WEST VIRGINIA CODE CHAPTER 17B ARTICLE 3

WV Legislature

§17B-3-1. Authority of division to cancel license.

The division is hereby authorized to cancel any operator's or chauffeur's license in any of the following events:

(1) When the division determines that the licensee was not entitled to the issuance thereof hereunder; or

(2) When said licensee failed to give the required or correct information in his application; or

(3) When said licensee committed any fraud in making such application; or

(4) When the division determines that the required fee has not been paid and the same is not paid upon reasonable notice or demand.

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§17B-3-2. Suspending privileges of nonresidents and reporting convictions.

The privilege of driving a motor vehicle on the highways of this state given to a nonresident hereunder shall be subject to suspension or revocation by the department in like manner and for like cause as an operator's or chauffeur's license issued hereunder may be suspended or revoked.

The department shall, upon receiving a record of the conviction in this state of a nonresident driver of a motor vehicle of any offense under the motor vehicle laws of this state, forward a certified copy of such record to the motor vehicle administrator in the state wherein the person so convicted is a resident.

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§17B-3-3. Suspending resident's license upon conviction in another state.

The department is authorized to suspend or revoke the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of such person in another state of an offense therein which, if committed in this state, would be a ground for the suspension or revocation of the license of an operator or chauffeur.

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§17B-3-3a. Suspending license for failure to respond or appear in court.

(a) The division shall suspend the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice from a magistrate court or municipal court of this state that such person has failed to respond or appear in court when charged with a motor vehicle violation.

(b) For the purposes of this section, §50-3-2a of this code and §8-10-2b of this code, "motor vehicle violation" is as any violation designated in chapters 17A, 17B, 17C, 17D, or 17E of this code, or the violation of any municipal ordinance relating to the operation of a motor vehicle for which the violation thereof would result in a fine or penalty: *Provided,* That any parking violation or other violation for which a citation may be issued to an unattended vehicle shall not be considered a motor vehicle violation for the purposes of this section, §50-3-2a of this code, or §8-10-2b of this code.

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§17B-3-3c. Suspending license for failure to appear in court.

(a) The division shall suspend the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice from a circuit court, magistrate court, or municipal court of this state, pursuant to §8-10-2b or §62-4-17 of this code, that the person has failed to appear in court when charged with a criminal offense. For the purposes of this section, §8-10-2b or §62-4-17 of this code, "criminal offense" shall be defined as any violation of the provisions of this code, or the violation of any municipal ordinance, for which the violation of the offense may result in a fine, confinement in jail, or imprisonment in a correctional facility of this state: *Provided*, That any parking violation or other violation for which a citation may be issued to an unattended vehicle shall not be considered a criminal offense for the purposes of this section, §8-10-2b or §62-4-17 of this code.

(b) A copy of the order of suspension shall be forwarded to the person by certified mail, return receipt requested. No order of suspension becomes effective until 10 days after receipt of a copy of the order. The order of suspension shall advise the person that because of the receipt of notice of the failure to appear, a presumption exists that the person named in the order of suspension is the same person named in the notice. The commissioner may grant an administrative hearing which substantially complies with the requirements of the provisions of §17C-5A-2 of this code upon a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. The request for hearing shall be made within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing shall be for the person requesting the hearing to present evidence that he or she is not the person named in the notice. In the event the commissioner grants an administrative hearing, the commissioner shall stay the license suspension pending the commissioner's order resulting from the hearing.

(c) A suspension under this section and §17B-3-3a of this code will continue until the person provides proof of compliance from the municipal, magistrate, or circuit court and pays the reinstatement fee as provided in §17B-3-9 of this code. The reinstatement fee is assessed upon issuance of the order of suspension regardless of the effective date of suspension.

(d) Upon notice from an appropriate state official that the person is successfully participating in an approved treatment and job program as prescribed in §61-11-26a of this code, and that the person is believed to be safe to drive, the Division of Motor Vehicles shall stay or supersede the imposition of any suspension under this section or §17B-3-3a of this code. The Division of Motor Vehicles shall waive the reinstatement fee established by the provisions §17B-3-9 upon receipt of proper documentation of the person's successful completion of a program under §61-11-26a of this code and proof of compliance from the municipal, magistrate, or circuit court. The stay or supersedeas shall be removed by the Division of Motor Vehicles upon receipt of notice from an appropriate state official of a participant's failure to complete or comply with the approved treatment and job program as established under §61-11-26a of this code.

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§17B-3-4. Abstract of judgment of conviction for violation of motor vehicle laws to be sent to division.

Whenever a conviction is had in any court of record, or in a justice's court, or in the police court or mayor's court of any incorporated municipality, for the violation of any law of this state governing or regulating the licensing or operation of any motor vehicle, or for the violation of any provision of a charter, or bylaw, or ordinance of such incorporated municipality governing or regulating the operation of motor vehicles, except regulations governing standing or parking, the clerk of every such court, or the justice, or the clerk or recorder of such municipality, as the case may be, shall in each case transmit to the division within seventy-two hours after such conviction is had a certified abstract of the judgment on such conviction.

