WEST VIRGINIA CODE CHAPTER 17c

WV Legislature

§17C-1-1. Definitions generally.

The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this article.

WV Legislature

§17C-1-2. Vehicle.

"Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks or wheelchairs.

WV Legislature

§17C-1-3. Motor vehicle.

"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, except motorized wheelchairs.

WV Legislature

§17C-1-4. Motorcycle.

"Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

WV Legislature

§17C-1-5. Motor-driven cycle.

"Motor-driven cycle" means every motorcycle having a piston displacement of more than fifty cubic centimeters but not more than one hundred fifty cubic centimeters, or with not more than five brake horsepower.

WV Legislature

§17C-1-5a. Moped.

"Moped" means every motorcycle or motor-driven cycle unless otherwise specified in this chapter, which is equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of two-brake horsepower, but excludes electric bicycles as defined in §17C-1-70 of this code. If a combustion engine is used, the maximum piston or rotor displacement shall be 50 cubic centimeters regardless of the number of chambers in the power source. The power source shall be capable of propelling the vehicle, unassisted, at a speed not to exceed 30 miles per hour on a level road surface and shall be equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged.

WV Legislature

§17C-1-6. Authorized emergency vehicle.

"Authorized emergency vehicle" means vehicles of a fire department, duly chartered rescue squad, police department, ambulance service, hospital police department, state, county, or municipal agency, and such privately owned ambulances, tow trucks, wreckers, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation, postal service vehicles, snow removal equipment, Class A vehicles of firefighters, Class A vehicles of members of ambulance services, Class A vehicles of members of duly chartered rescue squads, emergency management and operations vehicles operated by airports and designated pursuant to §17C-15-26 of this code, and all other emergency vehicles as are designated by the agency responsible for the operation and control of these persons or organizations. Class A vehicles are as defined by §17A-10-1 of this code. Agency authorization and emergency equipment are provided in §17C-15-26 of this code. Agencies responsible for issuing authorization for emergency vehicle permits may promulgate such regulations that are necessary for the issuance of permits for emergency vehicles. In the event that emergency medical technicians ("EMTs") or paramedics on the scene of an emergency are unable to drive an ambulance in the course of administering patient care, firefighters on the scene shall be permitted to drive an ambulance: *Provided*, That the fire department with which the firefighters are associated or members and the emergency medical services provider that owns the ambulance have previously entered into a memorandum of understanding or other agreement authorizing such action and the firefighter driving the ambulance has completed an Emergency Vehicle Operations Course ("EVOC") otherwise required by this code or legislative rule promulgated thereunder.

WV Legislature

§17C-1-7. School bus.

"School bus" means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

WV Legislature

§17C-1-8. Bicycle.

"Bicycle" means every device which does not have a motor attached and which is propelled by human power upon which any person may ride, having two tandem wheels either of which is more than twenty inches in diameter.

WV Legislature

§17C-1-9. Truck tractor.

"Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

WV Legislature

§17C-1-10. Farm tractor.

"Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

WV Legislature

§17C-1-11. Road tractor.

"Road tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

WV Legislature

§17C-1-12. Truck.

"Truck" means every motor vehicle designed, used or maintained primarily for the transportation of property.

WV Legislature

§17C-1-13. Bus.

"Bus" means every motor vehicle designed for carrying more than seven passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

WV Legislature

§17C-1-14. Trackless trolley coach.

"Trackless trolley coach" means every motor vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

WV Legislature

§17C-1-15. Trailer.

"Trailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

WV Legislature

§17C-1-16. Semitrailer.

"Semitrailer" means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

WV Legislature

§17C-1-17. Pole trailer.

"Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, trusses, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

WV Legislature

§17C-1-18. Pneumatic tire.

"Pneumatic tire" means every tire in which compressed air is designed to support the load.

WV Legislature

§17C-1-19. Solid tire.

"Solid tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

WV Legislature

§17C-1-20. Metal tire.

"Metal tire" means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard nonresilient material.

WV Legislature

§17C-1-21. Railroad.

"Railroad" means a carrier of persons or property upon cars, other than streetcars, operated upon stationary rails.

WV Legislature

§17C-1-22. Railroad train.

"Railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except streetcars.

WV Legislature

§17C-1-23. Streetcar.

"Streetcar" means a car other than a railroad train for transporting persons or property and operated upon rails principally within a municipality.

WV Legislature

§17C-1-24. Explosives.

"Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosive and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, by friction, by concussion, by percussion, or by detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb.

WV Legislature

§17C-1-25. Flammable liquid.

"Flammable liquid" means any liquid which has a flash point of seventy degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closed-cup test device.

WV Legislature

§17C-1-26. Gross weight.

"Gross weight" means the weight of a vehicle without load plus the weight of any load thereon.

WV Legislature

§17C-1-27. Commissioner.

"Commissioner" means the Commissioner of Motor Vehicles of this state.

WV Legislature

§17C-1-28. Division.

"Division" means the Division of Motor Vehicles of this state acting directly or through its duly authorized officers and agents. Wherever in this chapter reference is made to "the department of motor vehicles" or "the department", unless a different meaning is clearly required, the reference shall be deemed to be a reference to the Division of Motor Vehicles.

WV Legislature

§17C-1-29. Person.

"Person" means every natural person, firm, copartnership, association, or corporation.

WV Legislature

§17C-1-30. Pedestrian.

"Pedestrian" means any person afoot or any person using a wheelchair.

WV Legislature

§17C-1-31. Driver.

"Driver" means every person who drives or is in actual physical control of a vehicle.

WV Legislature

§17C-1-32. Owner.

"Owner" means a person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

WV Legislature

§17C-1-33. Police officer.

"Police officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

WV Legislature

§17C-1-34. Local authorities.

"Local authorities" means every county, municipal, and other local board or body having authority to enact laws relating to traffic under the Constitution and laws of this state.

WV Legislature

§17C-1-35. Street or highway.

"Street" or "highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

WV Legislature

§17C-1-36. Private road or driveway; private property.

(a) "Private road" or "driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(b) "Private property" means real estate in private ownership without regard to the manner in which it is used.

WV Legislature

§17C-1-37. Roadway.

"Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" as used herein shall refer to any such roadway separately but not to all such roadways collectively.

WV Legislature

§17C-1-38. Sidewalk.

"Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

WV Legislature

§17C-1-39. Laned roadway.

"Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic.

WV Legislature

§17C-1-40. Through highway.

"Through highway" means every highway or portion thereof at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing the same and when stop signs are erected as provided in this chapter.

WV Legislature

§17C-1-41. Controlled-access highway.

"Controlled-access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.

WV Legislature

§17C-1-42. Intersection.

"Intersection" includes: (a) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict; and

(b) Where a highway includes two roadways thirty feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

WV Legislature

§17C-1-43. Crosswalk.

"Crosswalk" includes: (a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; and

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

WV Legislature

§17C-1-44. Safety zone.

"Safety zone" means the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

WV Legislature

§17C-1-45. Business district.

"Business district" means the territory contiguous to and including a highway when within any six hundred feet along such highway there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations, and public buildings which occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.

WV Legislature

§17C-1-46. Residence district.

"Residence district" means the territory contiguous to and including a highway not comprising a business district when the property on such highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

WV Legislature

§17C-1-47. Traffic-control devices.

"Traffic-control devices" means all signs, signals, markings, and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

WV Legislature

§17C-1-48. Traffic-control signal.

"Traffic-control signal" means any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed.

WV Legislature

§17C-1-49. Railroad sign or signal.

"Railroad sign" or "signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

WV Legislature

§17C-1-50. Traffic.

"Traffic" means pedestrians, ridden or herded animals, vehicles, streetcars, and other conveyances either singly or together while using any highway for purposes of travel.

WV Legislature

§17C-1-51. Right-of-way.

"Right-of-way" means the privilege of the immediate use of the highway.

WV Legislature

§17C-1-52. Stop.

"Stop," when required, means complete cessation from movement.

WV Legislature

§17C-1-53. Stop, stopping, or standing.

"Stop,""stopping," or "standing," when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic- control sign or signal.

WV Legislature

§17C-1-54. Park

"Park," when prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

WV Legislature

§17C-1-55. School grounds.

"School grounds" includes the land on which a school is built together with such other land used by students for play, recreation or athletic events while attending school.

WV Legislature

§17C-1-56. Axle group.

"Axle group" means an assemblage of two or more consecutive axles considered together in determining their combined load effect on a bridge or pavement structure. The determination of what constitutes an axle group may include any or all the axles on the vehicle or combination of vehicles.

WV Legislature

§17C-1-57. Tandem axle.

"Tandem axle" means any two or more consecutive axles whose centers are more than forty inches but not more than ninety-six inches apart, and are individually attached to and/or articulated from a common attachment to the vehicle including a connecting mechanism designed to equalize the load between axles.

WV Legislature

§17C-1-58. Tandem axle weight.

"Tandem axle weight" means the total weight transmitted to the road by two or more consecutive axles whose centers may be included between parallel transverse planes spaced more than forty inches and not more than ninety-six inches apart, extending the full width of the vehicle.

WV Legislature

§17C-1-59. Connecting mechanism.

"Connecting mechanism" means an arrangement of parts interconnecting two or more consecutive axles to the frame of a vehicle in such a manner as to equalize the load between axles.

WV Legislature

§17C-1-60. Parking area.

"Parking area" means lots, areas or other accommodations for the parking of vehicles off the street or highway and open to public use with or without charge.

WV Legislature

§17C-1-61. Institution of higher education.

The term "institution of higher education" shall mean "state colleges," "state college," "state universities" and "universities," "state university," and "university," and "community college" as defined in subsection (b), (c), (d), (e) and (f), section two, article twenty-six, chapter eighteen of this code and any other institution as defined by sections 401 (f), (g), (h) of the Federal Higher Education Facilities Act of 1963, as amended.

WV Legislature

§17C-1-62. Residential street.

"Residential street" means the entire width between the boundary lines of every way, whether publicly or privately maintained, located within any subdivision, development or other similar area used primarily for residential purposes when any part thereof is open to the common use of those living in said area for the purpose of vehicular travel.

WV Legislature

§17C-1-63. Digger/derrick line truck.

"Digger/derrick line truck" means a truck which is specifically designed and used for transporting and setting utility poles.

WV Legislature

§17C-1-64. Passenger van.

"Passenger van" means any van or other motor vehicle owned by any agency, business or other legal entity and operated for the purpose of transportation of children under the age of eighteen years, other than a van utilized for private use, taxicab, bus or school bus. Passenger vans include, but are not limited to, vehicles used by day-care centers, after-school centers and nursery schools: Provided, That the term "passenger van" does not include any van or other motor vehicle which is utilized for the specific purpose of transporting children to medical facilities for the purpose of medical or dental treatment and which loads and unloads the children on private property, making no stops for loading or unloading along public roads or highways.

WV Legislature

§17C-1-65. Wheelchair.

"Wheelchair" means a motorized or nonmotorized wheeled device designed for, and used by, a person with disabilities that is incapable of a speed in excess of eight miles per hour.

WV Legislature

§17C-1-66. Electric personal assistive mobility device.

"Electric personal assistive mobility device" or "EPAMD" means a self-balancing, two nontandem-wheeled device, designed to transport only one person, with an electric propulsion system with average power of seven hundred fifty watts (one horse power), whose maximum speed on a paved level surface, when powered solely by such a propulsion system while ridden by an operator who weighs one hundred seventy pounds, is less than twenty miles per hour.

WV Legislature

§17C-1-67. Drug.

"Drug" has the same meaning as set forth in section one hundred one, article one, chapter sixty-a of this code, the Uniform Controlled Substances Act, that when taken into the human body can impair the ability of a person to operate a vehicle safely and in compliance with traffic regulations and the laws of the road.

WV Legislature

§17C-1-68. Controlled substance.

"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.

WV Legislature

§17C-1-69. Autocycle.

“Autocycle” means a fully or partially enclosed motorcycle that is equipped with safety belts, rollover protection, a rearview mirror, automotive seating, a steering wheel and equipment otherwise required on a motorcycle and which has no more than three wheels in contact with the roadway at any one time.

WV Legislature

§17C-1-70. Electric bicycles; definitions.

For the purpose of this section, the term "electric bicycle" means a two or three wheeled vehicle with fully operable pedals and an electric motor of fewer than 750 watts. There is a "three-class system" to differentiate between the models and top-assisted speeds of electric bicycles.

"Class 1" electric bicycles have a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the e-bike reaches 20 mph.

