

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4541

BY DELEGATES FOSTER, HANSHAW (MR. SPEAKER) AND

HOWELL

[Introduced January 24, 2020; Referred to the
Committee on Technology and Infrastructure then the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §17B-2-10a, relating to an occupational limited license.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-10a. Occupational limited license.

1 (a) Issuance.--

2 (1) The division shall issue an occupational limited license under the provisions of this
3 section to a driver whose operating privileges have been suspended for a violation of this chapter,
4 and is not prohibited under any other provision in this section. If the underlying reason for the
5 suspension was caused by violations committed while the driver was operating a commercial
6 motor vehicle, the driver shall not be issued an occupational limited license for the purpose of
7 operating a commercial motor vehicle. The division shall prohibit the issuance of an occupational
8 limited license when disqualified from doing so under the Commercial Motor Vehicle Safety Act
9 of 1986 (49 U.S.C. §§31100 et seq.) or the Motor Carrier Safety Improvement Act of 1999 (49
10 U.S.C. §§521 et seq.).

11 (2) The division shall not issue an occupational limited license to drivers whose operating
12 privileges have been recalled, canceled or revoked.

13 (b) Petition.--

14 (1) The applicant for an occupational limited license must file a petition with the division,
15 by certified mail, setting forth in detail the need for operating a motor vehicle. The petition shall
16 be on a form prescribed by the division and shall identify the specific motor vehicle or vehicles
17 the petitioner seeks permission to operate. The petition shall include an explanation as to why
18 the operation of a motor vehicle is essential to the petitioner's occupation, work, trade, treatment
19 or study or the petitioner's ability to travel to and from petitioner's occupation, work, trade,
20 treatment or study. The petition shall identify the petitioner's employer, educational institution or
21 treatment facility, as appropriate, and shall include proof of financial responsibility covering all

22 vehicles which the petitioner requests to be allowed to operate. The division shall promulgate
23 rules in accordance with the provisions of §29A-3-1 et seq. of this code to require additional
24 information as well as additional evidence to verify the information contained in the petition.

25 (2) The petitioner shall surrender his driver's license. If the petitioner's driver's license has
26 been lost or stolen, the petitioner shall submit an application for a replacement license, along with
27 the proper fee. If the petitioner is a nonresident licensed driver, the petitioner shall submit an
28 acknowledgment of suspension in lieu of a driver's license. If the petitioner's license has expired,
29 the petitioner shall submit an application for renewal, along with the appropriate fee. All fines,
30 costs and restoration fees must be paid at the time of petition.

31 (3) Consistent with the provisions of this section, the division shall issue an occupational
32 limited license to the applicant within 20 days of receipt of the petition.

33 (4)(i) A person whose operating privilege has been suspended for a conviction of driving
34 while operating privilege is suspended or revoked may not petition for an occupational limited
35 license unless division records show that the suspension for a conviction occurred only as the
36 result of:

37 (A) A suspension for failure to respond to a citation imposed under the suspension of
38 operating privilege for failure to respond to citation to enforcement agreements;

39 (B) A suspension for failure to undergo a special examination imposed relating to school,
40 examination or hearing on accumulation of points or excessive speeding;

41 (C) A suspension for failure to attend a division hearing; or

42 (D) A suspension that occurred as a result of a suspension for nonpayment of judgments,
43 payments sufficient to satisfy judgments or installment payment of judgments.

44 (ii) The petition may not be filed until three months have been served for the suspension
45 under §17B-3-5.

46 (c) Fee.--The fee for applying for an occupational limited license is \$65. This fee is
47 nonrefundable and no other fee may be required: *Provided*, That any fee or cost required for the

48 installation of an ignition interlock device mandated by §17C-5-3a of this code or any other
49 provisions of this code or any rule of the code of state regulations shall be allowed.

50 (d) *Unauthorized issuance.*--The division shall prohibit issuance of an occupational limited
51 license to:

52 (1) A driver who is not licensed to drive by this or any other state.

53 (2) Any person who is required by this code to take an examination and who has failed to
54 take and pass such an examination.

55 (3) Any person who has an unsatisfied judgment against him or her as the result of a motor
56 vehicle operation under §8-10-2a or §50-3-2a of this code, until such judgment has been satisfied
57 or an installment agreement has been entered into to satisfy the judgment and the financial
58 responsibility of such person has been established.

59 (4) Any person applying for an occupational limited license to operate a commercial motor
60 vehicle whose commercial driver's license privilege is disqualified under the provisions of section
61 §17E-1-13 of this code (relating to disqualification).

62 (5) Any person who, at the time he or she applies for an occupational limited license, has
63 previously been granted such a privilege within the period of five years next preceding such
64 application.

65 (6) Except as set forth in subdivision (3) of subsection (d) of this section, any person whose
66 operating privilege has been suspended for a violation relating to purchase, consumption,
67 possession or transportation of liquor or malt or brewed beverages unless the suspension
68 imposed has been fully served: *Provided*, That an occupational limited license may be issued to
69 a petitioner applicant who's operating privilege has been suspended so long as the use of an
70 ignition interlock device is as set forth in §17C-5-3a of this code or any other provisions of this
71 code or any rule of the code of state regulations is required as a condition of the occupational
72 limited license.

