WEST VIRGINIA CODE CHAPTER 17E ARTICLE 1

WV Legislature

§17E-1-1. Short title.

This article may be cited as the "Uniform Commercial Driver's License Act."

WV Legislature

§17E-1-2. Statement of intent and purpose.

(a) The purpose of this article is to implement 49 U.S.C. et seq., The Federal Motor Carrier Safety Improvement Act of 1999, 49 U.S.C. §5103a, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept or Obstruct Terrorism Act of 2001 and to reduce or prevent commercial motor vehicle accidents, fatalities and injuries by:

(1) Permitting commercial drivers to hold only one license;

(2) Disqualifying commercial drivers who have committed certain serious traffic offenses;

(3) Permitting only commercial drivers who do not present a security threat to operate commercial vehicles carrying a hazardous material; and

(4) Strengthening licensing and testing standards.

(b) This article is a remedial law and shall be liberally construed to promote the public health, safety and welfare. Where this chapter is silent, the general driver licensing provisions and the provisions of Title 49 of the Code of Federal Regulations apply.

WV Legislature

§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.

(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

WV Legislature

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 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).

WV Legislature

(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 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.

WV Legislature

(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 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:

WV Legislature

(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 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.

WV Legislature

(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 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.

WV Legislature

(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

§17E-1-4. Limitation on number of driver's licenses.

No person who drives a commercial motor vehicle may have more than one driver's license at one time. The division shall require the surrender of any previously issued driver's license before issuing a renewed or duplicate driver's license with updated information.

WV Legislature

§17E-1-5. Notification required by driver.

(a) Notification of convictions.

(1) Any driver of a commercial motor vehicle holding a driver's license issued by this state, who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control, in any other state or federal, provincial, territorial or municipal laws of Canada, other than parking violations, shall notify the West Virginia Division of Motor Vehicles in the manner specified by the Commissioner and in accordance with C.F.R. §383.31(2004) within thirty days of the date of conviction.

(2) Any driver of a commercial motor vehicle holding a driver's license issued by this state, who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in this state or any other state or federal, provincial, territorial or municipal laws of Canada, other than parking violations, must notify his or her employer in writing and in accordance with 49 C.F.R. §383.31 (2004) of the conviction within thirty days of the date of conviction.

(b) Each driver whose driver's license is:

(1) Suspended, revoked, canceled or expired, by any state;

(2) Who loses the privilege to drive a commercial motor vehicle in any state for any period; or

(3) Who is disqualified from driving a commercial motor vehicle for any period, shall notify his or her employer of that fact before the end of the business day following the day the driver received notice of the action against his or her driving privileges.

(c) Each person who applies to be a commercial motor vehicle driver shall provide the employer, at the time of the application, with the following information for the ten years preceding the date of application:

(1) A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle;

(2) The dates between which the applicant drove for each employer; and

(3) The reason for leaving that employer.

The applicant shall certify that all information furnished is true and complete. An employer may require an applicant to provide additional information.

WV Legislature

§17E-1-6. Employer responsibilities.

(a) Each employer shall require the applicant to provide the information specified in section five of this article.

(b) No employer may knowingly allow, permit, require or authorize a driver to drive a commercial motor vehicle during any period in which the driver:

(1) Has a driver's license suspended, revoked or canceled by a state; has lost the privilege to drive a commercial motor vehicle in a state or has been disqualified from driving a commercial motor vehicle;

(2) Has more than one driver's license at one time;

(3) The commercial motor vehicle he or she is driving or the motor carrier operation is subject to an out-of-service order;

(4) Is in violation of federal, state or local law or regulation pertaining to railroad highway grade crossings; or

(5) Is in violation of any provision of 49 C.F.R., Part § 382 related to controlled substances and alcohol use and testing.

(c) No employer may require or allow a driver to operate a commercial motor vehicle while texting.

(d) The division shall impose a civil penalty in addition to any penalty required under the provisions of section twenty-five of this article on any employer who knowingly allows, permits, requires or authorizes a driver to drive a commercial motor vehicle in violation of subdivision (3) or (4) of subsection (b) or subsection (c) of this section.

(1) If the conviction is for a violation of subdivision (3), of subsection (b) of this section, the penalty is $2,750.

(2) If the conviction is for a violation of subdivision (4), of subsection (b) or (c) of this section, the penalty shall be no more than $25,000.

WV Legislature

§17E-1-7. Commercial driver's license required; disqualification for driving without valid license.

(a) On or after April 1, 1992, except when driving under a commercial driver's instruction permit accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle unless the person holds a commercial driver's license and applicable endorsements valid for the vehicle they are driving.

(b) No person may drive a commercial motor vehicle while their driving privilege is suspended, revoked, canceled, expired, subject to a disqualification or in violation of an out-of-service order.

(c) Drivers of a commercial motor vehicle shall have a commercial driver's license in their possession at all times while driving.