For the purposes of this chapter, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

Wilful failure, refusal or neglect to comply with the provisions of this section shall subject the person who is guilty thereof to a fine of not less than $10 nor more than $50 and may be the grounds for removal from office.

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§17B-3-5. Grounds for mandatory revocation of license by department.

The division shall immediately revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses, when such conviction has become final: *Provided*, That if the convicted driver had not reached his or her 19th birthday at the time of the conduct for which the license is revoked under this section, the license shall be revoked until the driver's 19th birthday, or the applicable statutory period of revocation, whichever is longer:

(1) Manslaughter, homicide, or any offense contained within §17C-5-1 of this code, resulting from the operation of a motor vehicle;

(2) Any felony in the commission of which a motor vehicle is used;

(3) Failure to stop and render aid as required under the laws of this state in the event of involvement in a motor vehicle accident resulting in the death or personal injury of another person;

(4) Perjury or the making of a false affidavit or statement under oath to the division under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(5) Conviction, or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of 24 months;

(6) Driving under the influence of alcohol, controlled substances or other drugs outside the State of West Virginia which conviction is under a municipal ordinance or statute of the United States or any other state of an offense which has the same elements as an offense described in §17C-5-2 of this code; and

(7) Nothing herein shall prohibit the division from exercising its authority to revoke or suspend a person's license to drive a motor vehicle in this state, as provided in Chapter 17C of this code.

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

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

(1) Has committed an offense for which mandatory revocation of a driver's license is required upon conviction;

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

(3) Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

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

(5) Is incompetent to drive a motor vehicle;

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

(7) Has failed to pay or has defaulted on a plan for the payment of all costs, fines, forfeitures, or penalties imposed by a magistrate court or municipal court within 90 days, as required by §50-3-2a of this code or §8-10-2a of this code;

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

(9) Is under the age of 17 and has withdrawn either voluntarily or involuntarily due to misconduct from a secondary school or has failed to maintain satisfactory academic progress, as provided in §18-8-11 of this code; or

(10) Has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings, if a circuit court has ordered the suspension of the license as provided in §48A-5A-1 *et seq*. of this code and the Child Support Enforcement Division has forwarded to the division a copy of the court order suspending the license, or has forwarded its certification that the licensee has failed to comply with a new or modified order that stayed the suspension and provided for the payment of current support and any arrearage due.

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

(1) The license was suspended under the provisions of subdivision (7), subsection (a) of this

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section and the payment of costs, fines, forfeitures, or penalties imposed by the applicable court has been made;

(2) The license was suspended under the provisions of subdivision (8), subsection (a) of this section and the person having his or her license suspended has appeared in court and has prevailed against the motor vehicle violations charged; or

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

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

(d) Upon suspending, or restricting the driver's license of any person as hereinbefore in this section authorized, the division shall immediately notify the licensee in writing, sent by certified mail, return receipt requested, to the address given by the licensee in applying for license, and upon his or her request shall afford him or her an opportunity for a hearing as early as practical within not to exceed 20 days after receipt of such request in the county wherein the licensee resides unless the division and the licensee agree that such hearing may be held in some other county. Upon such hearing the commissioner or his or her duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the division shall either rescind its order of suspension, or restriction or, good cause appearing therefor, may extend the suspension, or restriction of such license or revoke such license. The provisions of this subsection providing for notice and hearing are not applicable to a suspension under subdivision (10), subsection (a) of this section. Any person whose driver's license is suspended, restricted, or revoked after hearing with the commissioner may seek judicial review of the final order or decision in accordance with §29A-5-4 of this code.

(e) Notwithstanding the provisions of legislative rule 91 CSR 5, the division may, upon completion of an approved defensive driving course, deduct three points from a licensee's point accumulation provided the licensee has not reached 14points. If a licensee has been notified of a pending 30-day driver's license suspension based on the accumulation of 12 or 13 points, the licensee may submit proof of completion of an approved defensive driving course to deduct three points and rescind the pending license suspension: *Provided*, That the licensee submits proof of prior completion of the course and payment of the reinstatement fee in accordance with section nine, article three of this chapter to the division prior to the effective date of the suspension.

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§17B-3-7. Department may require reexamination.

The department, having good cause to believe that a licensed operator or chauffeur is incompetent or otherwise not qualified to be licensed, may upon written notice of at least five days to the licensee require him to submit to an examination. Upon the conclusion of such examination the department shall take such action as may be appropriate and may suspend or revoke the license of such person or permit him to retain such license, or may issue a license subject to restrictions as permitted under section ten, article two of this chapter. Refusal or neglect of the licensee to submit to such examination shall be ground for suspension or revocation of his license.

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§17B-3-8. Suspension for more than one year.

The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one year, except as provided in chapter seventeen-c of this code.

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§17B-3-9. Surrender and return of license not required.

The Division, upon disqualifying, downgrading, suspending or revoking a license, may not require that the license be surrendered to and be retained by the Division. The surrender of a license may not be a precondition to the commencement and tolling of any applicable period of suspension or revocation: *Provided*, That before the license may be reinstated, the licensee shall pay a fee of $50, in addition to all other fees and charges, which shall be collected by the Division and deposited in a special revolving fund to be appropriated to the Division for use in the enforcement of the provisions of this section.