"Class 2" electric bicycles have a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the e-bike reaches 20 mph.

"Class 3" electric bicycles have a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the e-bike reaches 28 mph.

"Throttle" refers to a device that controls the flow of power to the electric motor on an electric bicycle for the purpose of propelling the electric bicycle.

WV Legislature

§17C-2-1. Provisions of chapter refer to vehicles upon streets and highways; exceptions.

The provisions of this chapter relating to the operation of vehicles refer exclusively to the operation of vehicles upon streets and highways except:

(1) Where a different place is specifically referred to in a given section.

(2) The provisions of articles three, four, five, five-a, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, eighteen and nineteen shall apply upon streets and highways as defined in section one, article two, chapter seventeen-b of this code.

WV Legislature

§17C-2-2. Required obedience to traffic laws.

It is unlawful and, unless otherwise declared in this chapter with respect to particular offenses, it is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this chapter.

WV Legislature

§17C-2-3. Enforcement of chapter; designation and power of special officers; bond of special officers; failure to obey police officer or special officers.

(a) It is the duty of the West Virginia state police and its members to enforce the provisions of this chapter and other laws of this state governing the operation of vehicles upon the streets and highways of this state as defined in section thirty-five, article one of this chapter or in other designated places specifically referred to in a given section in this chapter; and it is the duty of sheriffs and their deputies and of the police of municipalities to render to the West Virginia state police assistance in the performance of said duties as the superintendent of the West Virginia state police may require of them.

(b) The West Virginia commissioner of highways is authorized to designate employees of the West Virginia Division of Highways as special officers to enforce the provisions of this chapter only when special officers are directing traffic upon bridges and the approaches to bridges which are a part of the state road system when any bridge needs special traffic direction and the superintendent of the West Virginia state police has informed the West Virginia commissioner of highways that he or she is unable to furnish personnel for traffic direction. The West Virginia commissioner of highways may also designate certain employees of the West Virginia Division of Highways serving as members of official weighing crews as special officers to enforce the provisions of article seventeen of this chapter. Notwithstanding any provision of this code to the contrary, designated special officers serving as members of official weighing crews may carry handguns in the course of their official duties after meeting specialized qualifications established by the Governor's committee on crime, delinquency and correction, which qualifications shall include the successful completion of handgun training, including a minimum of four hours' training in handgun safety, paid for by the Division of Highways and comparable to the handgun training provided to law-enforcement officers by the West Virginia state police: Provided, That nothing in this section shall be construed to include designated special officers authorized by the provisions of this section as law-enforcement officers as such are defined in section one, article twenty-nine, chapter thirty of this code. The West Virginia commissioner of highways shall provide a blanket bond in the amount of $10,000 for all employees designated as special officers, as above provided.

(c) No person shall willfully fail or refuse to comply with a lawful order or direction of any police officer or designated special officer invested by law with authority to direct, control or regulate traffic.

(d) No person shall willfully fail or refuse to comply with a lawful order or direction of any designated special officer pursuant to the provisions of subsection (b) of this section.

WV Legislature

§17C-2-4. Obedience to chapter of public officers and employees; chapter inapplicable to persons engaged in highway surface work.

(a) The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state, or any county, city, town, district, or any other political subdivision of the state, except as provided in this section and subject to such specific exceptions as are set forth in this chapter with reference to authorized emergency vehicles.

(b) Unless specifically made applicable, the provisions of this chapter shall not apply to persons, teams, motor vehicles, and other equipment while actually engaged in work upon the surface of a highway but shall apply to such persons and vehicles when traveling to or from such work.

WV Legislature

§17C-2-5. Authorized emergency vehicles.

(a) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section, but subject to the conditions herein stated.

(b) The driver of an authorized emergency vehicle may:

(1) Park or stand, irrespective of the provisions of this chapter;

(2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation;

(3) Exceed the speed limits so long as he does not endanger life or property;

(4) Disregard regulations governing direction of movement of turning in specified directions.

(c) The exemptions herein granted to an authorized emergency vehicle shall apply only when the driver of any said vehicle while in motion sounds audible signal by bell, siren, or exhaust whistle as may be reasonably necessary, and when the vehicle is equipped with at least one lighted flashing lamp as authorized by section twenty-six, article fifteen of this chapter which is visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a warning light visible from in front of the vehicle.

(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

WV Legislature

§17C-2-6. Traffic laws apply to persons riding animals or driving animal-drawn vehicles.

Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application.

WV Legislature

§17C-2-7. Uniformity of provisions of chapter throughout state.

The provisions of this chapter shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any ordinance, rule, or regulation in conflict with the provisions of this chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this chapter.

WV Legislature

§17C-2-8. Powers of local authorities.

(a) The provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

(1) Regulating the standing or parking of vehicles;

(2) Regulating traffic by means of police officers or traffic-control devices;

(3) Regulating or prohibiting processions or assemblages on the highways;

(4) Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;

(5) Regulating the speed of vehicles in public parks;

(6) Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances at such intersection;

(7) Restricting the use of highways as authorized in section twelve, article seventeen of this chapter;

(8) Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee;

(9) Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

(10) Altering the speed limits as authorized herein;

(11) Adopting such other traffic regulations as are specifically authorized by this chapter.

(b) No local authority shall permit any parking on any state highway, or erect or maintain any stop sign or traffic- control device at any location so as to require the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the state road commissioner. Any such approval may be withdrawn by a notice in writing from the state road commissioner.

(c) No ordinance or regulation enacted under subdivisions (4), (5), (6), (7), or (10), of subsection (a) of this section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrance to the highway or part thereof affected as may be most appropriate.

WV Legislature

§17C-2-9. Chapter not to interfere with rights of owners of real property

Nothing in this chapter shall be construed to prevent the owner of real property used by the public for purposes of vehicular travel by permission of the owner and not as matter of right from prohibiting such use, or from requiring other or different or additional conditions than those specified in this chapter, or otherwise regulating such use as may seem best to such owner.

WV Legislature

§17C-3-1. Adoption of manual and specifications for uniform system of traffic-control devices.

The state road commission shall adopt a manual and specifications for a uniform system of traffic-control devices consistent with the provisions of this chapter for use upon highways within this state. Such uniform system shall correlate with and so far as possible conform to the system then current as approved by the American association of state highway officials.

WV Legislature

§17C-3-2. Placing and maintaining traffic-control devices and signs on state highways.

(a) The state road commission shall place and maintain such traffic-control devices, conforming to its manual and specifications, upon all state highways as it shall deem necessary to indicate and to carry out the provisions of this chapter or to regulate, warn, or guide traffic.

(b) No local authority shall place or maintain any traffic- control device upon any highway under the jurisdiction of the state road commission except by the latter's permission.

WV Legislature

§17C-3-3. Local traffic-control devices.

Local authorities in their respective jurisdictions shall place and maintain such traffic-control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this chapter or local traffic ordinances or to regulate, warn, or guide traffic. All such traffic-control devices hereafter erected shall conform to the state manual and specifications.

WV Legislature

§17C-3-4. Obedience to traffic-control devices; official signs to be in proper position, etc; penalty.

(a) The driver of any vehicle and the operator of any streetcar shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.

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

(c) No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, such section shall be effective even though no signs are erected or in place.

WV Legislature

§17C-3-4a. Obedience to traffic-control instructions at site of street or highway construction or maintenance; penalty.

(a) The driver of any vehicle shall obey the traffic-control instructions of any law-enforcement officer or persons authorized by the commissioner of highways or by proper local authorities to operate traffic-control devices, act as flagmen, or operate authorized vehicles engaged in work at or near the site of street or highway construction maintenance work, for the purpose of regulating, warning or guiding traffic, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.

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

(c) Any person failing to comply with the requirements of this section when any worker is present is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $250; upon a second conviction within one year thereafter, shall be fined not more than $500; and upon a third or subsequent conviction, shall be fined not more than $1,000.

WV Legislature

§17C-3-4b. Traffic violations in construction zones; posting requirement; criminal penalty.

(a) Where street or highway construction work is being conducted, signs and other traffic control devices, as adopted in §17C-3-1 of this code, shall be posted giving the location of the work and notifying all motorists as to the speed limit and any other traffic restrictions.

(b) Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in subsection (a) of this section by less than 15 miles per hour is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $200: *Provided*, That any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in subsection (a) of this section when any worker is present by less than 15 miles per hour is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500.

(c) Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in subsection (a) of this section by 15 miles per hour or more is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $200 or confined in a regional jail not more than 20 days, or both: *Provided*, That any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in subsection (a) of this section when any worker is present by 15 miles per hour or more is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in a regional jail not more than 30 days, or both.

(d) Notwithstanding the provisions of §17C-14-15 of this code, any person who commits a violation of §17C-14-15 of this code within a construction site referred to in subsection (a) of this section when any worker is present is guilty of a misdemeanor and, upon conviction thereof, shall be subject to fines not more than twice those authorized for the applicable offense under §17C-14-15 of this code.

(e) Nothing in this section shall be construed to preclude prosecution of any operator of a motor vehicle who commits a violation of any other provision of this code for such violation.

WV Legislature

§17C-3-5. Traffic-control signal legend.

Whenever traffic is controlled by traffic-control signals exhibiting the words "go,""caution" or "stop," or exhibiting different colored lights successively one at a time, or with arrows, the following colors only shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) Green alone or "go":

(1) Vehicular traffic facing the signal, except when prohibited under section two, article twelve of this chapter may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(2) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(b) Yellow alone or "caution" when shown following the green or "go" signal:

(1) Vehicular traffic facing the signal is thereby warned that the red or "stop" signal will be exhibited immediately thereafter and such vehicular traffic shall not enter or be crossing the intersection when the red or "stop" signal is exhibited.

(2) Pedestrians facing such signal are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right-of- way to all vehicles.

(c) Red alone or "stop":

(1) Vehicular traffic facing the signal shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until green or "go" is shown alone except as provided in paragraphs (2) and (3) of this subdivision (c).

(2) A vehicle which is stopped in obedience to a red or "stop" signal as close as practicable at the entrance to the crosswalk on the near side of the intersection or, if none, then at the entrance to the intersection, may cautiously make a right turn but such vehicle shall yield the right-of-way to pedestrians lawfully within a crosswalk and to other vehicular traffic proceeding as directed by the signal at said intersection, except that local authorities in their respective jurisdictions may by ordinance prohibit any such right turn against a red or "stop" signal at any intersection within such jurisdiction, which ordinance shall be effective when a sign is erected at such intersection giving notice thereof.

(3) A vehicle which is stopped in obedience to a red or "stop" signal as close as practicable at the entrance to the crosswalk on the near side of the intersection or, if none, then at the

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entrance to the intersection on a one-way street which intersects another one-way street on which traffic moves to the left, may cautiously make a left turn into said one-way street but such vehicle shall yield the right-of-way to pedestrians lawfully within a crosswalk and to other vehicular traffic proceeding as directed by the signal at said intersection, except that local authorities in their respective jurisdictions may by ordinance prohibit any such left turn against a red or "stop" signal at any intersection within such jurisdiction, which ordinance shall be effective when a sign is erected at such intersection giving notice thereof.

(4) No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(d) Red with green arrow:

(1) Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right-of-way to pedestrians lawfully within a crosswalk and to other traffic lawfully using the intersection.

(2) No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

(e) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

(f) The motorman of any streetcar shall obey the above signals as applicable to vehicles.

WV Legislature

§17C-3-6. Pedestrian walk and wait signals; penalty.

(a) Whenever special pedestrian-control signals exhibiting the words "Walk" or "Wait" are in place such signals shall indicate as follows:

(1) Walk. -- Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles.

(2) Wait. -- No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his or her crossing on the walk signal shall proceed to a sidewalk or safety island while the wait signal is showing.

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

WV Legislature

§17C-3-7. Flashing signals.

Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it requires obedience by vehicular traffic as follows:

(1) Flashing red (stop signal). — When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or, if none, then before entering the intersection, and the right to proceed is subject to the rules applicable after making a stop at a stop sign.

(2) Flashing yellow (caution signal). — When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past the signal only with caution.

(3) Local authorities, in areas that experience low traffic times, may permit flashing signals between the hours of eleven o'clock p.m. and six o'clock a.m.

WV Legislature

§17C-3-8. Display of unauthorized devices, signs, etc.; such devices, etc., declared nuisance and subject to removal.

