

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 55

SENATORS BOSO AND JEFFRIES, *original sponsors*

[Originating in the Committee on the Judiciary;

Reported on January 23, 2019]

1 A BILL to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended, relating
2 to driving privileges and requirements for persons under the age of 18; prohibiting the
3 holder of a level three, full class E license from using a wireless communication device
4 while operating motor vehicle and specifying exception; and making violation of level three
5 license terms and conditions subject to criminal penalty provision.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION, AND RENEWAL.

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

1 (a) ~~Any~~ A person under the age of 18 may not operate a motor vehicle unless he or she
2 has obtained a graduated driver's license in accordance with the three-level graduated driver's
3 license system described in the following provisions.

4 (b) Any person under the age of 21, regardless of class or level of licensure, who operates
5 a motor vehicle with any measurable alcohol in his or her system is subject to ~~the provisions of~~
6 §17C-5-2 and §17C-5A-2 of this code. Any person under the age of 18, regardless of class or
7 licensure level, is subject to the mandatory school attendance and satisfactory academic progress
8 provisions of §18-8-11 of this code.

9 (c) *Level one instruction permit.* — An applicant who is 15 years or older meeting all other
10 requirements prescribed in this code may be issued a level one instruction permit.

11 (1) *Eligibility.* — The division shall not issue a level one instruction permit unless the
12 applicant:

13 (A) Presents a completed application, as prescribed by ~~the provisions of~~ §17B-2-6 of this
14 code, ~~and~~ which is accompanied by a writing, duly acknowledged, consenting to the issuance of
15 the graduated driver's license, and executed by a parent or guardian entitled to custody of the
16 applicant;

17 (B) Presents a certified copy of a birth certificate issued by a state or other governmental
18 entity responsible for vital records unexpired, or a valid passport issued by the United States

19 government evidencing that the applicant meets the minimum age requirement and is of verifiable
20 identity;

21 (C) Passes the vision and written knowledge examination and completes the driving under
22 the influence awareness program, as prescribed in §17B-2-7 of this code;

23 (D) Presents a driver's eligibility certificate or otherwise shows compliance with ~~the~~
24 ~~provisions of~~ §18-8-11 of this code; and

25 (E) Pays a fee of \$7.50, which shall permit the applicant one attempt at the written
26 knowledge test. The Division of Motor Vehicles may adjust this fee every five years on September
27 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer
28 Price Index: *Provided*, That an increase in such fee may not exceed 10 percent of the total fee
29 amount in a single year.

30 (2) *Terms and conditions of instruction permit.* — A level one instruction permit issued
31 under ~~the provisions of~~ this section is valid until 30 days after the date the applicant attains the
32 age of 18 and is not renewable. However, any permit holder who allows his or her permit to expire
33 prior to successfully passing the road skills portion of the driver examination, and who has not
34 committed any offense which requires the suspension, revocation, or cancellation of the
35 instruction permit, may reapply for a new instruction permit under ~~the provisions of~~ §17B-2-6 of
36 this code. The division shall immediately revoke the permit upon receipt of a second conviction
37 for a moving violation of traffic regulations and laws of the road or violation of the terms and
38 conditions of a level one instruction permit, which convictions have become final unless a greater
39 penalty is required by this section or any other provision of this code. Any person whose
40 instruction permit has been revoked is disqualified from retesting for a period of 90 days. However,
41 after the expiration of 90 days, the person may retest if otherwise eligible. A holder of a level one
42 instruction permit who is under the age of 18 years shall not use a wireless communication device
43 while operating a motor vehicle, unless the use of the wireless communication device is for
44 contacting a 9-1-1 system. In addition to all other provisions of this code for which a driver's

45 license may be restricted, suspended, revoked, or canceled, the holder of a level one instruction
46 permit may only operate a motor vehicle under the following conditions:

47 (A) ~~Under~~ The permit holder is under the direct supervision of a licensed driver, 21 years
48 of age or older, or a driver's education or driving school instructor who is acting in an official
49 capacity as an instructor, who is fully alert and unimpaired, and the only other occupant of the
50 front seat. The vehicle may be operated with no more than two additional passengers, unless the
51 passengers are family members;

52 (B) ~~Between~~ The permit holder is operating the vehicle between the hours of 5:00 a.m.
53 and 10:00 p.m.;

54 (C) All occupants ~~must~~ use safety belts in accordance with ~~the provisions of~~ §17C-15-49
55 of this code;

56 (D) ~~Without~~ The permit holder is operating the vehicle without any measurable blood
57 alcohol content, in accordance with ~~the provisions of~~ §17C-5-2(h) of this code; and

58 (E) ~~Maintains~~ The permit holder maintains current school enrollment and is making
59 satisfactory academic progress or otherwise shows compliance with ~~the provisions of~~ §18-8-11
60 of this code.

