WEST VIRGINIA CODE: §17E-1-3

§17E-1-3. Definitions.

Notwithstanding any other provision of this code, the following definitions apply to this article:

(1) "Alcohol" means:

(A) Any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propenyl and isopropanol;

(B) Beer, ale, port or stout and other similar fermented beverages, including sake or similar products, of any name or description containing one half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute for malt;

(C) Distilled spirits or that substance known as ethyl alcohol, ethanol or spirits of wine in any form including all dilutions and mixtures thereof from whatever source or by whatever process produced; or

(D) Wine of not less than one half of one percent of alcohol by volume.

(2) "Alcohol concentration" means:

(A) The number of grams of alcohol per one hundred milliliters of blood;

(B) The number of grams of alcohol per two hundred ten liters of breath;

(C) The number of grams of alcohol per sixty-seven milliliters of urine; or

(D) The number of grams of alcohol per eighty-six milliliters of serum.

(3) "At fault traffic accident" means, for the purposes of waiving the road test, a determination of fault by the official filing the accident report as evidenced by an indication of contributing circumstances in the accident report.

(4) "Commercial driver's license" means a license or an instruction permit issued in accordance with the requirements of this article to an individual which authorizes the individual to drive a class of commercial motor vehicle.

(5) "Commercial driver's license information system" is the information system established pursuant to the Federal Commercial Motor Vehicle Safety Act to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

WV Legislature

(6) "Commercial driver instruction permit" means a permit issued pursuant to subsection (d), section nine of this article.

(7) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:

(A) If the vehicle has a gross combination vehicle weight rating of twenty-six thousand one pounds or more inclusive of a towed unit(s) with a gross vehicle weight rating of more than ten thousand pounds;

(B) If the vehicle has a gross vehicle weight rating of twenty-six thousand one pounds or more;

(C) If the vehicle is designed to transport sixteen or more passengers, including the driver; or

(D) If the vehicle is of any size and transporting hazardous materials as defined in this section.

(8) "Commissioner" means the Commissioner of Motor Vehicles of this state.

(9) "Controlled substance" means any substance classified under the provisions of chapter sixty-a of this code, the Uniform Controlled Substances Act, and includes all substances listed on Schedules I through V, inclusive, of article two of said chapter, as revised. The term "controlled substance" also has the meaning such term has under 21 U.S.C. §802.6 and includes all substances listed on Schedules I through V of 21 C.F.R. §1308 as they may be amended by the United States Department of Justice.

(10) "Conviction" means an unvacated adjudication of guilt; a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal or proceeding; an unvacated forfeiture of bail or collateral deposited to secure the persons appearance in court; a plea of guilty or nolo contendere accepted by the court or the payment of a fine or court cost or violation of a condition of release without bail regardless of whether or not the penalty is rebated, suspended, or probated.

(11) "Division" means the Division of Motor Vehicles.

(12) "Disqualification" means any of the following three actions:

(A) The suspension, revocation, or cancellation of a driver's license by the state or jurisdiction of issuance.

(B) Any withdrawal of a person's privilege to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control other than parking or vehicle weight except as to violations committed by a

www.Legislature

special permittee on the coal resource transportation system or vehicle defect violations.

(C) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. Part §391 (2004).

(13) "Drive" means to drive, operate or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For the purposes of sections twelve, thirteen and fourteen of this article, "drive" includes operation or physical control of a motor vehicle anywhere in this state.

(14) "Driver" means a person who drives, operates or is in physical control of a commercial motor vehicle in any place open to the general public for purposes of vehicular traffic or who is required to hold a commercial driver's license.

(15) "Driver's license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle of a specific class.

(16) "Electronic device" includes, but is not limited to, a cellular telephone, personal digital assistant, pager or any other device used to input, write, send, receive, or read text.

(17) "Employee" means an operator of a commercial motor vehicle, including full time, regularly employed drivers, casual, intermittent or occasional drivers, leased drivers and independent, owner-operator contractors when operating a commercial motor vehicle, who are either directly employed by or under lease to drive a commercial motor vehicle for an employer.

(18) "Employer" means a person, including the United States, a state or a political subdivision of a state, who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle.

(19) "Endorsement" means an authorization to a person to operate certain types of commercial motor vehicles.

(20) "Farm vehicle" includes a motor vehicle or combination vehicle registered to a farm owner or entity operating the farm and used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants and in the transportation of agricultural or horticultural supplies and machinery to the farms or orchards to be used on the farms or orchards.

(21) "Farmer" includes an owner, tenant, lessee, occupant or person in control of the premises used substantially for agricultural or horticultural pursuits who is at least eighteen years of age with two years licensed driving experience.

(22) "Farmer vehicle driver" means the person employed and designated by the "farmer" to

WV Legislature

drive a "farm vehicle" as long as driving is not his or her sole or principal function on the farm and who is at least eighteen years of age with two years licensed driving experience.

(23)"Felony" means an offense under state or federal law that is punishable by death or imprisonment for a term exceeding one year.

(24) "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination, articulated vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the gross vehicle weight rating (GVWR) of the power unit and the total weight of the towed unit and load, if any.