(a) No local authority or person shall place, maintain, or display upon or in view of any highway any unauthorized traffic- control device or traffic-control signal, or any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad sign or signal, and no person shall place or maintain nor shall any public authority permit upon any highway any traffic-control device bearing thereon any commercial advertising. This shall not be deemed to prohibit the erection upon private property adjacent to highway of signs giving useful directional information and of a type that cannot be mistaken for official signs.

(b) Every such prohibited device, signal, sign or marking is hereby declared to be a public nuisance and the state road commissioner or other authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.

WV Legislature

§17C-3-9. Interference with official traffic-control devices or railroad signs or signals.

No person shall without lawful authority attempt to or in fact alter, deface, injure, knock down, or remove any official traffic-control device or any railroad sign or signal or any inscription, shield, or insignia thereon, or any other part thereof.

WV Legislature

§17C-3-10. Interference with official traffic-control devices by infrared or electronic devices.

(a) The possession or use of a mobile infrared transmitter (MIRT), or any type of infrared or electronic device capable of changing a traffic control signal, by anyone other than the operator of an authorized emergency vehicle, is prohibited.

(b) Any person violating the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500 or confined in the county or regional jail not more than three days, or both; and upon a second conviction thereof, shall be fined not more than $1,000 or confined in the county or regional jail not more than six days, or both; and upon a third or subsequent conviction thereof, shall be fined not less than $500 nor more than $2,500 or confined in a county or regional jail one year, or both.

(c) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a violation of subsection (a) of this section which results in physical injury to another shall be guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not less than one nor more than three years or fined not more than $5,000, or both.

(d) The provisions of this section shall not apply to any device which simply makes a vehicle visible or its presence known to a sensor which triggers the changing of a traffic light after the vehicle operator has complied with the traffic signal indication.

WV Legislature

§17C-4-1. Crashes involving death or personal injuries; Erin's Law.

(a) The driver of any vehicle involved in a crash resulting in the injury to or death of any person shall immediately stop the vehicle at the scene of the crash or as close to the scene as possible and return to and remain at the scene of the crash until he or she has complied with the requirements of §17C-4-3 of this code: Provided, That the driver may leave the scene of the crash as may reasonably be necessary for the purpose of rendering assistance to any person injured in the crash, as required by §17C-4-3 of this code.

(b) Any driver who is involved in a crash in which another person suffers bodily injury and who intentionally violates §17C-4-1(a) of this code when he or she knows or has reason to believe that another person has suffered physical injury in said crash is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, confined in jail for not more than one year, or both fined and confined.

(c) Notwithstanding the provisions of §17C-4-1(b) of this code, any driver who is involved in a crash in which another person suffers serious bodily injury and who intentionally violates §17C-4-1(a) of this code when he or she knows or has reason to believe that another person has suffered physical injury in said crash is guilty of a felony and, upon conviction thereof, shall be fined not more than $2,500, or imprisoned in a state correctional facility for not less than one year nor more than three years, or both fined and imprisoned.

(d) Notwithstanding the provisions of §17C-4-1(b) or §17C-4-1(c) of this code, any driver who is involved in a crash that proximately causes the death of another person who intentionally violates §17C-4-1(a) of this code when he or she knows or has reason to believe that another person has suffered physical injury in said crash is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned: Provided, That any death underlying a prosecution under this subsection must occur within one year of the crash.

(e) As used in this section:

(1) "Bodily injury" means injury that causes substantial physical pain, illness, or any impairment of physical condition;

(2) "Physical injury" means bodily injury, serious bodily injury or death; and

(3) "Serious bodily injury" means bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health, prolonged loss or impairment of the function of any bodily organ, loss of pregnancy, or the morbidity or mortality occurring because of a preterm delivery.

(f) The commissioner shall revoke the license or permit or operating privilege to drive of any resident or nonresident person convicted pursuant to the provisions of this section for a

WV Legislature

period of one year from the date of conviction or the date of release from incarceration, whichever is later.

(g) This section may be known and cited as Erin's Law.

WV Legislature

§17C-4-2. Crashes involving damage to vehicle.

The driver of any vehicle involved in a crash resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such crash or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such crash until he has fulfilled the requirements of section three of this article. Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances is guilty of a misdemeanor and, subject to the penalties prescribed in section one, article eighteen of this chapter.

WV Legislature

§17C-4-3. Duty to give information and render aid.

(a) (1) The driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall, if physically able to do so, provide to the person struck or the driver or occupant of or person attending any vehicle collided with, the following:

(A) His or her name, a valid telephone number where he or she may be contacted and the year, make, model and last four digits of the vehicle identification number of the vehicle he or she is driving; and

(B) Proof of security and financial responsibility required by section three, article two-a, and section two, article four, chapter seventeen-d of this code, and if provided by insurance, the information provided upon the certificate of insurance, including the name of the insured, the name and contact information of the insurer and insurance policy number.

(2) A driver may meet the requirements of this subsection by providing the information required herein to a law-enforcement officer who is investigating or providing assistance at the scene of the collision, who shall, if practical under the circumstances, provide the information to any person entitled thereto pursuant to this subsection.

(b) The driver of any vehicle involved in a crash resulting in injury to or death of any person, if physically able to do so, shall render to any person injured in such crash reasonable assistance, including the carrying, or the making arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person.

WV Legislature

§17C-4-4. Duty upon striking unattended vehicle.

The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

WV Legislature

§17C-4-5. Duty upon striking fixtures upon a highway.

The driver of any vehicle involved in a crash resulting only in damage to fixtures or other property legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of his or her name and address and of the registration number of the vehicle he or she is driving and shall upon request and if available exhibit his or her driver's license and shall make report of such crash when and as required in section seven of this article. Any person failing to make the notification required by this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $150.

WV Legislature

§17C-4-6. Immediate notification of crashes.

The driver of a vehicle involved in a crash resulting in injury to or death of any person or total property damage to an apparent extent of $1,000 or more shall immediately by the quickest means of communication, give notice of such crash to the local police department if such crash occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the West Virginia State Police.

WV Legislature

§17C-4-7. Reports of crashes.

(a) Every law-enforcement officer who, in the regular course of duty, investigates a motor vehicle crash occurring on the public streets or highways of this state resulting in bodily injury to, or death of, any person or total property damage to an apparent extent of $1,000 or more shall, either at the time of and at the scene of the crash or thereafter by interviewing participants or witnesses, within 24 hours after completing such investigation, prepare a report of such crash either electronically or in writing.

(b) Within 24 hours of a motor vehicle crash, the investigating law-enforcement officer shall provide the owner, operator, and insurance information upon request for all the involved parties to each of the other involved parties, and to each party's respective insurance agents. This information shall be made available, at no cost, whether or not the accident report has been completed.

(c) The investigating law-enforcement officer shall submit the report electronically or in writing within 24 hours after completing the investigation to the Division of Highways in the form and manner approved by the Commissioner of the Division of Highways, the Superintendent of the West Virginia State Police, and the Commissioner of the Division of Motor Vehicles. The Division of Highways shall supply electronic or paper copies of the form to police departments, sheriffs, and other appropriate law-enforcement agencies.

(d) In the event that the investigating law-enforcement officer cannot complete the investigation within 10 days of the crash, he or she shall submit a preliminary report of the crash to the Division of Highways on the 10th day after the crash and submit the final report within 24 hours of completion of the investigation pursuant to subsection (c) of this section.

WV Legislature

§17C-4-8. When driver unable to report.

Whenever the driver of a vehicle is physically incapable of making an immediate notification of a crash as required in section six of this article and there was another occupant in the vehicle at the time of the crash capable of making a notification, such occupant shall make or cause to be made said notification not made by the driver.

WV Legislature

§17C-4-9. Crash report forms.

(a) The Division of Highways shall prepare and upon request supply to the State Police, municipal police departments, sheriffs, Division of Natural Resources, and other suitable agencies or individuals, electronic or paper forms for crash reports required hereunder.

(b) The format of the crash reports shall provide sufficiently detailed information to disclose with reference to a traffic crash the cause, conditions then existing, and the persons and vehicles involved.

(c) Every crash report required to be made shall be made in the appropriate form provided by the Division of Highways and shall contain all of the information required therein unless not available.

(d) Every such report shall also contain information sufficient to enable the Commissioner of Motor Vehicles to determine whether the requirements for security upon motor vehicles is in effect in accordance with chapter seventeen-d of this code.

WV Legislature

§17C-4-10. Penalty for failure to notify law enforcement.

The commissioner may suspend the driver's license or permit to drive and any nonresident operating privileges of any person failing to notify law enforcement of a crash as herein provided under section six of this article. Any person convicted of failing to notify law enforcement as required herein shall be punished as provided in section one, article eighteen of this chapter.

WV Legislature

§17C-4-11. Coroners to report on crash victims.

Every coroner or other official performing like functions shall on or before the tenth day of each month report in writing to the Division of Highways the death of any person within his or her jurisdiction during the preceding calendar month as the result of a traffic crash giving the name of the victim, the date, time and place of the crash and the circumstances relating thereto.

WV Legislature

§17C-4-12. Garages to report bullet damage.

The person in charge of any garage or repair shop to which is brought any motor vehicle which shows evidence of having been struck by any bullet, shall report to the local law-enforcement agency within twenty-four hours after such motor vehicle is received, giving the engine number, registration number, and the name and address of the owner or operator of such vehicle.

WV Legislature

§17C-4-13.

Repealed.

Acts, 1998 Reg. Sess., Ch. 316.

WV Legislature

§17C-4-14. Division of Highways to tabulate and analyze crash reports.

The Division of Highways shall tabulate and may analyze all crash reports and shall publish annually, or at more frequent intervals, statistical information based thereon as to the number and circumstances of traffic crashes.

WV Legislature

§17C-4-15. Any incorporated city, town, etc., may require crash reports.

Any incorporated city, town, village or other municipality may by ordinance require that the driver of a vehicle involved in a crash shall file with a designated city department a report of such crash. All such reports shall be for the confidential use of the city department.

WV Legislature

§17C-4-16. Crashes involving state and municipal property; reports to be provided.

Whenever a report of a motor vehicle crash prepared by a member of the West Virginia State Police, natural resources police officer of the Division of Natural Resources, a member of a county sheriff's department or a municipal police officer, in the regular course of their duties, indicates that as a result of the crash damage has occurred to any bridge, sign, guardrail or other property, exclusive of licensed motor vehicles, a copy of the report shall, in the case of property belonging to the Division of Highways, be provided to the Commissioner of the Division of Highways, and, in the case of property belonging to a municipality, be provided to the mayor of that municipality. The copies of the reports shall be provided to the commissioner or mayor, as applicable, without cost to them.

WV Legislature

§17C-4-17. Notification of landowner when accident damages livestock fence.

Whenever a member of the West Virginia State Police, Natural Resources police officer, a member of a county sheriff's department, or a municipal police officer, in the regular course of their duties, reports on a crash that causes damage to any fence that could contain livestock, that officer must make a reasonable attempt following the accident to contact either the landowner or any known lessee of the land to alert the landowner or lessee of the fence damage.

WV Legislature

§17C-5-1. Vehicular homicide; aggravated vehicular homicide; vehicular homicide in a school zone; vehicular homicide in a construction zone; penalties; revocation of driving privileges upon conviction.

(a) When the death of any person, including an embryo or fetus as defined in §61-2-30 of this code, other than the person operating the motor vehicle, ensues within one year as the proximate result of injury caused by the driving of any motor vehicle anywhere in this state by any person in reckless disregard for the safety of others, the person operating the motor vehicle is guilty of vehicular homicide.

(b) Any person convicted of vehicular homicide is guilty of a misdemeanor and upon conviction, shall be fined not less than $1,000 nor more than $10,000, confined in the jail for not more than one year, or both fined and confined.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, when the death of a person, including an embryo or fetus as defined in §61-2-30 of this code, other than the person operating the motor vehicle, occurs within one year as the proximate result of injury caused by the operation of any motor vehicle in this state in deliberate disregard for the safety of others, the person operating the motor vehicle is guilty of the offense of aggravated vehicular homicide and upon conviction he or she shall be fined not more than $20,000, or imprisoned in a state correctional facility for a definite term of years of not less than one nor more than five years, or both fined and imprisoned.

(d) For the purposes of this section, a person who acts with deliberate disregard for the safety of others if he or she has knowledge of facts or intentionally disregards facts that create high probability of injury to the safety of others and:

(1) deliberately proceeds to act in conscious or intentional disregard of the high degree of probability of injury to the safety of others; or

(2) deliberately proceeds to act with indifference to the high probability of injury to or the safety of others.

