 the age of eighteen years shall be prohibited from using a wireless
5 communication device while operating a motor vehicle, unless the
6 use of the wireless communication device is for contacting a 9-1-1
7 system. A person violating ~~the provisions of~~ this paragraph is
8 guilty of a misdemeanor and, upon conviction thereof, shall for the
9 first offense be fined \$25; for a second offense be fined \$50; and
10 for a third or subsequent offense be fined \$75.

11 (d) *Level two intermediate driver's license.* -- An applicant
12 sixteen years of age or older, meeting all other requirements of
13 the code, may be issued a level two intermediate driver's license.

14 (1) *Eligibility.* -- The division shall not issue a level two
15 intermediate driver's license unless the applicant:

16 (A) Presents a completed application as prescribed in section
17 six of this article;

18 (B) Has held the level one instruction permit conviction-free
19 for the one hundred eighty days immediately preceding the date of
20 application for a level two intermediate license;

21 (C) Has completed either a driver's education course approved
22 by the state Department of Education or fifty hours of behind-the-
23 wheel driving experience, including a minimum of ten hours of
24 nighttime driving, certified by a parent or legal guardian or other

1 responsible adult over the age of twenty-one as indicated on the
2 form prescribed by the division: *Provided*, That nothing in this
3 paragraph shall be construed to require any school or any county
4 board of education to provide any particular number of driver's
5 education courses or to provide driver's education training to any
6 student;

7 (D) Presents a driver's eligibility certificate or otherwise
8 shows compliance with ~~the provisions of~~ section eleven, article
9 eight, chapter eighteen of this code;

10 (E) Passes the road skills examination as prescribed by
11 section seven of this article; ~~and~~

12 (F) Pays a fee of \$5; and

13 (G) Passes a drug test designed to detect illegal consumption
14 of controlled substances.

15 (2) *Terms and conditions of a level two intermediate driver's*
16 *license.* -- A level two intermediate driver's license issued under
17 ~~the provisions of~~ this section shall expire thirty days after the
18 applicant attains the age of eighteen, or until the licensee
19 qualifies for a level three full Class E license, whichever comes
20 first. In addition to all other provisions of this code for which
21 a driver's license may be restricted, suspended, revoked or
22 canceled, the holder of a level two intermediate driver's license
23 may only operate a motor vehicle under the following conditions:

24 (A) Unsupervised between the hours of five a.m. and ten p.m.;

1 (B) Only under the direct supervision of a licensed driver,
2 age twenty-one years or older, between the hours of ten p.m. and
3 five a.m. except when the licensee is going to or returning from:

4 (i) Lawful employment;

5 (ii) A school-sanctioned activity;

6 (iii) A religious event; or

7 (iv) An emergency situation that requires the licensee to
8 operate a motor vehicle to prevent bodily injury or death of
9 another;

10 (C) All occupants shall use safety belts in accordance with
11 ~~the provisions of~~ section forty-nine, article fifteen, chapter
12 seventeen-c of this code;

13 (D) For the first six months after issuance of a level two
14 intermediate driver's license, the licensee may not operate a motor
15 vehicle carrying any passengers less than twenty years old, unless
16 these passengers are family members of the licensee; for the second
17 six months after issuance of a level two intermediate driver's
18 license, the licensee may not operate a motor vehicle carrying more
19 than one passenger less than twenty years old, unless these
20 passengers are family members of the licensee;

21 (E) Without any measurable blood alcohol content in accordance
22 with ~~the provisions of~~ subsection (h), section two, article five,
23 chapter seventeen-c of this code;

24 (F) Maintains current school enrollment and is making

1 satisfactory academic progress or otherwise shows compliance with
2 ~~the provisions of~~ section eleven, article eight, chapter eighteen
3 of this code;

4 (G) A holder of a level two intermediate driver's license who
5 is under the age of eighteen years shall be prohibited from using
6 a wireless communication device while operating a motor vehicle,
7 unless the use of the wireless communication device is for
8 contacting a 9-1-1 system. A person violating ~~the provisions of~~
9 this paragraph is guilty of a misdemeanor and, upon conviction
10 thereof, shall for the first offense be fined \$25; for a second
11 offense be fined \$50; and for a third or subsequent offense be
12 fined \$75.

