WEST VIRGINIA CODE CHAPTER 17C ARTICLE 12

WV Legislature

§17C-12-1. Obedience to signal indicating approach of train.

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

(1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;

(2) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

(3) A railroad train approaching within approximately one thousand five hundred feet of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard;

(4) Any approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

(b) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

(c) Any person failing to comply with the requirements of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined $100 or imprisoned for not more than ten days. The commissioner shall promulgate rules to further penalize those convicted of violating this section by levying three points against the violator's driver's license record: Provided, That if the electric or mechanical signal device is malfunctioning, this subsection shall not apply.

WV Legislature

§17C-12-2. All vehicles must stop at certain railroad grade crossings.

The state road commission and local authorities with the approval of the state road commission are hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat. When such stop signs are erected the driver of any vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall proceed only upon exercising due care.

WV Legislature

§17C-12-3. Certain vehicles must stop at all railroad grade crossings.

(a) Except as provided in subsection (f) of this section, the driver of a commercial motor vehicle specified in subsection (b) of this section shall not cross a railroad track or tracks at grade unless he or she first: (1) Stops the commercial motor vehicle within fifty feet of, and not closer than fifteen feet to, the tracks; (2) thereafter, listens and looks in each direction along the tracks for an approaching train; and (3) ascertains that no train is approaching. When it is safe to do so, the driver may drive the commercial motor vehicle across the tracks in a gear that permits the commercial motor vehicle to complete the crossing without a change of gears. The driver shall not shift gears while crossing the tracks.

(b) The following commercial vehicles are required to stop at railroad tracks or tracks at grade:

(1) Every bus transporting passengers;

(2) Every commercial motor vehicle transporting any quantity of a United States Department of Transportation defined division 2.3 chlorine;

(3) Every commercial motor vehicle which, in accordance with United States Department of Transportation regulations, is marked or placarded and is required to stop in accordance with 49 C.F.R. part §392.10(a)(3)(2001);

(4) Every cargo tank motor vehicle, loaded or empty, used for the transportation of any hazardous material, as defined in federal Department of Transportation hazardous materials rules, 49 C.F.R. parts §107 through §180 (2001);

(5) Every cargo tank motor vehicle transporting a commodity which, at the time of loading, has a temperature above its flashpoint as determined by 49 C.F.R. §173.120 (2001); and

(6) Every cargo tank motor vehicle, whether loaded or empty, transporting any commodity exemption in accordance with 49 C.F.R. part §107 subpart B (2001).

(c) Any vehicle owned by an employer which, in carrying on the employer's business or in carrying employees to and from work, carries more than six employees of the employer is required to stop at all railroad tracks or tracks at grade, in accordance with subsection (a) of this section.

(d) All drivers of commercial motor vehicles not required to stop at railroad tracks or tracks at grade as provided in subsection (a) of this section may not cross a railroad track or tracks at grade unless he or she first slows the commercial motor vehicle to a speed which will permit the commercial motor vehicle to be stopped before reaching the nearest rail of the railroad crossing and permit exercise of due caution to ascertain that the tracks are clear of an approaching train.

(e) All drivers of commercial motor vehicles may not proceed to cross a railroad crossing

WV Legislature

unless there is sufficient space to drive completely through the crossing without stopping and the vehicle has sufficient undercarriage clearance to drive completely through the crossing without stopping.

(f) No stop need be made at:

(1) Any crossing where a police officer, crossing flagger or a traffic-control signal directs traffic to proceed;

(2) A streetcar crossing, or railroad tracks used exclusively for industrial switching purposes within a business district, as defined in 49 C.F.R. §390.5 (2000);

(3) A railroad grade crossing controlled by a functioning highway traffic signal transmitting a green indication which under local law permits the commercial motor vehicle to proceed across the track without slowing or stopping; or

(4) A railroad grade crossing which is marked with a sign indicating that the rail line is out of service.

(g) Any person driving a vehicle specified in this section or a vehicle that requires a commercial driver's license who fails to comply with the requirements of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined $100 or imprisoned for not more than ten days: Provided, That if the electric or mechanical signal device is malfunctioning, this subsection shall not apply.

WV Legislature

§17C-12-4. Moving heavy equipment at railroad grade crossings.

(a) No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of ten or less miles per hour or a vertical body or load clearance of less than one- half inch per foot of the distance between any two adjacent axles or in any event of less than nine inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.