(e) When the death of any person, including an embryo or fetus as defined in §61-2-30 of this code, other than the person operating the motor vehicle, ensues within one year as the proximate result of injury caused by the driving of any vehicle in a school zone, as set forth in §17C-6-1 of this code, during school recess or while children are going to or leaving school during opening or closing hours, by any person in reckless disregard for the safety of others, the person operating the vehicle is guilty of vehicular homicide in a school zone.

(f) Any person convicted of vehicular homicide in a school zone is guilty of a felony and upon conviction, shall be fined not less than $2,500 nor more than $5,000, or imprisoned in a state correctional facility for a definite term of years of not less than two nor more than 10 years, or both fined and imprisoned.

WV Legislature

(g) When the death of any person, including an embryo or fetus as defined in §61-2-30 of this code, other than the person operating the motor vehicle, ensues within one year as the proximate result of injury caused by the driving of any vehicle where street or highway construction work is being performed consistent with the provisions of §17C-3-4b of this code, by any person in reckless disregard for the safety of others, the person operating the vehicle is guilty of vehicular homicide in a construction zone.

(h) Any person convicted of vehicular homicide in a construction zone shall be guilty of a felony and upon conviction, shall be fined not less than $2,500 nor more than $5,000, or imprisoned in a state correctional facility for a definite term of years of not less than two nor more than 10 years, or both fined and confined.

(i) The commissioner shall revoke the license or permit to drive and any nonresident operating privilege of any person convicted of any offense contained within this section.

WV Legislature

§17C-5-2. Driving under influence of alcohol, controlled substances, or drugs; penalties.

(a) Definitions.

(1) "Impaired state" means a person:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug or inhalant substance;

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight.

(2) "Bodily injury" means injury that causes substantial physical pain, illness, or any impairment of physical condition.

(3) "Controlled substance" has the meaning provided in §60A-1-101 of this code.

(4) "Serious bodily injury" means bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(5) "Test and lock program" means the Motor Vehicle Test and Lock Program, established in §17C-5A-3a and administered by the Division of Motor Vehicles.

(b)(1) Any person who drives a vehicle in this state while he or she is in an impaired state and does so with deliberate disregard for the safety of others, as defined in §17C-5-1 of this code, and such impaired state and deliberate disregard for the safety of others proximately causes the death of any person, including an embryo or fetus as defined in §61-2-30 of this code, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than five nor more than 30 years and shall be fined not less than $2,000 nor more than $10,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life: Provided, That any death charged under this subdivision must occur within one year of the offense: Provided further, That upon conviction for a violation of this subdivision, the sentence is mandatory, and not eligible for suspension pursuant to the provisions of §25-4-6 of this code, or an order for home incarceration pursuant to the provisions of §62-11B-1 *et seq*. of this code. The amendments to this section enacted during the 2026 regular legislative session shall be known as “Baylea’s Law”.

WV Legislature

(2) Any person who drives a vehicle in this state while he or she is in an impaired state, and such impaired state proximately causes the death of any person, including an embryo or fetus as defined in §61-2-30 of this code, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than 15 years and shall be fined not less than $1,000 nor more than $3,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of 10 years or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That any death charged under this subsection must occur within one year of the offense: *Provided, however*, That if the person has previously been convicted under this section, the person shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code.

(c) Any person who drives a vehicle in this state while he or she is in an impaired state, and such impaired state proximately causes serious bodily injury to any person, including an embryo or fetus as defined in §61-2-30 of this code, other than himself or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than 10 years and shall be fined not less than $1,000 nor more than $3,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of five years or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That if the person has previously been convicted under this section, the person shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code.

(d) Any person who drives a vehicle in this state while he or she is in an impaired state, and such impaired state proximately causes a bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than one year and shall be fined not less than $200 nor more than $1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of two years or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That if the person has previously been convicted under this section, the person shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code. Any jail term imposed pursuant to this subsection shall include actual confinement of not less than 24 hours: *Provided, however*, That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(e) Any person who drives a vehicle on any public highway or private road in this state: (1)

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while he or she is in an impaired state; or (2) while he or she is in an impaired state but has an alcohol concentration in his or her blood of less than fifteen hundredths of one percent, by weight, is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for up to six months and shall be fined not less than $100 nor more than $500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(f) Any person who drives a vehicle on any public highway or private road in this state while he or she has an alcohol concentration in his or her blood of fifteen 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 two days nor more than six months, which jail term is to include actual confinement of not less than 24 hours, and shall be fined not less than $200 nor more than $1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code. A person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(g) Any person who, being a habitual user of narcotic drugs or amphetamines, or any derivative thereof, drives a vehicle on any public highway or private road in this state is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term is to include actual confinement of not less than 24 hours, and shall be fined not less than $100 nor more than $500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months. A person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(h) Any person who knowingly permits his or her vehicle to be driven on any public highway or private road in this state by any other person who is in an impaired state is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than $100 nor more than $500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code.

(i) Any person who knowingly permits his or her vehicle to be driven on any public highway or private road in this state by any other person who is a habitual user of narcotic drugs or amphetamines, or any derivative thereof, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than $100 nor more than $500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months.

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(j) (1) Any person under the age of 21 years who drives a vehicle on any public highway or private road in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $100, and have his or her license to operate a motor vehicle suspended by the Commissioner of the Division of Motor Vehicles for a period of 60 days or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for 24 hours and shall be fined not less than $100 nor more than $500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or until the person's 21st birthday, whichever period is longer, or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings, from time to time, to allow the person to participate in the test and lock program as provided in §17C-5A-3a of this code. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection may not be construed as an admission or be used as evidence.

(2) (A) Notwithstanding subdivision (1) of this subsection, a person shall have his or her license to operate a motor vehicle suspended or revoked for a minimum period of one year or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code, if the person:

(i) Has previously been convicted under this subsection and is subsequently convicted of an offense under another subsection of this section; or

(ii) Is convicted under this subsection and has previously been convicted of an offense under another subsection of this section.

(B) Nothing in this subdivision permits a shorter period of license revocation, license suspension, or participation in the test and lock program than is mandatory for the specific offense for which the person is convicted.

(3) A person arrested and charged with an offense under the provisions of this subsection or subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(k) Any person who drives a vehicle on any public highway or private road in this state while he or she is in an impaired state and has within the vehicle one or more other persons who are unemancipated minors who have not yet reached their 16th birthday is guilty of a

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misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than 12 months, and shall be fined not less than $200 nor more than $1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That such jail term shall include actual confinement of not less than 48 hours: *Provided, however*, That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(l) A person convicted of an offense under this section, who has previously been convicted of any offense under this section on one occasion, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than six months nor more than one year, may be fined not less than $1,000 nor more than $3,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for 10 years or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That if the second conviction is for an offense as described in subsections (b), (c), or (d) of this section and the subsection creating the offense requires a period of incarceration, period of license revocation, or fine that is greater than what is required for a conviction under this subsection, the greater period of incarceration, period of revocation, or fine shall be imposed: *Provided, however*, That this section does not apply to a second conviction that is subject to a period of license revocation under subsection (j) of this section.

(m) A person convicted of an offense under this section, who has previously been convicted of any offense under this section on two or more occasions, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than five years, shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code, and the court may, in its discretion, impose a fine of not less than $3,000 nor more than $5,000: *Provided*, That if the third or subsequent conviction is for an offense as described in subsections (b), (c), or (d) of this section and the subsection creating the offense requires a period of incarceration, period of license revocation, or fine that is greater than what is required for a conviction under this subsection, the greater period of incarceration, period of revocation, and fine shall be imposed: *Provided, however*, That this section does not apply to a third or subsequent conviction that is subject to a period of license revocation under subsection (j) of this section.

(n) For purposes of subsections (l) and (m) of this section relating to second, third, and subsequent offenses, the following events shall be regarded as offenses and convictions under this section:

(1) Any conviction under the provisions of subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section, or under a prior enactment of this section, for an offense which occurred within the 10-year period immediately preceding the date of arrest in the current proceeding;

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(2) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section, which offense occurred within the 10-year period immediately preceding the date of arrest in the current proceeding; and

(3) Any period of conditional probation imposed pursuant to §17C-5-2b of this code for violation of subsection (e) of this section, which violation occurred within the 10-year period immediately preceding the date of arrest in the current proceeding.

(o) A person may be charged in a warrant, indictment, or information for a second or subsequent offense, as described in subsection (j), (l), or (m) of this section, if the person has been previously arrested for, or charged with, a violation of this section which is alleged to have occurred within the applicable time period for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that case, the warrant or indictment or information must set forth the date, location, and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final, or the person has previously had a period of conditional probation imposed pursuant to §17C-5-2b of this code.

(p) The fact that any person charged with a violation of subsection (b), (c), (d), (e), (f), or (g) of this section, or any person permitted to drive as described under subsection (h) or (i) of this section, is or has been legally entitled to use alcohol, a controlled substance, or a drug does not constitute a defense against any charge of violating subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section.

(q)The sentences provided in this section upon conviction for a violation of this article are mandatory and are not subject to suspension or probation: *Provided*, That the court may apply the provisions of §62-11A-1 *et seq*. of this code to a person sentenced or committed to a term of one year or less for a first offense under this section: *Provided, however*, That the court may impose a term of conditional probation pursuant to §17C-5-2b of this code to persons adjudicated thereunder. An order for home detention by the court pursuant to the provisions of §62-11B-1 *et seq.* of this code may be used as an alternative sentence to any period of incarceration required by this section for a first or subsequent offense: *Provided further*, That for any period of home incarceration ordered for a person convicted of a second offense under this section, electronic monitoring shall be required for no fewer than five days of the total period of home confinement ordered and the offender may not leave home for those five days notwithstanding the provisions of §62-11B-5 of this code: And *provided further*, That for any period of home incarceration ordered for a person convicted of a third or subsequent violation of this section, electronic monitoring shall be included for no fewer than 10 days of the total period of home confinement ordered and the offender may not leave home for those 10 days notwithstanding §62-11B-5 of this code.

(r) A person whose license to operate a motor vehicle has been revoked or suspended by the

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Commissioner of the Division of Motor Vehicles pursuant to this section must complete a comprehensive safety and treatment program as set forth in §17C-5A-3 of this code before his or her license to operate a motor vehicle can be reinstated and his or her driving privileges restored.

(s) For any offense for which an alternative revocation period is permitted conditioned upon participation in the test and lock program, an alternative sentence may not be imposed without the consent of the driver.

(t) Upon entering the order of conviction for an offense under this section, or the imposition of conditional probation as provided in §17C-5-2b of this code, the clerk of the court shall immediately transmit the order to the Commissioner of the Division of Motor Vehicles.

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§17C-5-2a. Definition of phrase "in this state"; phrases synonymous with driving under the influence of alcohol; validation of warrants and indictments.

(a) For purposes of this article and §17C-5A-1 *et seq*. of this code, the phrase "in this state" shall mean anywhere within the physical boundaries of this state, including, but not limited to, publicly maintained streets and highways, and subdivision streets or other areas not publicly maintained but nonetheless open to the use of the public for purposes of vehicular travel, but as used in §17C-5-2(e), §17C-5-2(f), §17C-5-2(g), §17C-5-2(h), §17C-5-2(i), §17C-5-2(j), and §17C-5-2(k) of this code, the term does not mean or include driving or operating a vehicle solely and exclusively on one's own property in an area not open to the use of the public for purposes of vehicular travel.

(b) When used in this code, the terms or phrases "driving under the influence of intoxicating liquor", "driving or operating a motor vehicle while intoxicated", "for any person who is under the influence of intoxicating liquor to drive any vehicle", or any similar term or phrase shall be construed to mean and be synonymous with the term or phrase "while under the influence of alcohol ... drives a vehicle" as the latter term or phrase is used in §17C-5-2 of this code.

(c) From and after the effective date of this section, a warrant or indictment which charges or alleges an offense, prohibited by §17C-5-2 of this code, and which warrant or indictment uses any of the terms or phrases set forth in subsection (b) of this section, shall not thereby be fatally defective if such warrant or indictment otherwise informs the person so accused of the charges against said person.

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§17C-5-2b. Deferral of further proceedings for certain first offenses upon condition of participation in Motor Vehicle Alcohol Test and Lock Program; procedure on charge of violation of conditions.