(d) The Commissioner shall suspend for a period of sixty days the driving privileges of any person who is convicted of operating a commercial motor vehicle:

(1) Without holding a valid commercial driver's license and the applicable endorsements valid for the vehicle he or she is driving in accordance with subsection (a) of this section, or

(2) For any conviction for operating a commercial motor vehicle while his or her privilege to operate a motor vehicle were suspended, revoked, canceled or while disqualified from operating a commercial motor vehicle in accordance with subsection (b) of this section.

(e) Any person not holding a commercial driver's license who is convicted of an offense that requires disqualification from operating a commercial motor vehicle shall also be disqualified from eligibility for a commercial driver's license for the same time periods as prescribed in federal law or rule or section thirteen of this article for commercial driver's license holders.

(f) The Commissioner shall suspend the driver's license or the privilege to drive in this state of any holder of a commercial driver's license or operator of a commercial motor vehicle upon receiving notice from another state or jurisdiction of failure to pay fines, costs, forfeitures or penalties imposed or failure to appear or failure to respond for any violation of a state or local law relating to motor vehicle traffic control in accordance with 49 C.F.R. §384.225 (2009). A suspension under this section will continue until the person provides proof of compliance from the court and pays the reinstatement fee provided in section nine, article three, chapter seventeen-b of this code.

WV Legislature

§17E-1-8. Exemptions to the commercial driver's license requirements.

(a) Bona fide farmers or farm vehicle drivers, as defined, operating a vehicle otherwise covered by the commercial driver's license requirements may be exempted from the provisions of this article only if the vehicle used is:

(1) Driven by a farmer or farm vehicle driver;

(2) Used only to transport either agricultural products, farm machinery, farm supplies, to or from a farm;

(3) Not used in the operation of a common or contract motor carrier; and

(4) Used within one hundred fifty miles of the qualifying farm.

Farmers who wish to be exempted from the commercial driver's license requirements must apply to the Division of Motor Vehicles for a certificate of exemption.

(b) Active duty military personnel operating vehicles being used for military purposes are exempted from the provisions of this article in accordance with the provisions of 49 CFR §383.3 (c)(2006).

(c) Fire fighting and rescue equipment. Operators of vehicles authorized to hold an "authorized emergency vehicle permit" for use of red signal lights only are exempt from the provisions of this article while the "authorized emergency vehicle permit" is in force. Vehicles in this class include, but are not limited to, firefighters and rescue equipment:

(1) Owned and operated by state, county and municipal fire departments;

(2) Owned and operated by state, county and municipal civil defense organizations;

(3) Owned and operated by a manufacturer engaged in a type of business that requires firefighter equipment to protect the safety of their plants and its employees; or

(4) Owned and operated by volunteer fire departments.

(d) Operators of off-road construction and mining equipment. Operators of equipment which, by its design, appearance and function, is not intended for use on a public road, including, without limitation, motorscrapers, backhoes, motorgraders, compactors, excavators, tractors, trenches and bulldozers, are exempt from the provisions of this article: Provided, That the exemption recognized by this subsection shall not be construed to permit the operation of such equipment on any public road except such operation as may be required for a crossing of such road: Provided, however, That no such equipment may be operated on a public road for a distance exceeding five hundred feet from the place where such equipment entered upon the public road.

WV Legislature

(e) The Federal Motor Carrier Safety Improvement Act of 1999 exempts vehicles used exclusively for personal use such as recreation vehicles and rental trucks used only to transport the driver's personal or household property.

WV Legislature

§17E-1-8a. Restricted commercial driver's license for certain drivers in farm-related service industries.

(a) A restricted commercial driver's license may be issued to persons without meeting the required knowledge and skill tests for driving a commercial motor vehicle prescribed in §17E-1-9 of this code who are employees of the following designated farm-related service industries:

(1) Agrichemical businesses;

(2) Custom harvesters;

(3) Farm retail outlets and suppliers; and

(4) Livestock feeders.

(b) A restricted commercial driver's license issued pursuant to this section shall meet all of the requirements and restrictions set forth in 49 C.F.R. § 383.3(f), including any seasonal periods defined by the commissioner.

WV Legislature

§17E-1-9. Commercial driver's license qualification standards.

(a) No person may be issued a commercial driver's license unless that person is a resident of this state and has passed a knowledge and skills test for driving a commercial motor vehicle, which complies with minimum federal standards established by federal regulations enumerated in 49 C.F.R. Part 383, Subparts G and H, and has satisfied all other requirements of the Federal Motor Carrier Safety Improvement Act of 1999 in addition to other requirements imposed by state law or federal regulations.

(b) Third-party testing. — The commissioner may authorize a person, including an agency of this or another state, an employer, private individual or institution, department, agency, or instrumentality of local government, to administer the skills test specified by this section so long as:

(1) The test is the same which would otherwise be administered by the state; and

(2) The party has entered into an agreement with the state that complies with the requirements of 49 C.F.R. Part 383.75.