61 (F) ~~A holder of a level one instruction permit who is under the age of 18 years shall be~~
62 ~~prohibited from using a wireless communication device while operating a motor vehicle, unless~~
63 ~~the use of the wireless communication device is for contacting a 9-1-1 system. A person violating~~
64 ~~the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for~~
65 ~~the first offense be fined \$25; for a second offense be fined \$50; and for a third or subsequent~~
66 ~~offense be fined \$75.~~

67 (d) *Level two intermediate driver's license.* — An applicant 16 years of age or older,
68 meeting all other requirements of ~~the~~ this code, may be issued a level two intermediate driver's
69 license.

70 (1) *Eligibility.* — The division shall not issue a level two intermediate driver's license unless

71 the applicant:

72 (A) Presents a completed application as prescribed in §17B-2-6 of this code;

73 (B) Has held the level one instruction permit conviction-free for the 180 days immediately
74 preceding the date of application for a level two intermediate license;

75 (C) Has completed either a driver's education course approved by the State Department
76 of Education or 50 hours of behind-the-wheel driving experience, including a minimum of 10 hours
77 of night time driving, certified by a parent or legal guardian or other responsible adult over the age
78 of 21 as indicated on the form prescribed by the division: *Provided*, That nothing in this paragraph
79 shall be construed to require any school or any county board of education to provide any particular
80 number of driver's education courses or to provide driver's education training to any student;

81 (D) Presents a driver's eligibility certificate or otherwise shows compliance with ~~the~~
82 ~~provisions of~~ §18-8-11 of this code;

83 (E) Passes the road skills examination as prescribed by §17B-2-7 of this code; and

84 (F) Pays a fee of \$7.50 for one attempt. The Division of Motor Vehicles may adjust this
85 fee every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor
86 Statistics most current Consumer Price Index: *Provided*, That an increase in ~~such~~ the fee may
87 not exceed 10 percent of the total fee amount in a single year.

88 (2) *Terms and conditions of a level two intermediate driver's license.* — A level two
89 intermediate driver's license issued under the provisions of this section ~~shall expire~~ expires 30
90 days after the applicant attains the age of 18, or until the licensee qualifies for a level three full
91 Class E license, whichever comes first. A holder of a level two intermediate driver's license who
92 is under the age of 18 years shall not use a wireless communication device while operating a
93 motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1
94 system. In addition to all other provisions of this code for which a driver's license may be restricted,
95 suspended, revoked, or canceled, the holder of a level two intermediate driver's license may only
96 operate a motor vehicle under the following conditions:

97 (A) ~~Unsupervised~~ The licensee operates a vehicle unsupervised between the hours of
98 5:00 a.m. and 10:00 p.m.;

99 (B) ~~Only~~ The licensee operates a vehicle only under the direct supervision of a licensed
100 driver, age 21 years or older, between the hours of 10:00 p.m. and 5:00 a.m. except when the
101 licensee is going to or returning from:

102 (i) Lawful employment;

103 (ii) A school-sanctioned activity;

104 (iii) A religious event; or

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

107 (C) All occupants ~~shall~~ of the vehicle use safety belts in accordance with ~~the provisions of~~
108 §17C-15-49 of this code;

109 (D) For the first six months after issuance of a level two intermediate driver's license, the
110 licensee ~~may~~ does not operate a motor vehicle carrying any passengers less than 20 years old,
111 unless these passengers are family members of the licensee; for the second six months after
112 issuance of a level two intermediate driver's license, the licensee ~~may~~ does not operate a motor
113 vehicle carrying more than one passenger less than 20 years old, unless these passengers are
114 family members of the licensee;

115 (E) ~~Without~~ The licensee operates a vehicle without any measurable blood alcohol content
116 in accordance with ~~the provisions of~~ §17C-5-2(h) of this code;

117 (F) ~~Maintains~~ The licensee maintains current school enrollment and is making satisfactory
118 academic progress or otherwise shows compliance with ~~the provisions of~~ §18-8-11 of this code;

119 (G) ~~A holder of a level two intermediate driver's license who is under the age of 18 years~~
120 ~~shall be prohibited from using a wireless communication device while operating a motor vehicle,~~
121 ~~unless the use of the wireless communication device is for contacting a 9-1-1 system; A person~~
122 ~~violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof,~~

123 shall for the first offense be fined \$25; for a second offense be fined \$50; and for a third or
124 subsequent offense be fined \$75.