(b) Notice of any such intended crossing shall be given to a station agent of such railroad and a reasonable time be given to such railroad to provide proper protection at such crossing.

(c) Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen feet nor more than fifty feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.

(d) No such crossing shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction.

WV Legislature

§17C-12-5. Vehicles must stop at through highways; erection of signs.

(a) The state road commission with reference to state highways and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop signs at specified entrances thereto or may designate any intersection as a stop intersection and erect like signs at one or more entrances to such intersection.

(b) Every said sign shall bear the word "Stop" in letters not less than six inches in height and such sign shall at nighttime be rendered luminous by steady or flashing internal illumination, or by a fixed floodlight projected on the face of the sign, or by efficient reflecting elements on the face of the sign.

(c) Every stop sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the roadway.

(d) Every driver of a vehicle and every motorman of a streetcar approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection or in the event there is no crosswalk shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting highway where the driver has a view of approaching traffic on the intersecting highway before entering the intersection except when directed to proceed by a police officer or traffic-control signal.

WV Legislature

§17C-12-6. Stopping before emerging from alley or private driveway; penalty.

(a) The driver of a vehicle within a business or residence district emerging from any alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or private driveway, and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

(b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100; upon a second conviction within one year thereafter, shall be fined not more than $200; and upon a third or subsequent conviction, shall be fined not more than $500.

WV Legislature

§17C-12-7. Overtaking and passing school bus; penalties; signs and warning lights upon buses; requirements for sale of buses; mounting of cameras; educational information campaign; limitation on idling.

(a) The driver of a vehicle, upon meeting or overtaking from either direction any school bus which has stopped for the purpose of receiving or discharging any school children, shall stop the vehicle before reaching the school bus when there is in operation on the school bus flashing warning signal lights, as referred to in §17C-12-8 of this code, and the driver may not proceed until the school bus resumes motion, or is signaled by the school bus driver to proceed or the visual signals are no longer actuated. This section applies wherever the school bus is receiving or discharging children including, but not limited to, any street, highway, parking lot, private road, or driveway: Provided, That the driver of a vehicle upon a controlled access highway need not stop upon meeting or passing a school bus which is on a different roadway or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

(b) Any driver acting in violation of subsection (a) of this section is guilty of a misdemeanor and, upon conviction for a first offense, shall be fined not less than $500 or more than $1,000, or confined in jail not more than six months, or both fined and confined. Upon conviction of a second violation of subsection (a) of this section, the driver shall be fined not less than $1,000 nor more than $1,500, or confined in jail not more than six months, or both fined and confined. Upon conviction of a third or subsequent violation of subsection (a) of this section, the driver shall be fined $2,000 and confined not less than 48 hours in jail but not more than six months.

(c) Where the actual identity of the operator of a motor vehicle operated in violation of subsection (a) of this section is unknown but the license plate number of the motor vehicle is known, it may be inferred that the operator was an owner or lessee of the motor vehicle for purposes of the probable cause determination. Where there is more than one registered owner or lessee, the inference created by this subsection shall apply to the first listed owner or lessee as found on the motor vehicle registration: Provided, That a person charged with a violation of subsection (a) of this section, under the provisions of this subsection, where the sole evidence against the owner or lessee is the presence of the vehicle at the scene at the time of the offense shall only be subject to the applicable fine set forth in subsection (b) of this section upon conviction: Provided, however, That the offenses set forth in subsections (f) and (g) of this section are separate and distinct from that set forth in subsection (a) of this section.

(d) Service of process of a complaint issued pursuant to subsection (c) of this section shall be effected consistent with West Virginia Rule of Criminal Procedure 4.

(e) In addition to the penalties prescribed in subsection (b) of this section, the Commissioner of Motor Vehicles shall, upon conviction, suspend the driver’s license of the person so convicted:

WV Legislature

(1) Of a first offense under subsection (b) of this section, for a period of 60 days;

(2) Of a second offense under subsection (b) of this section, for a period of 180 days; or

(3) Of a third or subsequent offense under subsection (b) of this section, for a period of one year.

(f) Any driver of a vehicle who willfully violates the provisions of subsection (a) of this section and the violation causes serious bodily injury to any person other than the driver, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than one year nor more than three years and fined not less than $2,000 nor more than $5,000.

(g) Any driver of a vehicle who willfully violates the provisions of subsection (a) of this section, and the violation causes death, is guilty of a felony and, upon conviction, shall be confined in a state correctional facility not less than one year nor more than 10 years and fined not less than $5,000 nor more than $10,000.