(c) Indemnification of driver examiners. — No person who has been officially trained and certified by the state as a driver examiner, who administers a driving test, and no other person, firm, or corporation by whom or with which that person is employed or is in any way associated, may be criminally liable for the administration of the tests or civilly liable in damages to the person tested, other persons, or property unless for gross negligence or willful or wanton injury.

(d) The commissioner may waive the skills test specified in this section for a commercial driver license applicant who meets the requirements of 49 C.F.R. Part 383.77 and the requirements specified by the commissioner.

(e) A commercial driver's license or commercial driver's instruction permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, when the person does not possess a valid or current medical certification status, or while the person's driver's license is suspended, revoked, or canceled in any state. A commercial driver's license may not be issued by any other state unless the person first surrenders all such licenses to the division: *Provided*, That a person who became subject to a disqualification from driving a commercial motor vehicle prior to possessing a commercial driver's license is not disqualified from possessing a commercial driver's license or commercial driver's license instruction permit so long as the mandatory revocation period specified in §17E-1-13(a)(3) of this code has elapsed, and the individual has completed the Safety and Treatment Program or other appropriate program prescribed by the division as required by §17E-1-13(a)(2) of this code.

(f) Commercial driver's instruction permit may be issued as follows:

WV Legislature

(1) To an individual who holds a valid Class E or Class D driver's license and has passed the vision and written tests required for issuance of a commercial driver's license.

(2) The commercial instruction permit may not be issued for a period to exceed one year. The holder of a commercial driver's instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven, who is 21 years of age or older, who is alert and unimpaired, and who occupies a seat beside the individual for the purpose of giving instruction or testing.

(3) Only to a person who is at least 18 years of age.

(4) The applicant for a commercial driver's instruction permit shall also be otherwise qualified to hold a commercial driver's license.

WV Legislature

§17E-1-10. Application for commercial driver's license.

(a) The application for a commercial driver's license or commercial driver's instruction permit must include at least the following:

(1) The full name and current mailing and residential address of the person;

(2) A physical description of the person including sex, height, weight and eye color;

(3) Date of birth;

(4) The applicant's social security number;

(5) The person's signature;

(6) The person's color photograph;

(7) Certifications including those required by 49 C.F.R. Part § 383.71(a)(2004);

(8) Any other information required by the commissioner;

(9) A consent to release driving record information; and

(10) Certification stating that the applicant is:

(A) Engaged in interstate commerce and subject to 49 C.F.R. Part §391 standards;

(B) Engaged in interstate commerce but excepted from 49 C.F.R. Part §391 standards;

(C) Engaged in intrastate commerce and subject to state medical standards; or

(D) Engaged in intrastate commerce but not subject to state medical standards.

(b) When a licensee changes his or her name, mailing address or residence, or when a licensee's classifications, endorsements, or restrictions or medical certification status changes; the licensee shall submit an application for a duplicate license and obtain a duplicate driver's license displaying the updated information.

(c) No person who has been a resident of this state for thirty days or more may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

WV Legislature

§17E-1-11. Commercial driver's license.

The commercial driver's license shall be marked "commercial driver's license" or "CDL" and, to the maximum extent practicable, tamper proof. It must include, but not be limited to, the following information:

(a) The name and residential address of the person;

(b) The person's color photograph;

(c) A physical description of the person including sex, height, weight, and eye color;

(d) Date of birth;

(e) The person's signature;

(f) The class or type of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsement(s) and or restriction(s);

(g) The name of this state;

(h) The dates between which the license is valid; and

(i) Any information required by the Federal Motor Carrier Safety Administration concerning the driver's valid or current medical certification status.

WV Legislature

§17E-1-12. Classifications, endorsements, and restrictions.

(a) Commercial driver's licenses may be issued with the following classifications:

(1) Class A combination vehicle. − Any combination of vehicles with a gross combined vehicle weight rating of 26,001 pounds or more, provided the gross vehicle weight rating of the vehicle being towed is in excess of 10,000 pounds.

(2) Class B heavy straight vehicle. − Any single vehicle with a gross vehicle weight rating of 26,001 pounds or more and any vehicle towing a vehicle not in excess of 10,000 pounds.

(3) Class C small vehicle. − Any single vehicle or combination vehicle that does not fall under either Class A or Class B but are:

(A) Vehicles designed to transport 16 or more passengers, including the driver; and

(B) Vehicles used in the transportation of hazardous materials which requires the vehicle to be placarded under 49 C.F.R. Part § 172, Subpart F (2004).