(a) (1) Except as provided in subsection (f) of this section, the court, without entering a judgment of guilt and with the consent of the accused, shall defer further proceedings and impose probation, when:

(A) The person pleads to or is found guilty of the offense defined in §17C-5-2(e) of this code;

(B) The person has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to driving under the influence of alcohol, any controlled substance, or any other drug; and

(C) The person notifies the court within 30 days of his or her arrest of his or her intention to participate in a deferral pursuant to this section.

(2) If all the requirements in subdivision (1) of this subsection are met, the court, without entering a judgment of guilt, shall defer further proceedings and place the person on probation, the conditions of which shall include that he or she successfully completes the Motor Vehicle Alcohol Test and Lock Program as provided in §17C-5A-3a of this code. Participation therein shall be for a period of at least 165 days after a 15-day suspension of his or her license to operate a motor vehicle and shall be completed within one year thereafter.

(b) (1) If the prosecuting attorney files a motion alleging that the defendant during the period of the Motor Vehicle Alcohol Test and Lock Program has been removed therefrom by the Division of Motor Vehicles, or has failed to successfully complete the program before making a motion for dismissal pursuant to subsection (c) of this section, the court may issue such process as is necessary to bring the defendant before the court.

(2) A motion alleging a violation filed pursuant in subdivision (1) of this subsection must be filed during the period of the Motor Vehicle Alcohol Test and Lock Program or, if filed thereafter, must be filed within a reasonable time after the alleged violation was committed.

(3) When the defendant is brought before the court, the court shall afford the defendant an opportunity to be heard. If the court finds that the defendant has been rightfully removed from the Motor Vehicle Alcohol Test and Lock Program by the Division of Motor Vehicles, the court may order, when appropriate, that the deferral be terminated, and thereupon enter an adjudication of guilt and proceed as otherwise provided.

(4) Should the defendant fail to complete or be removed from the Motor Vehicle Alcohol Test and Lock Program, the defendant waives the appropriate statute of limitations and the defendant's right to a speedy trial under any applicable federal or state constitutional provisions, statutes, or rules of court during the period of enrollment in the program.

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(c) When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol Test and Lock Program and complied with its conditions, the defendant may move the court for an order dismissing the charges. This motion shall be supported by affidavit of the defendant and by certification of the Division of Motor Vehicles that the defendant has successfully completed the Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the prosecuting attorney who shall within 30 days after service advise the judge of any objections to the motion, serving a copy of such objections on the defendant or the defendant's attorney. If there are no objections filed within the 30-day period, the court shall thereafter dismiss the charges against the defendant. If there are objections filed with regard to the dismissal of charges, the court shall proceed as set forth in subsection (b) of this section.

(d) Except as provided herein, unless a defendant adjudicated pursuant to this subsection is convicted of a subsequent violation of this article, discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, except for those provided in §17C-5A-1 *et seq*. of this code. Except as provided in §17C-5-2 of this code regarding subsequent offenses, the effect of the dismissal and discharge shall be to restore the person in contemplation of law to the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of perjury, false swearing, or otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for any purpose other than any inquiry made in connection with any subsequent offense as provided in §17C-5-2 of this code.

(e) There may be only one discharge and dismissal under this section with respect to any person.

(f) No person shall be eligible for dismissal and discharge under this section: (1) In any prosecution in which any violation of any other provision of this article has been charged; (2) if the person holds a commercial driver's license or operates commercial motor vehicles; (3) if the person has previously had his or her license to operate a motor vehicle revoked for any offense under a municipal ordinance of this state or any other state or a statute of the United States or of any other state which has the same elements as an offense described in this article; or (4) if a court entered an order finding that the person refused the secondary chemical test pursuant to §17C-5-7a of this code.

(g) (1) After a period of not less than one year, which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this section, the person may apply to the court for an order to expunge all official records of his or her arrest, trial, and conviction, pursuant to this section except for those maintained by the Division of Motor Vehicles: *Provided,* That any person who has previously been convicted of a felony may not make a motion for expungement pursuant to this section.

(2) If the prosecuting attorney objects to the expungement, the objections shall be filed with

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the court within 30 days after service of a motion for expungement, and copies of the objections shall be served on the defendant or the defendant's attorney.

(3) If the objections are filed, the court shall hold a hearing on the objections, affording all parties an opportunity to be heard. If the court determines after a hearing that the person during the period of his or her probation and during the period of time prior to his or her application to the court under this subsection has not been guilty of any serious or repeated violation of the conditions of his or her probation, it shall order the expungement.

(h) A person prosecuted for an offense under §17C-5-2(e) of this code, whose case is disposed of pursuant to the provisions of this section, shall be required to pay the amount of court costs that could be assessed against a person convicted of the offense. Payment of such costs may be made a condition of probation. The costs assessed pursuant to this subsection, whether as a term of probation or not, shall be distributed as other court costs in accordance with §50-3-2 of this code; §14-2A-4 of this code; §30-29-4 of this code; and §62-5-2, §62-5-7, and §62-5-10 of this code.

(i) The amendments made to this section during the 2020 regular session of the Legislature shall become effective on July 1, 2020.

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§17C-5-3. Reckless driving; penalties.

(a) Any person who drives any vehicle upon any street or highway, or upon any residential street, or in any parking area, or upon the ways of any institution of higher education, whether public or private, or upon the ways of any state institution, or upon the property of any county boards of education, or upon any property within the state park and public recreation system established by the Director of the Division of Natural Resources pursuant to §20-4-3 of this code in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

(b) The provisions of subsection (a) of this section does not apply to those areas which have been temporarily closed for racing sport events or which may be set aside by the Director of the Division of Natural Resources within the state park and recreation system for exclusive use by motorcycles or other recreational vehicles.

(c) Every person convicted of reckless driving is guilty of a misdemeanor and, upon a first conviction thereof, shall be confined in jail for a period of not less than five days nor more than 90 days, or fined not less than $25 nor more than $500, or both fined and confined, and upon conviction of a second or subsequent conviction thereof, shall be confined in jail not less than 10 days nor more than six months, or fined not less than $50 nor more than $1,000, or both fined and confined.

(d) Notwithstanding the provisions of subsection (c) of this section, any person convicted of a violation of subsection (a) of this section who in doing so proximately causes another to suffer serious bodily injury shall, upon conviction, be confined in jail not less than 30 days nor more than one year or fined not less than $50 nor more than $1,000, or both fined and confined.

(e) For purposes of subsection (d) of this section, "serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

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§17C-5-4. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of "law-enforcement officer".

(a) Any person who drives a motor vehicle in this state is considered to have given his or her consent by the operation of the motor vehicle to a preliminary breath analysis and a secondary chemical test of either his or her blood or breath to determine the alcohol concentration in his or her blood, or the concentration in the person's body of a controlled substance, drug, or any combination thereof.

(b) A preliminary breath analysis may be administered in accordance with the provisions of §17C-5-5 of this code whenever a law-enforcement officer has reasonable cause to believe a person has committed an offense prohibited by §17C-5-2 of this code or by an ordinance of a municipality of this state which has the same elements as an offense described in §17C-5-2 of this code.

(c) A secondary test of blood or breath is incidental to a lawful arrest and is to be administered at the direction of the arresting law-enforcement officer having probable cause to believe the person has committed an offense prohibited by §17C-5-2 of this code or by an ordinance of a municipality of this state which has the same elements as an offense described in said section: *Provided*, That absent written consent of the person, a secondary test of blood may not be performed without issuance of a warrant signed by a magistrate or a circuit judge.

(d) The law-enforcement agency that employs the arresting law-enforcement officer shall designate the secondary tests to be administered. Notwithstanding §17C-5-7a of this code, the refusal to submit to a blood test only may not result in the revocation of the arrested person's license to operate a motor vehicle in this state.

(e) Any person to whom a preliminary breath test is administered who is arrested shall be advised verbally and given a written statement advising him or her of the following:

(1) That the person's refusal to submit to the secondary chemical test, designated pursuant to subsection (d) of this section, will result in the revocation of his or her license to operate a motor vehicle for a period of at least 45 days and up to life;

(2) That, if a designated secondary chemical test is taken, the results of the test may be used against him or her in court as evidence of violating §17C-5-2 of this code or an ordinance of a municipality of this state which has the same elements as an offense described in said section; and

(3) That, if the person first submits to the requested secondary chemical test, the person has the right to have a test or tests of his or her blood performed as provided in §17C-5-9 of this code.

(f) Any law-enforcement officer who has been properly trained in the administration of any

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secondary chemical test authorized by this article, including, but not limited to, certification by the West Virginia State Police Forensic Laboratory in the operation of any equipment required for the collection and analysis of a breath sample, may conduct the test at any location in the county wherein the arrest is made: *Provided*, That the law-enforcement officer may conduct the test at the nearest available properly functioning secondary chemical testing device located outside the county in which the arrest was made, if: (1) There is no properly functioning secondary chemical testing device located within the county the arrest was made; or (2) There is no magistrate available within the county the arrest was made for the arraignment of the person arrested. A law-enforcement officer who is directing that a secondary chemical test be conducted has the authority to transport the person arrested to where the secondary chemical testing device is located.

(g) If the arresting officer lacks proper training in the administration of a secondary chemical test, then any other law-enforcement officer who has received training in the administration of the secondary chemical test to be administered may, upon the request of the arresting law-enforcement officer and in his or her presence, conduct the secondary test. The results of a test conducted pursuant to this subsection may be used in evidence to the same extent and in the same manner as if the test had been conducted by the arresting law-enforcement officer.

(h) Only the person actually administering or conducting a test conducted pursuant to this article is competent to testify as to the results and the veracity of the test.

(i) (1) For the purpose of this article, the term "law-enforcement officer" or "police officer" shall have the same meaning as the term "law-enforcement officer" is defined pursuant to §30-29-1 of this code.

(2) In addition to standards promulgated by the Governor’s Committee on Crime, Delinquency, and Correction, pursuant to §30-29-3 of this code, governing the qualification of law-enforcement officers and the entry-level law-enforcement training curricula, the Governor’s Committee on Crime, Delinquency, and Correction shall require the satisfactory completion of a minimum of not less than six hours of training in the recognition of impairment in drivers who are under the influence of controlled substances or drugs other than alcohol.

(3) In addition to standards promulgated by the Governor’s Committee on Crime, Delinquency, and Correction, pursuant to §30-29-3 of this code, establishing standards governing in-service law-enforcement officer training curricula and in-service supervisory level training curricula, the Governor’s Committee on Crime, Delinquency, and Correction shall require the satisfactory completion of a minimum of not less than six hours of training in the recognition of impairment in drivers who are under the influence of controlled substances or drugs other than alcohol.

(4) A law-enforcement officer who has not satisfactorily completed the minimum number of hours of training in the recognition of impairment in drivers who are under the influence of

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controlled substances or drugs other than alcohol, required by subdivisions (2) and (3) of this subsection, may not require any person to submit to secondary chemical test of his or her blood for the purposes of determining the concentration in the person's body of a controlled substance, drug, or any combination thereof.

(j) A law-enforcement officer who has reasonable cause to believe that a person has committed an offense prohibited by §20-7-18 of this code, relating to the operation of a motorboat, jet ski, or other motorized vessel, shall follow the provisions of this section when administering, or causing to be administered, a preliminary breath analysis and, incidental to a lawful arrest, a secondary chemical test of the accused person's blood or breath to determine the alcohol concentration in his or her blood, or the concentration in the person's body of a controlled substance, drug, or any combination thereof.

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§17C-5-5. Preliminary analysis of breath to determine alcoholic content of blood.

When a law-enforcement officer has reason to believe a person has committed an offense prohibited by §17C-5-2 of this code or by an ordinance of a municipality of this state which has the same elements as an offense described in §17C-5-2 of this code, the law-enforcement officer may require such person to submit to a preliminary breath analysis for the purpose of determining such person's blood alcohol content. Such breath analysis must be administered as soon as possible after the law-enforcement officer has a reasonable belief that the person has been driving while under the influence of alcohol, controlled substances or drugs. Any preliminary breath analysis required under this section must be administered with a device and in a manner approved by the West Virginia State Police Forensic Laboratory for that purpose. The results of a preliminary breath analysis shall be used solely for the purpose of guiding the officer in deciding whether an arrest should be made. When a driver is arrested following a preliminary breath analysis, the tests as hereinafter provided in this article shall be administered in accordance with the provisions thereof.

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§17C-5-6. How blood test administered; additional test at option of person tested; use of test results; certain immunity from liability incident to administering test.