13 (H) Upon the first conviction for a moving traffic violation
14 or a violation of paragraph (A), (B), (C), (D) or (G), subdivision
15 (1), subsection (d) of this section of the terms and conditions of
16 a level two intermediate driver's license, the licensee shall
17 enroll in an approved driver improvement program unless a greater
18 penalty is required by this section or by any other provision of
19 this code; and

20 At the discretion of the commissioner, completion of an
21 approved driver improvement program may be used to negate the
22 effect of a minor traffic violation as defined by the commissioner
23 against the one year conviction-free driving criteria for early
24 eligibility for a level three driver's license and may also negate

1 the effect of one minor traffic violation for purposes of avoiding
2 a second conviction under paragraph (I) of this subdivision; and

3 (I) Upon the second conviction for a moving traffic violation
4 or a violation of the terms and conditions of the level two
5 intermediate driver's license, the licensee's privilege to operate
6 a motor vehicle shall be revoked or suspended for the applicable
7 statutory period or until the licensee's eighteenth birthday,
8 whichever is longer unless a greater penalty is required by this
9 section or any other provision of this code. Any person whose
10 driver's license has been revoked as a level two intermediate
11 driver, upon reaching the age of eighteen years and if otherwise
12 eligible may reapply for an instruction permit, then a driver's
13 license in accordance with ~~the provisions of~~ sections five, six and
14 seven of this article.

15 (e) *Level three, full Class E license.* -- The level three
16 license is valid until thirty days after the date the licensee
17 attains his or her twenty-first birthday. Unless otherwise
18 provided in this section or any other section of this code, the
19 holder of a level three full Class E license is subject to the same
20 terms and conditions as the holder of a regular Class E driver's
21 license.

22 A level two intermediate licensee whose privilege to operate
23 a motor vehicle has not been suspended, revoked or otherwise
24 canceled and who meets all other requirements of the code may be

1 issued a level three full Class E license without further
2 examination or road skills testing if the licensee:

3 (1) Has reached the age of seventeen years; and

4 (A) Presents a completed application as prescribed by ~~the~~
5 ~~provisions of~~ section six of this article;

6 (B) Has held the level two intermediate license conviction
7 free for the twelve-month period immediately preceding the date of
8 the application;

9 (C) Has completed any driver improvement program required
10 under paragraph (G), subdivision (2), subsection (d) of this
11 section; ~~and~~

12 (D) Passes a drug test designed to detect illegal consumption
13 of controlled substances;

14 ~~(D)~~ (E) Pays a fee of \$2.50 for each year the license is
15 valid. An additional fee of \$.50 shall be collected to be
16 deposited in the Combined Voter Registration and Driver's Licensing
17 Fund established in section twelve, article two, chapter three of
18 this code; and

19 ~~(E)~~ (F) Presents a driver's eligibility certificate or
20 otherwise shows compliance with ~~the provisions of~~ section eleven,
21 article eight, chapter eighteen of this code; or

22 (2) Reaches the age of eighteen years; and

23 (A) Presents a completed application as prescribed by ~~the~~
24 ~~provisions of~~ section six of this article; and

1 (B) Pays a fee of \$2.50 for each year the license is valid.
2 An additional fee of \$.50 shall be collected to be deposited in the
3 Combined Voter Registration and Driver's Licensing Fund established
4 in section twelve, article two, chapter three of this code.

5 (f) A person violating ~~the provisions of~~ the terms and
6 conditions of a level one or level two intermediate driver's
7 license is guilty of a misdemeanor and, upon conviction thereof,
8 shall for the first offense be fined \$25; for a second offense be
9 fined \$50; and for a third or subsequent offense be fined \$75.

NOTE: The purpose of this bill is to prohibit the Division of Motor Vehicles from issuing instruction permits to applicants who have not successfully passed drug tests. The bill permits a level two intermediate licensee to be issued a level three full Class E license if, in addition to other requirements, he or she has successfully passed a drug test.

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