(4) Each applicant who desires to operate a vehicle in a classification different from the class in which the applicant is authorized is required to retake and pass all related tests except the following:

(A) A driver who has passed the knowledge and skills test for a combination vehicle in Class A may operate a heavy straight vehicle in Class B or a small vehicle in Class C provided he or she possesses the required endorsements; and

(B) A driver who has passed the knowledge and skills test for a vehicle in Class B may operate any small vehicle in Class C provided he or she possesses the required endorsements.

(b) Endorsements and restrictions. − The commissioner upon issuing a commercial driver's license may impose endorsements and restrictions determined by the commissioner to be appropriate to assure the safe operation of a specific class, type, or category of motor vehicle or a specifically equipped motor vehicle and to comply with 49 U.S.C., *et seq.*, and 49 C.F.R. § 383.93 (2004) including, but not limited to, endorsements or restrictions to operate:

(1) Double or triple trailers which requires successful completion of a knowledge test;

(2) Passenger vehicles which requires successful completion of a knowledge and skills test;

(3) Tank vehicles which requires successful completion of a knowledge test;

(4) Vehicles used for the transportation of hazardous materials as defined in section three of this article which requires the completion of a knowledge test and a background security risk check in accordance with 49 C.F.R. § 1572.5 (2004);

WV Legislature

(5) School buses which requires successful completion of a knowledge and skills test unless the applicant meets the criteria for waiver of the skills test in accordance with 49 C.F.R. § 383.123(b) (2004); or

(6) Vehicles equipped with air brakes which requires the completion of a skills test.

(c) Applicant record check. – Before issuing a commercial driver's license, the commissioner shall obtain driving record and medical certification status information through the commercial driver's license information system, the national driver register, and from each state in which the person has been licensed.

(d) Notification of license issuance. – Within 10 days after issuing a commercial driver's license, the commissioner shall notify the commercial driver's license information system of the issuance and provide all information required to ensure identification of the person.

(e) Expiration of license. –

(1) Every commercial driver's license issued to persons who have attained their 21st birthday expires on the applicant's birthday in those years in which the applicant's age is evenly divisible by five. Except as provided in subdivision (2) of this subsection, no commercial driver's license may be issued for less than three years nor more than seven years. The commercial driver's license shall be renewed by the applicant's birthday and is valid for a period of five years, expiring on the applicant's birthday and in a year in which the applicant's age is evenly divisible by five. No commercial driver's license with a hazardous materials endorsement may be issued for more than five years.

(2) Every commercial driver's license issued to persons who have not attained their 21st birthday expires 30 days after the applicant's birthday in the year in which the applicant attains the age of 21 years.

(3) Commercial driver's licenses held by any person in the armed forces which expire while that person is on active duty remains valid for 30 days from the date on which that person reestablishes residence in West Virginia.

(4) Any person applying to renew a commercial driver's license which has been expired for three years or more shall follow the procedures for an initial issuance of a commercial driver's license, including the testing provisions: *Provided*, That a person whose commercial driver's license has been downgraded solely as a result of his or her medical certification becoming expired or invalid may also have his or her commercial driver's license restored upon presentation of a valid and current medical certification no more than five years after such downgrade without being required to follow the procedures for an initial issuance of a commercial driver's license, including the testing provisions.

(5) Any commercial driver's license held by a person who does not possess a valid or current medical certification status is no longer valid for the operation of a commercial motor

WV Legislature

vehicle and is downgraded to the appropriate licensure level commensurate with the licensee's qualifications regardless of the expiration date or indicated class on the face of the license within the time frames prescribed by 49 C.F.R. § 383.73(j).

(f) When applying for renewal of a commercial driver's license, the applicant shall complete the application form and provide updated information and required certifications.

(g) If the applicant wishes to obtain or retain a hazardous materials endorsement, the applicant shall comply with a background check in accordance with 49 U.S.C. § 5103a and 49 C.F.R. Part § 1572 (2004) and subject to the following:

(1) The applicant is a citizen of the United States or a lawful permanent resident of the United States;

(2) The applicant completes the application prescribed by the division and submits fingerprints in a form and manner prescribed by the division and the United States Department of Homeland Security Transportation Security Administration at the time of application or at any other time in accordance with 49 C.F.R.§ 1572.5 (2004);

(3) The applicant pays all fees prescribed by the Transportation Security Administration or its agent and the division;

(4) The applicant has not been adjudicated as a mental defective or committed to a mental institution as prescribed in 49 C.F.R. § 1572.109 (2004);

(5) The applicant has not committed a disqualifying criminal offense as described in 49 C.F.R. § 1572.103 (2004);

(6) The applicant has passed the Transportation Security Administration security threat assessment and the division has received a final notification of threat assessment or notification of no security threat from the Transportation Security Administration. An appeal of a decision, determination or ruling of the Federal Bureau of Investigation or the Transportation Security Agency shall be directed to that agency; and

(7) The applicant has successfully passed the written test for the issuance or renewal of a hazardous material endorsement.