73 (7) For a conviction of any offense involving the possession, sale, delivery, offering for

74 sale, holding for sale or giving away of any controlled substance under the laws of the United
75 States, this state or any other state: *Provided*, That for convictions of possession without intent to
76 distribute, an occupational limited license may be issued to a petitioner applicant who's operating
77 privilege has been suspended so long as the use of an ignition interlock device is as set forth in
78 §17C-5-3a of this code or any other provisions of this code or any rule of the code of state
79 regulations is required as a condition of the occupational limited license;

80 (8) Any person whose operating privilege has been suspended or revoked as the result of
81 a conviction of or as a result of a court order in conjunction with an adjudication of delinquency or
82 the granting of a consent decree for any offense under the following provisions, unless the
83 suspension or revocation has been fully served:

84 (i) Meeting or overtaking school bus;

85 (ii) Racing on highways; or

86 (iii) Any violation relating to serious traffic offenses or relating to accidents and accident
87 reports.

88 (9) Any person whose operating privilege is currently suspended for failure to respond to
89 a citation.

90 (10) Any person whose operating privilege is currently suspended pursuant to proof of
91 financial responsibility following violation, to proof of financial responsibility following accident or
92 required financial responsibility.

93 (11) Any person whose operating privilege is currently suspended for failure to attend and
94 satisfactorily complete a driver improvement course or failure to attend a hearing.

95 (12) Any person whose operating privilege has been suspended for a conviction unless
96 division records show that the suspension for a conviction occurred only as a result of:

97 (i) A suspension for failure to respond to a citation;

98 (ii) A suspension for failure to undergo a special examination; or

99 (iii) A suspension for failure to attend a hearing.

100 (13) Any person whose operating privilege has been suspended under an
101 interjurisdictional agreement as the result of a conviction or adjudication if the conviction or
102 adjudication for an equivalent offense in this state would have prohibited the issuance of an
103 occupational limited license.

104 (14) Any person whose operating privilege has been suspended as the result of a
105 conviction of a violation relating to removal or falsification of identification number, relating to
106 dealing in vehicles with removed or falsified numbers, relating to dealing in titles and plates for
107 stolen vehicles, relating to false application for certificate of title or registration or relating to
108 altered, forged or counterfeit documents and plates unless the suspension has been fully served.

109 (15) Any person whose operating privilege has been suspended for conviction or
110 adjudication of delinquency based on a violation relating to homicide by vehicle or relating to
111 homicide by vehicle while driving under influence.

112 (e) Suspension eligibility related to Title 18 violation.--An individual whose operating
113 privilege has been suspended for a violation of §60-7-12a of this code shall be eligible for an
114 occupational limited license unless the individual has previously violated §60-7-12a. of this code.

115 (f) Offenses committed during a period for which an occupational limited license has been
116 issued.-- Any driver who has been issued an occupational limited license and as to whom the
117 division receives a report of conviction of an offense for which the penalty is a cancellation,
118 disqualification, recall, suspension or revocation of operating privileges or a report relating to
119 mandatory sentencing shall have the occupational limited license recalled, and the driver shall
120 surrender the limited license to the division or its agents.

121 (g) Restrictions.--A driver who has been issued an occupational limited license shall
122 observe the following:

123 (1) The driver shall operate a designated vehicle only:

124 (h) Between the driver's place of residence and place of employment or study and as
125 necessary in the course of employment or conducting a business or pursuing a course of study

126 where the operation of a motor vehicle is a requirement of employment or of conducting a
127 business or of pursuing a course of study.

128 (ii) To and from a place for scheduled or emergency medical examination or treatment.

129 This subparagraph includes treatment relating to driving after imbibing alcohol or utilizing drugs.

130 (2) A driver who has been issued an occupational limited license may not operate a school
131 bus.

132 (3) Any person who violates the conditions of issuance or restrictions of the occupational
133 limited license is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$200 and,
134 upon receipt of a certified record of conviction, the division shall recall the limited license.

135 (4) The operating privilege of a driver who has been issued an occupational limited license
136 remains under suspension or revocation except when operating a motor vehicle in accordance
137 with the conditions of issuance or restrictions of the occupational limited license.

138 (5) A driver who has been issued an occupational limited license shall possess a
139 completed occupational limited license affidavit on a form prescribed by the division at all times
140 when operating a motor vehicle. The driver shall exhibit the completed form upon demand by a
141 police officer. The affidavit shall indicate that the driver is operating the motor vehicle at a time
142 and between places in accordance with the restrictions of paragraph (1). An occupational limited
143 license affidavit shall contain information required by rules which may be proposed by the division
144 under the provisions of §29A-3-1 et seq. of this code. The driver is not required to possess a
145 completed occupational limited license affidavit when operating a motor vehicle to a location for
146 emergency medical treatment.

147 (i) *Changes in condition.*-- A driver who is granted an occupational limited license shall
148 immediately inform the division in writing of any change in the conditions under which that driver
149 applied for the occupational limited license, including loss of employment, change of
150 employments, or change in location of employment. Upon failure to give prompt notice of any
151 changes or if the conditions for the limited license no longer exist, the division shall recall the

152 occupational limited license.

153 (i) Appeal from denial or recall of occupational limited license.--Any driver who is denied
154 an occupational limited license or whose occupational limited license is recalled may file with the
155 division a petition for a hearing under the provisions of §29A-5-1 et seq. of this code. The division
156 may charge a reasonable fee based on the cost to the division for conducting such a hearing.
157 The appeal shall not operate as an automatic supersedeas. If an administrative hearing officer
158 orders a supersedeas in any appeal, the petitioner shall earn no credit towards serving the
159 suspension for which the petitioner was granted an occupational limited license. An appeal from
160 a decision of an administrative hearing officer may be taken in the manner provided in §29A-6-1
161 et seq. of this code.

NOTE: The purpose of this bill is to provide for an occupational limited driver's license.

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