(h) Every bus used for the transportation of school children shall bear upon the front and rear of the bus a plainly visible sign containing the words "school bus" in letters not less than eight inches in height. When a contract school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school, all markings on the contract school bus indicating "school bus" shall be covered or concealed. Any school bus sold or transferred to another owner by a county board of education, agency or individual shall have all flashing warning lights disconnected and all lettering removed or permanently obscured, except when sold or transferred for the transportation of school children: Provided, That every county board of education shall install forward-facing and rear-facing cameras on all school buses purchased on or after July 1, 2019, for the purpose of enforcing this section and for any other lawful purpose.

(i) To the extent that state, federal, or other funds are available, the State Police shall conduct an information campaign to educate drivers concerning the provisions of this section and the importance of school bus safety.

(j) The State Board of Education shall promulgate a rule in accordance with the provisions of §29A-3B-1 et seq. of this code governing the idling of school buses.

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§17C-12-7a. Signs and warning lights or alternative warning devices upon passenger vans; passing passenger van; criminal penalties.

(a) Every passenger van used for the transportation of children, as defined in section sixty-four, article one of this chapter shall bear upon the front and rear thereof a plainly visible sign containing the warning "Caution: Loading and Unloading Passengers" in letters not less than six inches in height. Every such passenger van shall be equipped with either flashing warning signal lights as are contemplated and referred to in section eight of this article, or a red caution flag which the driver or some other adult must use by exiting the passenger van and displaying while assisting in the loading or unloading of passengers. Such vehicles may also be equipped with a white flashing strobotron warning light that meets the requirements set forth in subsection (e), section twenty-six, article fifteen of this chapter.

(b) The driver of a vehicle upon meeting or overtaking from any direction any passenger van which has stopped for the purpose of loading or unloading passengers shall stop his or her vehicle before reaching the passenger van when there is in operation on the passenger van flashing warning signal lights or when an adult is outside the passenger van with a red caution flag and assisting with the loading or unloading of passengers. The driver of a vehicle may not proceed until he or she is signaled by the passenger van driver to proceed, the passenger van flashing signal lights are no longer actuated, or the passenger van resumes motion. This section applies wherever the passenger van is loading or unloading children on any street, highway, parking lot, private road or driveway: Provided, That the driver of a vehicle upon a controlled access highway need not stop upon meeting or passing a passenger van which is on a different roadway or adjacent to the highway and where pedestrians are not permitted to cross the roadway. Any driver acting in violation of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $200, or imprisoned in the county or regional jail not more than six months, or both fined and imprisoned. If the identity of the driver cannot be ascertained, then any owner or lessee of the vehicle in violation of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $100: Provided, however, That the conviction may not subject the owner or lessee to further administrative or other penalties for the offense, notwithstanding other provisions of this code to the contrary.

WV Legislature

§17C-12-8. Special lighting equipment on school buses.

(a) The Commissioner of Motor Vehicles is authorized to adopt standards and specifications applicable to lighting equipment on and special warning devices to be carried by school buses consistent with the provisions of this chapter, but supplemental thereto, and except that such standards and specifications may designate and permit the use of flashing warning signal lights on school buses for the purpose of indicating when children are boarding or alighting from any said bus. Such standards and specifications shall correlate with and, so far as possible, conform to the specifications then current as approved by the Society of Automotive Engineers.

(b) It shall be unlawful to operate any flashing warning signal light on any school bus except when any said school bus is stopped or is slowing down to stop on any street or highway for the purpose of permitting school children to board or alight from said school bus.

WV Legislature

§17C-12-9. School bus drivers may present complaint directly to magistrate.

Notwithstanding any other provision of this code to the contrary, a person authorized by law to operate a school bus, as that term is defined in section seven, article one, chapter seventeen-c, may submit a complaint directly to a magistrate without first presenting the complaint to the prosecuting attorney or other law-enforcement agency, if the complaint is based upon a violation of subsection (a), section seven, article twelve, chapter seventeen-c.

The complaint shall be in the form of a written statement of the essential facts constituting the offense charged. The complaint shall be presented to and sworn before a magistrate in the county where the offense is alleged to have occurred.

If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant committed it, a warrant for the arrest of the defendant shall be issued to any officer authorized by law to arrest persons charged with offenses against the state.

WV Legislature