WV Legislature

§17E-1-13. Disqualification.

(a) A person may not operate a commercial motor vehicle if his or her privilege to operate a commercial motor vehicle is disqualified under the provisions of the Federal Motor Carrier Safety Improvement Act of 1999, 49 C. F. R. Part §383, Subpart D (2004) or in accordance with the provisions of this section.

(1) For the purposes of determining first and subsequent violations of the offenses listed in this section, each conviction resulting from a separate incident includes convictions for offenses committed in a commercial motor vehicle or a noncommercial motor vehicle.

(2) Any person disqualified from operating a commercial motor vehicle for life under the provisions of this chapter for offenses described in subdivisions (1), (2), (3), (4) and (6), subsection (b) of this section is eligible for reinstatement of privileges to operate a commercial motor vehicle after 10 years and after completion of the Safety and Treatment Program or other appropriate program prescribed by the division. Any person whose lifetime disqualification has been amended under the provisions of this subdivision, and who is subsequently convicted of a disqualifying offense described in subdivisions (1) through (7), inclusive, subsection (b) of this section, is not eligible for reinstatement. Any person disqualified from operating a commercial motor vehicle for life under subsection (n) of this section is not eligible for reinstatement.

(3) Any person who committed a disqualifying offense contained in paragraph (B) or (E), subdivision (1), subsection (b) of this section prior to obtaining a commercial driver's license, and who committed the disqualifying offense more than 10 years before he or she applied for a commercial driver's license, and who has completed the Safety and Treatment Program or other appropriate program prescribed by the division, shall be considered to have served the period of disqualification and is eligible to obtain a commercial driver's license so long as all other eligibility requirements contained in §17E-1-9 and §17E-1-10 of this code are satisfied.

(4) Any disqualification imposed by this section is in addition to any action to suspend, revoke, or cancel the driver's license or driving privileges if suspension, revocation, or cancellation is required under another provision of this code.

(5) The provisions of this section apply to any person operating a commercial motor vehicle and to any person holding a commercial driver's license.

(b) Any person is disqualified from driving a commercial motor vehicle for the following offenses and time periods if convicted of:

(1) Driving a motor vehicle under the influence of alcohol or a controlled substance;

(A) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver is disqualified from operating a

commercial motor vehicle for a period of one year.

(B) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of one year.

(C) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F, a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction or for refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial motor vehicle license holder is disqualified from operating a commercial motor vehicle for life.

(2) Driving a commercial motor vehicle while the person's alcohol concentration of the person's blood, breath, or urine is four hundredths of one percent or more, by weight;

(A) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F, a driver is disqualified from operating a commercial motor vehicle for three years.

(C) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(3) Refusing to submit to any designated secondary chemical test required by the provisions of this code or the provisions of 49 C. F. R. §383.72 (2004);

(A) For the first conviction or refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction or refusal to submit to any designated secondary chemical test

WV Legislature

while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for one year.

(C) For the first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for life.

(4) Leaving the scene of an accident;

(A) For the first conviction while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified for one year.

(C) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for life.

(5) Using a motor vehicle in the commission of any felony as defined in §17E-1-3 of this code; except as set forth specifically in subsection (n) of this section;

(A) For the first conviction while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a noncommercial motor vehicle, a commercial

WV Legislature

driver's license holder is disqualified from operating a commercial motor vehicle for one year.

(C) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial motor vehicle license holder is disqualified from operating a commercial motor vehicle for life.

(6) Operating a commercial motor vehicle when, as a result of prior violations committed operating a commercial motor vehicle, the driver's privilege to operate a motor vehicle has been suspended, revoked, or canceled, or the driver's privilege to operate a commercial motor vehicle has been disqualified.

(A) For the first conviction while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(C) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(7) Causing a fatality through the negligent operation of a commercial motor vehicle, the operation of a commercial motor vehicle in reckless disregard for the safety of others, or the operation of a commercial motor vehicle in deliberate disregard for the safety of others, including, but not limited to, the crimes of motor vehicle manslaughter, homicide, vehicular homicide, aggravated vehicular homicide, vehicular homicide in a school zone, and vehicular homicide in a construction zone as defined in §17B-3-5, and §17C-5-1 of this code;

(A) For the first conviction while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three

WV Legislature

years.

(C) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(c) Any person is disqualified from driving a commercial motor vehicle if convicted of:

(1) Speeding excessively involving any speed of 15 miles per hour or more above the posted speed limit;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 120 days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder shall be disqualified from operating a commercial motor vehicle for a period of 120 days.

(2) Reckless driving as defined in §17C-5-3 of this code, or careless or negligent driving, including, but not limited to, the offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

WV Legislature

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 120 days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

(3) Making improper or erratic traffic lane changes;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 120 days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

(4) Following the vehicle ahead too closely;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

WV Legislature

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 120 days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

(5) Violating any law relating to traffic control arising in connection with a fatal accident, other than a parking violation;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 120 days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial motor vehicle license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

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

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 120 days.