Only a doctor of medicine or osteopathy, or registered nurse, or trained medical technician, or any professional trained in phlebotomy at the place of his or her employment, acting at the request and direction of the law-enforcement officer, may withdraw blood to determine the alcohol concentration in the blood, or the concentration in the blood of a controlled substance, drug, or any combination thereof. These limitations shall not apply to the taking of a breath test. In withdrawing blood to determine the alcohol concentration in the blood, or the presence in the blood of a controlled substance, drug, or any combination thereof, only a previously unused and sterile needle and sterile vessel may be utilized and the withdrawal shall otherwise be in strict accord with accepted medical practices. A nonalcoholic antiseptic shall be used for cleansing the skin prior to venapuncture. The person tested may, at his or her own expense, have a doctor of medicine or osteopathy, or registered nurse, or trained medical technician, or any professional trained in phlebotomy at the place of his or her employment, of his or her own choosing, administer a chemical test in addition to the test administered at the direction of the law-enforcement officer. Upon the request of the person who is tested, full information concerning the test taken at the direction of the law-enforcement officer shall be made available to him or her. No person who administers any such test upon the request of a law-enforcement officer as herein defined, no hospital in or with which such person is employed or is otherwise associated or in which such test is administered, and no other person, firm or corporation by whom or with which such person is employed or is in any way associated, shall be in any way criminally liable for the administration of such test, or civilly liable in damages to the person tested unless for gross negligence or willful or wanton injury.

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§17C-5-6a. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.

(a) A preliminary breath analysis may be administered to a child whenever a law-enforcement official has reasonable cause to believe the child to have been driving a motor vehicle with any amount of alcohol in his or her blood for the purpose of determining the child's blood alcohol content. The breath analysis must be administered as soon as possible after the law-enforcement officer arrives at a reasonable belief that the child has been driving a motor vehicle with any amount of alcohol in his or her blood. Any preliminary breath analysis administered pursuant to this subsection must be administered with a device and in a manner approved by the West Virginia State Police Forensic Laboratory for that purpose. If a preliminary breath analysis is administered, the results shall be used solely for the purpose of guiding the officer in deciding whether the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of .02 of one percent or more, by weight, and should, therefore, be taken into custody to administer a secondary test in accordance with the provisions of this section.

(b) A child may be taken into custody by a law-enforcement official without a warrant or court order if the official has reasonable grounds to believe the child to have been driving a motor vehicle with any amount of alcohol in his or her blood. If a preliminary breath analysis is administered and the results of the analysis indicate that the child has an alcohol concentration in his or her blood of less than .02 of one percent, by weight, the child may not be taken into custody unless other grounds exist under §49-4-705(b) of this code. Upon taking a child into custody pursuant to the provisions of this section, the official shall take all reasonable steps to cause notification to be made to the child's parent or custodian or, if the parent or custodian cannot be located, to a close relative.

(c) Upon taking a child into custody pursuant to this section, the official shall take the child to a facility where a secondary test of the child's blood may be administered at the direction of the official or a test of the child's breath may be administered by the official. The law-enforcement agency by which such law-enforcement official is employed shall designate whether the secondary test is a test of either blood or breath: *Provided*, That if the test is a blood test and the child refuses to submit to the blood test, then the law-enforcement official taking the child into custody shall designate in lieu thereof a breath test to be administered. Notwithstanding the provisions of §17C-5-7a of this code, a refusal to submit to a blood test only shall not result in the revocation of the child's license to operate a motor vehicle in this state. Any child taken into custody pursuant to this section shall be given a written statement advising him or her that a refusal to submit to a secondary test of either blood or breath, as finally designated by the law-enforcement agency or official in accordance with this subsection, will result in the suspension of his or her license to operate a motor vehicle in this state for a period of at least 30 days or a revocation of the license for a period up to life.

(d) If the law-enforcement official taking the child into custody is employed by a law-enforcement agency which does not have available the testing equipment or facilities

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necessary to conduct any secondary breath test which may be administered pursuant to the provisions of this section, then the official who took the child into custody may request another qualified person to administer a secondary breath test: *Provided*, That the breath test shall be administered in the presence of the official who took the child into custody. The results of the breath test may be used in evidence to the same extent and in the same manner as if the test had been conducted by the law-enforcement official who took the child into custody. The qualified person administering the breath test must be a member of the State Police, the sheriff of the county where the child was taken into custody, or any deputy of the sheriff or a law-enforcement official of another municipality within the county wherein the child was taken into custody. Only the person actually administering the secondary breath test is competent to testify as to the results and the veracity of the test. If the secondary test is a blood test, the test shall be conducted in accordance with the provisions of §17C-5-6 of this code.

(e) After taking the child into custody, if the law-enforcement official has reasonable cause to believe that the act of the child in driving the motor vehicle is such that it would provide grounds for arrest for an offense defined under the provisions of §17C-5-2 of this code if the child were an adult, then the official shall proceed to treat the child in the same manner as any other child taken into custody without a warrant or court order, in accordance with the provisions of §17C-5-8 of this code.

(f) If the results of any secondary test administered pursuant to this section indicate that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of .08 of one percent or less, by weight, and if the law-enforcement official does not have reasonable cause to believe that the act of the child in driving the motor vehicle is such that it would provide grounds for arrest for an offense defined under the provisions of §17C-5-2 of this code if the child were an adult, then the official shall release the child: *Provided*, That if the results of any secondary test administered pursuant to this section indicate that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of .02 of one percent or more, by weight, the child shall only be released to a parent or custodian, or to some other responsible adult.

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§17C-5-7. Refusal to submit to tests; revocation of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing.

(a) If any person under arrest, as specified in §17C-5-4 of this code, refuses to submit to a secondary chemical test, the test shall not be given.

(b) Upon requesting that a person submit to the secondary test, designated pursuant to §17C-5-4 of this code, the person shall be given the written and verbal warnings set forth in §17C-5-4(e) of this code. After the person under arrest is given the required written and verbal warnings, the person shall have the opportunity to submit to, or refuse to submit to, the secondary test. A refusal to submit to the secondary test is considered final after 15 minutes have passed since the refusal: *Provided,* That during the 15 minutes following the refusal, the arresting officers shall permit the person under arrest to revoke his or her refusal and shall provide the person with the opportunity to submit to the test upon request. After the 15 minutes have passed following a refusal to submit to the secondary test, the arresting officer has no further duty to provide the person with an opportunity to take the secondary test.

(c) The officer shall, within 48 hours of the refusal, sign and submit to the Commissioner of the Division of Motor Vehicles and the court having jurisdiction over the charge filed against the person pursuant to §17C-5-2 of this code, a written statement that: (1) He or she had probable cause to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances, or drugs; (2) the person was lawfully placed under arrest for an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances, or drugs; (3) the person refused to submit to the secondary chemical test designated in the manner provided in §17C-5-4 of this code; and (4) the person was given the verbal warnings and the written statement required by subsection (b) of this section and §17C-5-4 of this code. An officer, by signing the statement required by this subsection, makes an oath or affirmation that the information contained in the statement is true and that any copy of the statement that he or she files is a true copy. The form for the written statement required by this section shall contain, upon its face, a warning to the officer signing that to willfully sign a statement containing false information is false swearing and is a misdemeanor.

(d) Any person who is unconscious or who is otherwise in a condition rendering him or her incapable of refusal shall be considered not to have withdrawn his or her consent for a test of his or her blood or breath as provided in §17C-5-4 of this code and the test may be administered although the person is not informed that his or her failure to submit to the test will result in the revocation of his or her license to operate a motor vehicle in this state for the period provided for in this section.

(e) The amendments made to this section during the 2020 regular session of the Legislature shall become effective on July 1, 2020.

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§17C-5-7a. Suspension of license to operate a motor vehicle for refusal of secondary test; refusal review hearing.

(a) For the purposes of this section, the term "refusal review hearing" refers to a hearing to review a person's alleged refusal to submit to a secondary chemical test, as documented in a statement submitted to the court by a law-enforcement officer pursuant to §17C-5-7 of this code.

(b) Subject to the provisions of this subsection, the court shall enter an order finding that a person charged with a violation of §17C-5-2 of this code did refuse to submit to a secondary chemical test, as required by §17C-5-4 of this code.

(1) At the person's first appearance before the court, the court shall advise the person that his or her license to operate a motor vehicle shall be revoked for the applicable period provided in subsection (e) of this section, unless the person requests a refusal review hearing within 30 days following the first appearance.

(2) If the person does not request a refusal review hearing within 30 days following the first appearance, the court shall enter an order finding that the person charged with a violation of §17C-5-2 of this code did refuse to submit to a secondary chemical test.

(3) If the person requests a refusal review hearing within 30 days following the first appearance, the court shall conduct the review and enter the appropriate order, as provided in subsection (c) of this section.

(c) Refusal review hearing. —

(1) The court shall schedule and conduct a refusal review hearing if the person, named in a statement submitted to the court by a law-enforcement officer pursuant to §17C-5-7 of this code, requests the hearing within 30 days following his or her first appearance before the court. During the refusal review hearing, the court shall review the statement documenting the person's refusal to submit to the secondary chemical test, along with any testimony or evidence presented by the person or law-enforcement officer during the hearing.

(2) Pursuant to the provisions of §7-4-1 and §8-10-2 of this code, either the prosecuting attorney of the county with jurisdiction over the refusal review hearing or the legal representative of the municipality with jurisdiction over the refusal review hearing shall appear in and attend to all matters, actions, and proceedings of the refusal review hearing to protect the interests of the state.

(3) Based on the hearing, the court shall enter an order finding that the person did refuse to submit to a secondary chemical test if the court determines, by a preponderance of the evidence, that:

(A) The arresting law-enforcement officer had reasonable grounds to believe the arrested person had committed a violation of §17C-5-2 of this code;

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(B) The law-enforcement officer requested the arrested person to submit to a chemical test designated pursuant to §17C-5-4 of this code;

(C) At the time the test was requested, the law-enforcement officer administered the required written and verbal warnings required by §17C-5-4 and §17C-5-7 of this code; and

(D) The arrested person refused to submit to a chemical test as requested by the law-enforcement officer.

(4) If the court determines, by a preponderance of the evidence, that one or more of the required conditions listed in subdivision (3) of this subsection did not occur, the court shall enter an order finding that the person did not refuse to submit to the secondary chemical test. If the court enters such an order, the Commissioner of the Division of Motor Vehicles may not revoke the person's license to operate a motor vehicle based on the alleged refusal to submit to a secondary chemical test.

(d) The clerk of the court in which the charges are pending shall immediately transmit any order entered pursuant to this section to the Commissioner of the Division of Motor Vehicles.

(e) Upon receipt of an order provided pursuant to this section finding that a person did refuse to submit to a secondary chemical test, the Commissioner of the Division of Motor Vehicles shall revoke the person's license to operate a motor vehicle as follows:

(1) For the first refusal to submit to the designated secondary chemical test, the commissioner shall enter an order revoking the person's license to operate a motor vehicle in this state for a period of one year or for a period of 45 days, with an additional one year of participation in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of §17C-5A-3a of this code.

(2) If the person's license to operate a motor vehicle has previously been revoked under the provisions of this section, the commissioner shall, for the refusal to submit to the designated secondary chemical test, enter an order revoking the person's license to operate a motor vehicle in this state for a period of 10 years. The license may be reissued in five years in accordance with the provisions of §17C-5A-3 of this code.

(3) If the person's license to operate a motor vehicle has previously been revoked more than once under the provisions of this section, the commissioner shall, for the refusal to submit to the designated secondary chemical test, enter an order revoking the person's license to operate a motor vehicle in this state for a period of life.

(f) The commissioner shall forward a copy of each order entered pursuant to this section to the person by registered or certified mail, return receipt requested. An order shall contain the reasons for any revocation and shall specify the revocation period imposed.

(g) A revocation ordered pursuant to this section shall run concurrently with the period of any suspension or revocation imposed in accordance with §17C-5A-2 of this code.

(h) The provisions of this section do not confer upon the Division of Motor Vehicles the status of a party to any refusal review proceeding. Nothing in this section shall be construed as requiring either the prosecuting attorney of the county with jurisdiction over the refusal review hearing or the legal representative of the municipality with jurisdiction over the refusal review hearing to act as counsel for the commissioner or the Division of Motor Vehicles.

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§17C-5-8. Interpretation and use of chemical test.

(a) Upon trial for the offense of driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, or upon the trial of any civil or criminal action arising out of acts alleged to have been committed by any person driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, evidence of the amount of alcohol in the person's blood at the time of the arrest or of the acts alleged, as shown by a chemical analysis of his or her blood or breath, is admissible, if the sample or specimen was taken within the time period provided in subsection (g).