(25) "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single vehicle. In the absence of a value specified by the manufacturer, the GVWR will be determined by the total weight of the vehicle and load, if any.

(26) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. §5103 and is required to be placarded under subpart F of 49 C.F.R.,Part §172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R., Part §73.

(27) "Imminent hazard" means existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury or a substantial endangerment to health, property or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury or endangerment.

(28) "Issuance of a license" means the completion of a transaction signifying that the applicant has met all the requirements to qualify for, including, but not limited to: The initial issuance of a driver's license, the renewal of a driver's license, the issuance of a duplicate license as a replacement to a lost or stolen driver's license, the transfer of any level of driving privileges including the privilege of operating a commercial motor vehicle from another state or jurisdiction, the changing of driver's license class, restrictions or endorsements or the change of any other information pertaining to an applicant either appearing on the face of a driver's license or within the driver record of the licensee maintained by the division.

(29) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

(30) "Noncommercial motor vehicle" means a motor vehicle or combination of motor vehicles not defined by the term "commercial motor vehicle".

(31) "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, county or local jurisdiction including any special agent of

WV Legislature

the Federal Motor Carrier Safety Administration that a driver, a commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 C.F.R. §§386.72, 392.5, 395.13, 396.9 or compatible laws or the North American uniform out-of-service criteria that an imminent hazard exists.

(32) "Violation of an out-of-service order" means:

(A) The operation of a commercial motor vehicle during the period the driver was placed out-of-service;

(B) The operation of a commercial motor vehicle by a driver after the vehicle was placed out-of-service and before the required repairs are made; or

(C) The operation of any commercial vehicle by a motor carrier operation after the carrier has been placed out of service.

(33) "School bus" means a commercial motor vehicle used to transport preprimary, primary or secondary school students from home-to-school, from school-to-home or to and from school sponsored events. School bus does not include a bus used as a common carrier.

(34) "Serious traffic violation" means conviction for any of the following offenses when operating a commercial motor vehicle:

(A) Excessive speeding involving any single offense for any speed of fifteen miles per hour or more above the posted limits;

(B) Reckless driving as defined in section three, article five, chapter seventeen-c of this code and careless or negligent driving, including, but not limited to, the offenses of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property;

(C) Erratic or improper traffic lane changes including, but not limited to, passing a school bus when prohibited, improper lane changes and other passing violations;

(D) Following the vehicle ahead too closely;

(E) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(F) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession. However, any person who provides proof to the law-enforcement agency that issued the citation, by the date the person must appear in court or pay any fine for such violation, that the person held a valid commercial driver's license on the date the citation was issued, shall not be guilty of this offense;

(G) Driving a commercial motor vehicle without the proper class of commercial driver's license or endorsements for the specific vehicle group being operated or for the passengers

WV Legislature

or type of cargo being transported;

(H) A violation of state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal traffic accident; or

(I) Any other serious violations determined by the United States Secretary of Transportation.

(J) Vehicle defects are excluded as serious traffic violations except as to violations committed by a special permittee on the coal resource transportation road system.

(35) "State" means a state of the United States and the District of Columbia or a province or territory of Canada or a state or federal agency of the United Mexican States.

(36)"State of domicile" means the state where a person has his or her true, fixed and permanent home and principle residence and to which he or she has the intention of returning whenever absent in accordance with chapter seventeen-a, article three, section one-a.

(37) "Suspension, revocation or cancellation" of a driver's license or a commercial driver's license means the privilege to operate any type of motor vehicle on the roads and highways of this state is withdrawn.

(38) "Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. These vehicles include, but are not limited to, cargo tanks and portable tanks as defined in 49 C. F. R. Part 171 (1998). This definition does not include portable tanks having a rated capacity under one thousand gallons.

(39) "Texting" means manually entering alphanumeric text into or reading text from an electronic device.

(A) This action includes, but is not limited to, short messaging service, e-mailing, instant messaging and a command or request to access a World Wide Web page or engaging in any other form of electronic text retrieval or entry for present or future communication.

(B) Texting does not include:

(i) Reading, selecting or entering a telephone number, an extension number or voicemail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a phone call or using voice commands to initiate or receive a telephone call;

(ii) Inputting, selecting or reading information on a global positioning system or navigation system; or

(iii) Using a device capable of performing multiple functions including, but not limited to, fleet management systems, dispatching devices, smart phones, citizen band radios or music

WV Legislature

players for a purpose that is not otherwise prohibited by this section

(40) "Transportation Security Administration" means the United States Department of Homeland Security Transportation Security Administration.

(41) "United States" means the fifty states and the District of Columbia.

(42) "Valid or Certified Medical Certification Status" means that an applicant or driver has a current medical evaluation or determination by a licensed physician that the applicant or driver meets the minimum federal motor carrier safety administration physical qualifications within the prescribed time frames pursuant 49 CFR Part §391. Not-certified means that an applicant or driver does not have a current medical evaluation or has not been certified by a licensed physician as meeting the minimum federal motor carrier safety administration physical qualifications pursuant 49 CFR Part §391.

(43)"Vehicle Group" means a class or type of vehicle with certain operating characteristics.

WV Legislature