(7) Driving a commercial motor vehicle without a commercial driver's license in the driver's

WV Legislature

possession except that any person who provides proof of possession of a commercial driver's license to the enforcement agency that issued the citation by the court appearance or fine payment deadline is not guilty of this offense;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

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

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

(9) Driving a commercial motor vehicle while engaged in texting and convicted pursuant to §17E-1-14a of this code or similar law of this or any other jurisdiction or 49 C. F. R. §392.80;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

(d) Any person convicted of operating a commercial motor vehicle in violation of any federal, state, or local law or ordinance pertaining to railroad crossing violations described in subdivisions (1) through (6), inclusive, of this subsection is disqualified from operating a commercial motor vehicle for the period of time specified;

WV Legislature

(1) Failing to slow down and check that the tracks are clear of an approaching train, if not required to stop in accordance with the provisions of §17C-12-3 of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for 120 days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(2) Failing to stop before reaching the crossing, if the tracks are not clear, if not required to stop in accordance with the provisions of §17C-12-1 of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for 120 days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(3) Failing to stop before driving onto the crossing, if required to stop in accordance with the provisions of §17C-12-3 of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, the driver is disqualified from operating a commercial motor vehicle for 120 days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(4) Failing to have sufficient space to drive completely through the crossing without stopping in accordance with the provisions of §17C-12-3 of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor

WV Legislature

vehicle for a period of 60 days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for 120 days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(5) Failing to obey a traffic control device or the directions of an enforcement official at the crossing in accordance with the provisions of §17C-12-1 of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for 120 days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(6) Failing to negotiate a crossing because of insufficient undercarriage clearance in accordance with the provisions of §17C-12-3 of this code.

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for 120 days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(e) Any person who is convicted of violating an out-of-service order while operating a commercial motor vehicle is disqualified for the following periods of time:

(1) If convicted of violating a driver or vehicle out-of-service order while transporting nonhazardous materials;

(A) For the first conviction of violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for 180

WV Legislature

days.

(B) For a second conviction in a separate incident within a 10-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for two years.

(C) For a third or subsequent conviction in a separate incident within a 10-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for three years.

(2) If convicted of violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F (2004) or while operating a vehicle designed to transport 16 or more passengers including the driver;

(A) For the first conviction of violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for 180 days.

(B) For a second conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for three years.

(C) For a third or subsequent conviction in a separate incident within a 10-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for three years.

(f) After disqualifying, suspending, revoking, or canceling a commercial driver’s license, the division shall update its records to reflect that action within 10 days.

(g) In accordance with the provisions of 49 U. S. C. §313119(a)(19)(2004), and 49 C. F. R. §384.226 (2004), notwithstanding the provisions of §61-11-25 of this code, no record of conviction, revocation, suspension, or disqualification related to any type of motor vehicle traffic control offense, other than a parking violation, of a commercial driver’s license holder or a person operating a commercial motor vehicle may be masked, expunged, deferred, or be subject to any diversion program.

(h) Notwithstanding any provision in this code to the contrary, the division may not issue any temporary driving permit, work-only driving permit, or hardship license or permit that authorizes a person to operate a commercial motor vehicle when his or her privilege to operate any motor vehicle has been revoked, suspended, disqualified, or otherwise canceled for any reason.

(i) In accordance with the provisions of 49 C. F. R. §391.15(b), a driver is disqualified from operating a commercial motor vehicle for the duration of any suspension, revocation, or cancellation of his or her driver’s license or privilege to operate a motor vehicle by this state

WV Legislature

or by any other state or jurisdiction until the driver complies with the terms and conditions for reinstatement set by this state or by another state or jurisdiction.

(j) In accordance with the provisions of 49 C. F. R. §353.52 (2006), the division shall immediately disqualify a driver's privilege to operate a commercial motor vehicle upon a notice from the assistant administrator of the Federal Motor Carrier Safety Administration that the driver poses an imminent hazard. Any disqualification period imposed under the provisions of this subsection shall be served concurrently with any other period of disqualification if applicable.

(k) In accordance with the provisions of 49 C. F. R. §1572.11(a), the division shall immediately disqualify a driver's privilege to operate a commercial motor vehicle if the driver fails to surrender his or her driver's license with a hazardous material endorsement to the division upon proper notice by the division to the driver that the division received notice from the Department of Homeland Security Transportation Security Administration of an initial determination of threat assessment and immediate revocation that the driver does not meet the standards for security threat assessment provided in 49 C. F. R. §1572.5. The disqualification remains in effect until the driver either surrenders the driver's license to the division or provides the division with an affidavit attesting to the fact that the driver has lost or is otherwise unable to surrender the license.