(b) The evidence of the concentration of alcohol in the person's blood at the time of the arrest or the acts alleged gives rise to the following presumptions or has the following effect:

(1) Evidence that there was, at that time, .05 of one percent or less, by weight, of alcohol in his or her blood, is prima facie evidence that the person was not under the influence of alcohol;

(2) Evidence that there was, at that time, more than .05 of one percent and less than .08 of one percent, by weight, of alcohol in the person's blood is relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of alcohol;

(3) Evidence that there was, at that time, .08 of one percent or more, by weight, of alcohol in his or her blood, shall be admitted as prima facie evidence that the person was under the influence of alcohol.

(c) A determination of the percent, by weight, of alcohol in the blood shall be based upon a formula of:

(1) The number of grams of alcohol per 100 cubic centimeters of blood;

(2) The number of grams of alcohol per 210 liters of breath; or

(3) The number of grams of alcohol per 86 milliliters of serum.

(d) A chemical analysis of blood for the purpose of determining the controlled substance or drug concentration of a person's blood, must include, but is not limited to, the following drugs or classes of drugs:

(1) Marijuana metabolites;

(2) Cocaine metabolites;

(3) Amphetamines;

(4) Opiate metabolites;

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(5) Phencyclidine (PCP);

(6) Benzodiazepines;

(7) Methadone;

(8) Barbiturates; and

(9) Synthetic narcotics.

(e) (1) A chemical analysis of a person's blood or breath, in order to give rise to the presumptions or to have the effect provided for in this section, must be performed in accordance with methods and standards approved by the West Virginia State Police Forensic Laboratory.

(A) The West Virginia State Police Forensic Laboratory shall prescribe, by legislative rules promulgated pursuant to §29A-3-1 *et seq.* of this code, methods and standards for the chemical analysis of a person's blood or breath.

(B) Legislative rules proposed by the West Virginia State Police Forensic Laboratory must specify the test or tests that are approved for reliability of result and ease of administration using scientific methods and instrumentation generally accepted in the forensic community, and must provide an approved method of administration which must be followed in all such tests given under this section.

(C) The West Virginia State Police Forensic Laboratory shall review prescribed standards and methods at least every two years to ensure that the methods and standards are approved for reliability of result and ease of administration using scientific methods and instrumentation generally accepted in the forensic community.

(2) A chemical analysis of blood to determine the alcohol content or the controlled substance or drug content of blood shall be conducted by an accredited laboratory or by the West Virginia State Police Forensic Laboratory.

(f) The provisions of this article do not limit the introduction in any administrative or judicial proceeding of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, controlled substances or drugs.

(g) For the purposes of the admissibility of a chemical test under subsection (a):

(1) A sample or specimen taken to determine the alcohol concentration of a person's blood, must be taken within two hours from the time of the person's arrest; or

(2) For a sample or specimen to determine the controlled substance or drug content of a person's blood, must be taken within four hours of the person's arrest.

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(h) The results of any test administered pursuant to this section for the purpose of detecting the concentration of any controlled substance shall not be admissible as evidence in a criminal prosecution for the possession of a controlled substance.

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§17C-5-9. Right to demand test.

Any person lawfully arrested for driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs shall have the right to demand that a sample or specimen of his or her blood or breath to determine the alcohol concentration of his or her blood be taken within two hours from and after the time of arrest and a sample or specimen of his or her blood or breath to determine the controlled substance or drug content of his or her blood, be taken within four hours from and after the time of arrest, and that a chemical test thereof be made. The analysis disclosed by such chemical test shall be made available to such arrested person forthwith upon demand.

WV Legislature

§17C-5-10. Fee for withdrawing blood sample; payment of fees.

A reasonable fee shall be allowed to the person withdrawing a blood sample at the request and direction of a law-enforcement officer in accordance with the provisions of this article. If the person whose blood sample was withdrawn was arrested and charged with a violation of §17C-5-2 of this code, the county having venue of such charge shall pay the fee, and if the person arrested is subsequently convicted of such charge, such fee shall be taxed as a part of the costs of the criminal proceeding and shall be paid, notwithstanding any other provision of this code to the contrary, into the General Fund of said county. If the person whose blood sample was withdrawn was arrested and charged with a violation of a similar ordinance of any municipality, said municipality shall pay the fee, and if the person arrested is subsequently convicted of such charge, such fee shall be taxed as a part of the costs of the criminal proceeding and shall be paid, notwithstanding any other provision of this code to the contrary, into the General Fund of said municipality.

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§17C-5-11. Municipal ordinances to contain same elements as offenses under this article; penalties in municipal ordinances required to conform to state penalties.

(a) Notwithstanding the provisions of section five, article twelve, chapter eight of this code, on and after September 1, 1983, each and every municipal ordinance defining a misdemeanor offense of or relating to driving under the influence of alcohol or driving under the influence of intoxicating liquor or otherwise prohibiting conduct made unlawful by this article shall be null and void and of no effect unless such ordinance defines such an offense in substantially similar terms as an offense defined under the provisions of this article and such offense contains the same elements as an offense defined herein.

(b) Notwithstanding the provisions of section one, article eleven, chapter eight of this code, on and after August 1, 1983, each and every municipal ordinance defining a misdemeanor offense of or relating to driving under the influence of alcohol or driving under the influence of intoxicating liquor or otherwise prohibiting conduct made unlawful by this article shall prescribe the same penalty for such offense as is prescribed for an offense under this article containing the same elements.

WV Legislature

§17C-5-12. Report to the Legislature.

On or before December 31, 2020, the Bureau for Public Health shall submit to the Joint Committee on Government and Finance a report that includes the following:

(1) Recommendations for the minimum levels of those drugs or controlled substances contained in §17C-5-8(d) of this code, that must be present in a person's blood in order for the test to be admitted as prima facie evidence that the person was under the influence of a controlled substance or drug in a prosecution for the offense of driving a motor vehicle in this state; and

(2) Recommendations for the minimum levels of those drugs or controlled substances contained in §17C-5-8(d) of this code, that laboratories approved to test blood for drug or controlled substance content can reliably identify and measure for the concentrations of drugs, controlled substances and their metabolites, in blood.

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§17C-5A-1. Report to be submitted to commissioner following arrest for driving under the influence of alcohol, controlled substances, or drugs or refusal to submit to secondary chemical test; report to the court.

(a) Any law-enforcement officer investigating a person for an offense described in §17C-5-2 of this code, or for an offense described in a municipal ordinance which has the same elements as an offense described in said section, shall report to the Commissioner of the Division of Motor Vehicles by written statement within 48 hours of the conclusion of the investigation the name and address of the person believed to have committed the offense. The report shall include the specific offense with which the person is charged and, if applicable, a copy of the results of any secondary tests of blood, breath, or urine. The signing of the statement required to be signed by this subsection constitutes an oath or affirmation by the person signing the statement that the statements contained in the statement are true and that any copy filed is a true copy. The statement shall contain upon its face a warning to the officer signing that to willfully sign a statement containing false information concerning any matter or thing, material or not material, is false swearing and is a misdemeanor.

(b) After receiving the report required by subsection (a) of this section, the Commissioner of the Division of Motor Vehicles shall immediately submit, to the court with jurisdiction over the criminal offense, a full and complete record of the following:

(1) Any prior suspensions or revocations of the person’s license to operate a motor vehicle under §17C-5-2, §17C-5-2b, or §17C-5-7a of this code; or

(2) Any conviction or term of conditional probation imposed under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in §17C-5-2 of this code.

(c) The amendments made to this section during the 2020 regular session of the Legislature shall become effective on July 1, 2020.

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§17C-5A-1a. Revocation upon conviction for driving under the influence of alcohol, controlled substances, or drugs.

(a) The Commissioner of the Division of Motor Vehicles shall revoke or suspend a person's license to operate a motor vehicle in any of the following circumstances:

(1) The person is convicted of an offense defined in §17C-5-2 of this code, which requires a minimum period of revocation or suspension of the person's license to operate a motor vehicle, and the person does not appeal the conviction;

(2) The person is convicted of an offense described in a municipal ordinance which has the same elements as an offense defined in §17C-5-2 of this code, which requires a minimum period of revocation or suspension of the person's license to operate a motor vehicle for the offense with the same elements as the municipal ordinance, and the person does not appeal the conviction;

(3) The person has a term of conditional probation imposed pursuant to §17C-5-2b of this code;

(4) A court enters an order, pursuant to §17C-5-7a of this code, finding that the person did refuse to submit to a secondary chemical test; or

(5) The person is convicted of an offense, as provided in subdivision (1) or (2) of this subsection, the person appeals the conviction, and the conviction is affirmed by the highest appellate court in which an appeal in the matter is filed.

(b) The clerk of the court that has jurisdiction over a term of conditional probation or a conviction described in subsection (a) of this section shall forward to the Commissioner of the Division of Motor Vehicles the order imposing conditional probation or the judgment of conviction and any related transcripts. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the order and any related transcript when the person convicted has not filed a notice of appeal within 20 days of the sentencing for such conviction. If the term of conditional probation is the act of a magistrate court, the magistrate court clerk shall forward the order and any related transcript when the order imposing the term of conditional probation is entered. If the conviction is the judgment of a mayor or police court judge or municipal court judge, the clerk or recorder shall forward the order and any related transcript when the person convicted has not filed a notice of appeal within 10 days from and after the date upon which the sentence is imposed. If the conviction is the judgment of a circuit court, the circuit clerk shall forward the transcript when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within 30 days after the judgment was entered.

(c) Upon receipt of an order of the court, as described in subsection (b) of this section, the commissioner shall make and enter an order revoking or suspending the person's license to operate a motor vehicle in this state as required by §17C-5-2, §17C-5-2b, or §17C-5-7a of this

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code. The order of the commissioner, revoking or suspending the license, shall contain the reasons for the revocation or suspension and the statutorily mandated revocation or suspension period for the offense or the suspension period required as a condition of probation.

(d) If a person receives an order of the commissioner suspending or revoking his or her license, as provided in subsection (c) of this section, and the person believes that he or she is not the person named in the commissioner's order, the person may notify the commissioner of the alleged error in writing. Upon receipt of this notification, the commissioner shall immediately review the contents of the judgment of conviction and the information provided by the person in question to determine whether or not the alleged error has been made. If the commissioner determines that the alleged error has been made, the commissioner shall: (1) Immediately reverse the suspension or revocation made in error; and (2) take all necessary steps to correctly identify the person who should have been named in the order and suspend or revoke the license of the correctly identified person, as required by this section.

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§17C-5A-2. Hearing; revocation; review.

Repealed.

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§17C-5A-2a. Assessment of costs; special account created.

The Division of Motor Vehicles is hereby authorized and required to assess witness costs at the same rate as witness fees in circuit court and a docket fee of $15 for each hearing request against any person filing a request for a hearing under section two of this article who fails to appear, fails to have said order rescinded or fails to have said order modified to a lesser period of revocation. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: Provided, That an increase in such fee may not exceed ten percent of the total fee amount in a single year.

All fees and costs collected hereunder shall be paid into a special revenue account in the State Treasury: 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 and costs collected shall be deposited in that fund. A portion of the funds in the Motor Vehicle Fees Fund may be used to pay or reimburse the various law-enforcement agencies at the same rate as witnesses in circuit court for the travel and appearance of its officers before the commissioner or authorized deputy or agent pursuant to a hearing request under the provisions of this article. The department shall authorize payment to the law-enforcement agencies from said account as the fees for a particular hearing request are received from the person against whom the costs were assessed. The department shall authorize transfer to an appropriate agency account from the Motor Vehicle Fees Fund to pay costs of registered and certified mailings and other expenses associated with the conduct of hearings under this article as the docket fee for a particular hearing request is received from the person against whom the costs were assessed.

In the event judicial review results in said order being rescinded or modified to a lesser period of revocation the costs assessed shall be discharged.

The provisions of this section enacted in 2017 take effect on July 1, 2017.

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§17C-5A-2b. Administrative hearing, revocation, and review process terminated on July 1, 2020.

Notwithstanding any other provision of this code:

(1) The provisions of §17C-5A-2 of this code apply only to proceedings arising from offenses occurring on or before June 30, 2020; and

(2) The provisions of §17C-5A-2 of this code have no force or effect beginning on the date when the Office of Administrative Hearings terminates, pursuant to §17C-5C-1a of this code.

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§17C-5A-3. Safety and treatment program; reissuance of license.