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§17B-3-10. No operation under foreign license during suspension or revocation in this state.

Any resident or nonresident whose operator's or chauffeur's license or right or privilege to operate a motor vehicle in this state has been suspended or revoked as provided in this chapter shall not operate a motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during such suspension or after such revocation until a new license is obtained when and as permitted under this chapter.

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§17B-3-11. Mandatory revocation of license of certain blind persons.

The department shall forthwith revoke the license of any operator or chauffeur upon receipt of certification by the commissioner of welfare that he is a blind person receiving public assistance or that his application for public assistance because of blindness has been approved by the state department of welfare.

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§17B-3-12. Mandatory suspension for fraudulent use of driver's license.

(a) The commissioner shall suspend for a period of ninety days the driver's license of any person upon receipt of a sworn affidavit from any law-enforcement officer, employee of the Alcohol Beverage Control Commission or employee of the Division of Motor Vehicles stating that the person committed any one of the following acts:

(1) Displayed or caused or permitted to be displayed to any law-enforcement officer or employee of the Division of Motor Vehicles or have in his or her possession any fictitious or fraudulently altered driver's license;

(2) Loaned or gave his or her driver's license to any other person or knowingly permitted the use thereof by another for an unlawful or fraudulent purpose;

(3) Displayed or represented as one's own any driver's license not issued to him or her; or

(4) Used a false or fictitious name or birth date on any application for a driver's license or knowingly made a false statement, knowingly concealed a material fact or otherwise committed a fraud in making application for a driver's license.

(b) For the purposes of this section, "driver's license" means any permit, camera card, identification card or driver's license issued by this state or any other state to a person which authorizes the person to drive a motor vehicle of a specific class or classes subject to any restriction or endorsement contained thereon.

(c) No person shall have his or her driver's license suspended under any provision of this section unless he or she shall first be given written notice of such suspension sent by certified mail, return receipt requested, at least twenty days prior to the effective date of the suspension. Within ten days of the receipt of the notice of suspension, the person may submit a written request by certified mail for a hearing and request a stay of the suspension pending the results of the hearing. Upon receipt of the request for a hearing and request for a stay of the suspension, the commissioner shall grant a stay of the suspension pending the results of the hearing. If the commissioner shall after hearing make and enter an order affirming the earlier order of suspension, the person affected shall be entitled to judicial review as set forth in chapter twenty-nine-a of this code and, pending the appeal, the court may grant a stay or supersedeas of such order. If the person does not appeal the suspension or if the suspension is affirmed by the court, the order of suspension shall be effective and the period of suspension shall commence to run.

(d) The suspended driver's license shall be reinstated following the period of suspension and upon compliance with the conditions set forth in this chapter.

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§17B-3-13. Reports by health care providers.

(a) Health care providers licensed and authorized pursuant to chapter thirty of the code to diagnose or treat diseases, disorders, disabilities or conditions, may notify the division in writing of the full name, date of birth and address of every person fifteen years of age or older who suffers from a physical or mental disease, disorder, disability, condition or symptoms that prevents the person from safely operating motor vehicle, and which is either:

(1) Uncontrollable (either through medication, therapy, or surgery; or by driving device or technique);

(2) Controllable, but the patient does not comply with the recommendations of the health care provider for treatment or restricted driving; or

(3) Undiagnosed but the extent of driver impairment is potentially significant based on the patient's symptoms.

(b) Reports, recommendations or opinions, findings or advice received or made by the division for the purpose of determining whether a person is qualified to be licensed to drive are for the confidential use of the division and exempt from provisions of article one, chapter twenty-nine-b of this code and may only be admitted in proceedings to either suspend, revoke or impose limitations on the use of a driver's license pursuant to section six, subsection (a)(5), article three, chapter seventeen-b of this code or section seven, article three, chapter seventeen-b of this code, or to reinstate the driver's license.

(c) Reports, recommendations, opinions, findings or advice received or made by the division for the purpose of determining whether a person is qualified to be licensed to drive may not be used in any proceedings to establish or prove competencies other than qualifications to operate a vehicle.

(d) A health care provider who makes a notification pursuant to subsection (a) shall be immune from any civil, administrative or criminal liability that otherwise might be incurred or imposed because of such notification if the health care provider has:

(1) Documented in the patient's record the disease, disorder, disability, condition or symptoms which may impair the patient's ability to drive a motor vehicle to a degree that precludes the safe operation of a motor vehicle;

(2) Informed the patient that their disease, disorder, disability, condition or symptoms may impair the patient's ability to drive a motor vehicle to a degree that precludes the safe operation of a motor vehicle;

(3) Advised the patient that he or she should not operate a motor vehicle; and

(4) Disclosed to the patient that the health care provider may notify the Commissioner of the patient's condition and of the patient's inability to safely operate a motor vehicle.

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(e) Compliance with or failure to comply with the requirements of this section does not constitute negligence, nor may compliance or noncompliance with the requirements of this section be admissible as evidence of negligence in any civil or criminal action.

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