(l) In accordance with 49 C. F. R. §391.41, a driver is disqualified from operating a commercial motor vehicle if the driver is not physically qualified to operate a commercial motor vehicle or does not possess a valid medical certification status.

(m) In accordance with the provisions of 49 C. F. R. §383.73(g), the division shall disqualify a driver's privilege to operate a commercial motor vehicle if the division determines that the licensee has falsified any information or certifications required under the provisions of 49 C. F. R. 383 Subpart J or 49 C. F. R. §383.71(a) for 60 days in addition to any other penalty prescribed by this code.

(n) Lifetime Disqualification Without Reinstatement.—

(1) Controlled substance violations — An individual who uses a commercial motor vehicle in committing a felony involving manufacturing, distributing, or dispensing a controlled substance, or involving possession with intent to manufacture, distribute, or dispense a controlled substance is disqualified from operating a commercial motor vehicle for life and is not eligible for reinstatement.

(2) Human trafficking violations — An individual who uses a commercial motor vehicle in committing a felony involving an act or practice described in paragraph (9) of section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102(9)) is disqualified from operating a commercial motor vehicle for life and is not eligible for reinstatement.

WV Legislature

§17E-1-14. Commercial drivers prohibited from driving with blood alcohol concentration of four hundredths of one percent or more; refusal of preliminary breath test to determine alcohol content of blood; criminal penalties.

(a) In addition to any other penalties provided by this code, any person who drives, operates or is in physical control of a commercial motor vehicle while having an alcohol concentration in his or her blood, breath or urine of four hundredths of one percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than twenty-four hours nor more than six months, and shall be fined not less than $100 nor more than $500. A person convicted of a second or any subsequent offense under the provisions of this subsection shall be confined in jail for a period of not less than six months nor more than one year, and the court may, in its discretion, impose a fine of not less than $1,000 nor more than $3,000.

(b) A person who violates the provisions of subsection (a) of this section shall be treated in the same manner set forth in section three, article nineteen, chapter seventeen-c of this code, as if he or she had been arrested for driving under the influence of alcohol or of any controlled substance.

(c) In addition to any other penalties provided by this code, a person who drives, operates or is in physical control of a commercial motor vehicle having any measurable alcohol in such person's system or who refuses to take a preliminary breath test to determine such person's blood alcohol content as provided by section fifteen of this article, shall be placed out-of-service for twenty-four hours by the arresting law-enforcement officer.

WV Legislature

§17E-1-14a. Commercial Drivers Prohibited From Texting.

(a) No commercial driver may engage in texting while driving a commercial motor vehicle.

(b) No motor carrier may allow or require its drivers to engage in texting while driving a commercial motor vehicle.

(c) For the purposes of this section only, and unless a more restrictive prohibition is prescribed in this code, driving means operating a commercial motor vehicle with the motor running, including while temporarily stationed because of traffic, a traffic control device or other momentary delays. Driving does not include operating a commercial motor vehicle with or without the motor running when the driver moved the vehicle to the side of or off a highway, as defined in 49 CFR 390.5, and halted in a location where the vehicle can safely remain stationary.

WV Legislature

§17E-1-15. Implied consent requirements for commercial motor vehicle drivers; disqualification for driving with blood alcohol concentration of four hundredths of one percent or more, by weight.

(a) A person who drives a commercial motor vehicle within this state is deemed to have given consent, subject to provisions of section four, article five, chapter seventeen-c of this code, to take a test or tests of that person's blood, breath or urine for the purpose of determining that person's alcohol concentration, or the presence of other drugs.

(b) A test or tests may be administered at the direction of a law-enforcement officer, who after lawfully stopping or detaining the commercial motor vehicle driver, has reasonable cause to believe that driver was driving a commercial motor vehicle while having alcohol in his or her system.

(c) A person requested to submit to a test as provided in subsection (a) of this section must be warned by the law-enforcement officer requesting the test that a refusal to submit to the test will result in that person being disqualified from operating a commercial motor vehicle under section thirteen or fifteen of this article.

(d) If the person refuses testing, or submits to a test which discloses an alcohol concentration of four hundredths of one percent or more, by weight, that law-enforcement officer shall submit a sworn report to the Division of Motor Vehicles certifying that the test was requested pursuant to subsection (a) of this section and that the person refused to submit to testing, or submitted to a test which disclosed an alcohol concentration of four hundredths of one percent or more, by weight.

(e) Upon receipt of the sworn report of a law-enforcement officer submitted under subsection (d) of this section, the Commissioner shall enter an order revoking the person's driver's license in accordance with section seven, article five, chapter seventeen-c of this code and disqualifying the person from driving a commercial motor vehicle for the period of time prescribed in section thirteen of this article.

WV Legislature

§17E-1-16. Notification of traffic convictions.