125 (H) (G) Upon the first conviction for a moving traffic violation or a violation of paragraph
126 (A), (B), (C), (D) or (G), subdivision (1), subsection (d) of this section §17B-2-3a(c)(2), §17B-2-
127 3a(d)(1)(A), §17B-2-3a(d)(1)(B), §17B-2-3a(d)(1)(C), or §17B-2-3a(d)(1)(D) of this code of the
128 terms and conditions of a level two intermediate driver's license, the licensee shall enroll in an
129 approved driver improvement program unless a greater penalty is required by this section or by
130 any other provision of this code; and

131 At the discretion of the commissioner, completion of an approved driver improvement
132 program may be used to negate the effect of a minor traffic violation as defined by the
133 commissioner against the one year conviction-free driving criteria for early eligibility for a level
134 three driver's license and may also negate the effect of one minor traffic violation for purposes of
135 avoiding a second conviction under ~~§17B-2-3a(d)(1)(H)~~ §17B-2-3a(d)(2)(H) of this code; and

136 (H) (H) Upon the second conviction for a moving traffic violation or a violation of the terms
137 and conditions of the level two intermediate driver's license, the Division of Motor Vehicles shall
138 revoke or suspend the licensee's privilege to operate a motor vehicle ~~shall be revoked or~~
139 ~~suspended~~ for the applicable statutory period or until the licensee's 18th birthday, whichever is
140 longer, unless a greater penalty is required by this section or any other provision of this code. Any
141 person whose driver's license has been revoked as a level two intermediate driver, upon reaching
142 the age of 18 years and if otherwise eligible, may reapply for an instruction permit, then a driver's
143 license in accordance with ~~the provisions of~~ §17B-2-5, §17B-2-6, and §17B-2-7 of this code.

144 (e) *Level three, full Class E license.* — The level three license is valid until 30 days after
145 the date the licensee attains his or her 21st birthday. A holder of a level three driver's license who
146 is under the age of 18 years shall not use a wireless communication device for the purpose of
147 communicating with another while operating a motor vehicle, unless the use of the wireless
148 communication device is for contacting a 9-1-1 system. Unless otherwise provided in this section

149 or any other section of this code, the holder of a level three full Class E license is subject to the
150 same terms and conditions as the holder of a regular Class E driver's license.

151 A level two intermediate licensee whose privilege to operate a motor vehicle has not been
152 suspended, revoked, or otherwise canceled and who meets all other requirements of the code
153 may be issued a level three full Class E license without further examination or road skills testing
154 if the licensee:

155 (1) Has reached the age of 17 years; and

156 (A) Presents a completed application as prescribed by ~~the provisions of~~ §17B-2-6 of this
157 code;

158 (B) Has held the level two intermediate license conviction free for the 12-month period
159 immediately preceding the date of the application;

160 (C) Has completed any driver improvement program required under ~~paragraph (G),~~
161 ~~subdivision (2), subsection (d) of this section~~ §17B-2-3a(d)(2)(G) of this code; and

162 (D) Pays a fee of \$2.50 for each year the license is valid. An additional fee of 50 cents
163 shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund
164 established in §3-2-12 of this code;

165 (E) Presents a driver's eligibility certificate or otherwise shows compliance with ~~the~~
166 ~~provisions of~~ §18-8-11 of this code; or

167 (2) Reaches the age of 18 years; and

168 (A) Presents a completed application as prescribed by ~~the provisions of~~ §17B-2-6 of this
169 code; and

170 (B) Pays a fee of \$5 for each year the license is valid. The Division of Motor Vehicles may
171 adjust this fee every five years on September 1, based on the U. S. Department of Labor, Bureau
172 of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in ~~such~~ the
173 fee may not exceed 10 percent of the total fee amount in a single year. An additional fee of 50
174 cents shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing

175 Fund established in §3-2-12 of this code.

176 (f) A person violating the provisions of the terms and conditions of a level one instruction
177 permit, ~~or~~ level two intermediate driver's license, or level three license is guilty of a misdemeanor
178 and, upon conviction thereof, shall for the first offense be fined \$25; for a second offense be fined
179 \$50; and for a third or subsequent offense be fined \$75.