(a) The Commissioner shall notify the licensing authority of the state where the driver is licensed within thirty days of the date of conviction of any holder of a commercial driver license or any person operating a commercial motor vehicle for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle.

(b) The Commissioner shall notify the driver licensing authority in the licensing state where the driver is licensed within ten days of the date of disqualification of any holder of a commercial driver license or any person operating a commercial motor vehicle.

(c) Beginning on September 30, 2008, the Commissioner shall notify the driver licensing authority in the licensing state where the driver is licensed within ten days of the date of conviction of any holder of a commercial driver's license or any person operating a commercial motor vehicle for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle.

WV Legislature

§17E-1-17. Driving record information to be furnished.

Subject to the provisions of article two-a, chapter seventeen-a of this code, the commissioner shall furnish full information regarding the driving record of any person:

(a) To the driver license administrator of any other 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 requesting that information;

(b) To any motor carrier employer or prospective motor carrier employer;

(c) To the United States Secretary of Transportation; and

(d) To the driver:Nothing in this section prevents an insurer from obtaining a standard driving record issued in accordance with section two, article two, chapter seventeen-d of this code.

WV Legislature

§17E-1-18. Rule-making authority.

The commissioner shall adopt rules and regulations necessary to carry out the provision of this article.

WV Legislature

§17E-1-19. Authority to enter agreements.

The commissioner may enter into or make agreements, arrangements or declarations to carry out the provisions of this chapter.

WV Legislature

§17E-1-20. Reciprocity.

(a) Notwithstanding any law to the contrary, a person may drive a commercial motor vehicle if the person has a commercial driver's license by any 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 in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver licenses if the license is not suspended, revoked or canceled, if the person is not disqualified from driving a commercial motor vehicle or not subject to an "out-of-service" order.

(b) The commissioner is authorized to suspend, revoke or cancel the privilege to operate a motor vehicle or disqualify the privilege to operate a commercial motor vehicle of any resident of this state or of a nonresident upon receiving notice of the conviction of such person in another state of an offense which, if committed in this state, would be grounds for the suspension, revocation or cancellation of the privilege to operate a motor vehicle or the disqualification of the privilege to operate a commercial motor vehicle.

WV Legislature

§17E-1-21. Severability and savings clause.

The provisions of any chapter or parts of chapters of this code, which are inconsistent with the provisions of this chapter, are repealed to the extent of such inconsistency.

WV Legislature

§17E-1-22. Effective dates.

All provisions of this chapter are effective immediately on passage except:

(a) Section seven - April 1, 1992.

(b) Section eight - July 1, 1989.

(c) Section nine - July 1, 1989.

(d) Section ten - July 1, 1989.

(e) Sections eleven, twelve, thirteen, fourteen - April 1, 1992.

WV Legislature

§17E-1-23. Funding for the commercial driver's license fees.

(a) Each application for a commercial driver's license shall be accompanied by the fees provided in this section and the fees shall be deposited in a special revolving fund for the operation by the division of its functions established by this chapter: Provided, That on and after July 1, 2007, any unexpended balance remaining in the special revolving fund shall be transferred to the Motor Vehicle Fees Fund created under the provisions of section twenty-one, article two, chapter seventeen-a of this code and all further fees collected shall be deposited in that fund.

(b) The fee for a commercial driver's license shall be established by the commissioner to cover all necessary costs for program administration. The fees for knowledge and road testing shall also be established by the commissioner to cover all program costs projected to be incurred by the division.

WV Legislature

§17E-1-24. Enforcement.

In addition to the officers of the West Virginia State Police, any police officer, or any commercial vehicle enforcement officer or weight enforcement officer of the Public Service Commission, Motor Carrier Division, and any special agent of the Federal Motor Carrier Safety Administration may enforce the provisions of this article.

WV Legislature

§17E-1-25. Penalties.

(a) It is a misdemeanor for any person to violate any of the provisions of this chapter unless the violation is by this chapter or other law of this state, declared to be a felony.

(b) Unless another penalty is provided in this chapter or by the laws of this state, every person convicted of a misdemeanor for the violation of any provisions of this chapter shall be fined not less than $100 nor more than $1,000, or confined for not more than six months in jail, or both fined and confined, except that for the second violation of section seven of this article and, upon conviction thereof, the offender shall be fined not less than $500 nor more than $2,000 or confined for not less than six months nor more than nine months in jail, or both fined and confined. For the third or any subsequent conviction for violation of section seven of this article, upon conviction thereof, the offender shall be fined not less than one $1,000 nor more than $2,500, or confined for not less than nine months nor more than one year in the county jail, or both fined and confined.

(c) The division shall impose a civil penalty, in addition to any penalty required under the provisions of this section on any driver who is convicted of violating subsection (e), section thirteen of this article. The penalty shall be $2,500 for the first offense and $5,000 for each subsequent offense.

WV Legislature