(a) The Division of Motor Vehicles shall administer a comprehensive safety and treatment program for persons whose licenses have been suspended or revoked under the provisions of §17B-3-5(6), §17C-5-2, §17C-5-2a, or §17C-5-7a of this code and shall also establish the minimum qualifications for mental health facilities, day report centers, community corrections centers, or other public agencies or private entities conducting the safety and treatment program: *Provided*, That the Division of Motor Vehicles may establish standards whereby the division will accept or approve participation by violators in another treatment program which provides the same or substantially similar benefits as the safety and treatment program established pursuant to this section.

(b) The program shall include, but not be limited to, treatment of alcoholism, treatment of alcohol and drug abuse, psychological counseling, educational courses on the dangers of alcohol and drugs as they relate to driving, defensive driving, or other safety driving instruction, and other programs designed to properly educate, train, and rehabilitate the offender: *Provided*, That successful compliance with the substance abuse and counseling program prescribed in §61-11-26a of this code is sufficient to meet the requirements of this section.

(c) The Division of Motor Vehicles shall provide for the preparation of an educational and treatment program for each person whose license has been revoked under the provisions of §17B-3-5(6), §17C-5-2, §17C-5-2a, or §17C-5-7a of this code, which shall contain the following: (1) A listing and evaluation of the offender's prior traffic record; (2) the characteristics and history of alcohol or drug use, if any; (3) his or her amenability to rehabilitation through the alcohol safety program; and (4) a recommendation as to treatment or rehabilitation and the terms and conditions of the treatment or rehabilitation. The program shall be prepared by persons knowledgeable in the diagnosis of alcohol or drug abuse and treatment.

(d) A special revenue account is created within the State Treasury, known as the Division of Motor Vehicles Safety and Treatment Fund. The Commissioner of the Division of Motor Vehicles shall manage and expend moneys from the account for the purpose of administering the comprehensive safety and treatment program established by subsection (a) of this section. The moneys in the account may be invested and all earnings and interest accruing shall be retained in the account. The Auditor shall conduct an audit of the account at least every three fiscal years.

(e) (1) The program provider shall collect the established fee from each participant upon enrollment unless the division has determined that the participant is an indigent based upon criteria established pursuant to legislative rule authorized in this section.

(2) If the division determined that a participant is an indigent based upon criteria established pursuant to the legislative rule authorized by this section, the department shall provide the participant with proof of its determination regarding indigency, which proof the

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participant shall present to the interlock provider as part of the application process provided in §17C-5A-3a of this code and the rules promulgated pursuant thereto.

(3) Program providers shall remit to the Division of Motor Vehicles a portion of the fee collected, which shall be deposited by the Commissioner of the Division of Motor Vehicles into the Division of Motor Vehicles Safety and Treatment Fund. The Division of Motor Vehicles shall reimburse enrollment fees to program providers for each eligible indigent offender.

(f) On or before January 15 of each year, the Commissioner of the Division of Motor Vehicles shall report to the Legislature on:

(1) The total number of offenders participating in the safety and treatment program during the prior year;

(2) The total number of indigent offenders participating in the safety and treatment program during the prior year;

(3) The total number of program providers during the prior year; and

(4) The total amount of reimbursements paid to program providers during the prior year.

(g) The Commissioner of the Division of Motor Vehicles, after giving due consideration to the program developed for the offender, shall prescribe the necessary terms and conditions for the reissuance of the license to operate a motor vehicle in this state revoked under §17B-3-5(6), §17C-5-2, §17C-5-2a, or §17C-5-7a of this code which shall include successful completion of the educational, treatment, or rehabilitation program, subject to the following:

(1) When the period of revocation is six months, the license to operate a motor vehicle in this state may not be reissued until: (A) At least 90 days have elapsed from the date of the initial revocation, during which time the revocation was actually in effect; (B) the offender has successfully completed the program; (C) all costs of the program and administration have been paid; and (D) all court costs assessed as a result of criminal proceedings have been paid.

(2) When the period of revocation is for a period of one year or for more than a year, the license to operate a motor vehicle in this state may not be reissued until: (A) At least one half of the time period has elapsed from the date of the initial revocation, during which time the revocation was actually in effect; (B) the offender has successfully completed the program; (C) all costs of the program and administration have been paid; and (D) all court costs assessed as a result of a criminal proceedings have been paid. Notwithstanding any provision in this code, a person whose license is revoked for refusing to take a chemical test as required by §17C-5-4 of this code for a first offense is not eligible to reduce the revocation period by completing the safety and treatment program.

(3) When the period of revocation is for life, the license to operate a motor vehicle in this

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state may not be reissued until: (A) At least 10 years have elapsed from the date of the initial revocation, during which time the revocation was actually in effect; (B) the offender has successfully completed the program; (C) all costs of the program and administration have been paid; and (D) all court costs assessed as a result of a criminal proceeding have been paid.

(4) Notwithstanding any provision of this code or any rule, any mental health facilities or other public agencies or private entities conducting the safety and treatment program, when certifying that a person has successfully completed a safety and treatment program, shall only have to certify that the person has successfully completed the program.

(h) (1) The Division of Motor Vehicles shall provide for the preparation of an educational program for each person whose license has been suspended for 60 days pursuant to §17C-5-2(j) of this code. The educational program shall consist of not less than 12 nor more than 18 hours of actual classroom time.

(2) When a 60-day period of suspension has been ordered, the license to operate a motor vehicle may not be reinstated until: (A) At least 60 days have elapsed from the date of the initial suspension, during which time the suspension was in effect; (B) the offender has successfully completed the educational program; (C) all costs of the program and administration have been paid; and (D) all costs assessed as a result of a suspension hearing have been paid.

(i) As a component of the programs required by subsections (b) and (c) of this section, the offender shall attend a victim impact panel program. The victim impact panel program must provide a forum for victims of alcohol and drug-related offenses and offenders to share first-hand experiences on the impact of alcohol and drug-related offenses in their lives. The Division of Motor Vehicles shall propose and implement a plan for victim impact panels where appropriate numbers of victims are available and willing to participate and shall establish guidelines for other innovative programs which may be substituted where the victims are not available to participate in an impact panel. The plan shall require, at a minimum, discussion and consideration of the following:

(1) Economic losses suffered by victims and offenders;

(2) Death or physical injuries suffered by victims and offenders;

(3) Psychological injuries suffered by victims and offenders;

(4) Changes in the personal welfare or familial relationships of victims and offenders; and

(5) Other information relating to the impact of alcohol and drug-related offenses upon victims and offenders.

The Division of Motor Vehicles shall ensure that any meetings between victims and offenders shall be nonconfrontational and ensure the physical safety of the persons involved.

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(j) The Commissioner of the Division of Motor Vehicles shall propose a rule for legislative approval in accordance with §29A-3-1 *et seq.* of this code to administer the provisions of this section and establish a fee to be collected from each offender enrolled in the safety and treatment program. The rule shall include: (A) A reimbursement mechanism to program providers of required fees for the safety and treatment program for indigent offenders, criteria for determining eligibility of indigent offenders, and any necessary application forms; and (B) program standards that encompass provider criteria including minimum professional training requirements for providers, curriculum approval, minimum course length requirements, and other items that may be necessary to properly implement the provisions of this section.

(k) A day report or community corrections program, authorized pursuant to §62-11C-1 *et seq*. of this code, may provide the comprehensive safety and treatment program pursuant to this section.

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§17C-5A-3a. Establishment of and participation in the Motor Vehicle Alcohol and Drug Test and Lock Program.

(a) (1) The Division of Motor Vehicles shall control and regulate a Motor Vehicle Alcohol and Drug Test and Lock Program for persons whose licenses have been revoked pursuant to this article or the provisions of §17C-5-1 *et seq*. of this code or have been convicted under §17C-5-2 of this code, or who are serving a term of a conditional probation pursuant to §17C-5-2b of this code.

(2) The program shall include the establishment of a user's fee for persons participating in the program which shall be paid in advance and deposited into the Motor Vehicle Fees Fund created under the provisions of §17A-2-21 of this code.

(3) (A) Except where specified otherwise, the use of the term "program" in this section refers to the Motor Vehicle Alcohol and Drug Test and Lock Program.

(B) The Commissioner of the Division of Motor Vehicles shall propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq*. of this code for the purpose of implementing the provisions of this section. The rules shall also prescribe those requirements which, in addition to the requirements specified by this section for eligibility to participate in the program, the commissioner determines must be met to obtain the commissioner's approval to operate a motor vehicle equipped with a motor vehicle alcohol and drug test and lock system.

(C) Nothing in this section may be construed to prohibit day report or community corrections programs authorized pursuant to §62-11C-1 *et seq*. of this code, or a home confinement program authorized pursuant to §62-11B-1 *et seq*. of this code, from being a provider of motor vehicle alcohol and drug test and lock systems for eligible participants as authorized by this section.

(4) For purposes of this section, a "motor vehicle alcohol and drug test and lock system" means a mechanical or computerized system which, in the opinion of the commissioner, prevents the operation of a motor vehicle when, through the system's assessment of the blood alcohol or drug content of the person operating or attempting to operate the vehicle, the person is determined to be under the influence of alcohol or drugs.

(5) The fee for installation and removal of ignition interlock devices shall be waived for persons determined to be indigent by the Division of Motor Vehicles pursuant to §17C-5A-3 of this code. The commissioner shall establish by legislative rule, proposed pursuant to §29A-3-1 *et seq*. of this code, procedures to be followed with regard to persons determined by the Division of Motor Vehicles to be indigent. The rule shall include, but is not limited to, promulgation of application forms, establishment of procedures for the review of applications, and the establishment of a mechanism for the payment of installations for eligible offenders.

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(6) On or before January 15 of each year, the Commissioner of the Division of Motor Vehicles shall report to the Legislature on:

(A) The total number of offenders participating in the program during the prior year;

(B) The total number of indigent offenders participating in the program during the prior year;

(C) The terms of any contracts with the providers of ignition interlock devices; and

(D) The total cost of the program to the state during the prior year.

(7) A person participating in the Motor Vehicle Alcohol and Drug Test and Lock Program shall submit to drug testing in a manner and at intervals prescribed by the commissioner. The commissioner shall give due consideration to a lawfully prescribed medication taken in accordance with a valid prescription or order of a licensed medical practitioner who acted in the course of the practitioner's professional practice and does not create an impairment to driving safely when considering a positive drug test result.

(b) (1) Any person whose license is revoked for the first time pursuant to this article or the provisions of §17C-5-1 *et seq*. of this code is eligible to participate in the program when the person's minimum revocation period, as specified by subsection (c) of this section, has expired and the person is enrolled in or has successfully completed the safety and treatment program or presents proof to the commissioner within 60 days of receiving approval to participate by the commissioner that he or she is enrolled in a safety and treatment program: *Provided*, That anyone whose license is revoked for the first time for driving with a blood alcohol concentration of 0.15 percent or more, by weight, must participate in the program when the person's minimum revocation period, as specified by subsection (c) of this section, has expired and the person is enrolled in or has successfully completed the safety and treatment Program or presents proof to the commissioner within 60 days of receiving approval to participate by the commissioner that he or she is enrolled in a safety and treatment program.

(2) Any person whose license has been suspended for driving a motor vehicle while under the age of 21 years with an alcohol concentration in his or her blood 0.02 percent or more, by weight, but less than 0.08 percent, by weight, is eligible to participate in the program after 30 days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect: *Provided*, That in the case of a person under the age of 18, the person is eligible to participate in the program after 30 days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect or after the person's 18th birthday, whichever is later. Before the commissioner approves a person to operate a motor vehicle equipped with a motor vehicle alcohol and drug test and lock system, the person must agree to comply with the following conditions:

(A) If not already enrolled, the person shall enroll in and complete the educational program

provided in §17C-5A-3(d) of this code at the earliest time that placement in the educational program is available, unless good cause is demonstrated to the commissioner as to why placement should be postponed;

(B) The person shall pay all costs of the educational program, any administrative costs, and all costs assessed for any suspension hearing; and

(3) Notwithstanding the provisions of this section to the contrary, a person eligible to participate in the program under this subsection may not operate a motor vehicle unless approved to do so by the commissioner.

(c) A person who participates in the program under subdivision (1), subsection (b) of this section is subject to a minimum revocation period and minimum period for the use of the ignition interlock device as follows:

(1) For a person whose license has been revoked for a first offense for six months for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent, by weight, but less 0.15 percent, by weight, the minimum period of revocation for participation in the test and lock program is 15 days and the minimum period for the use of the ignition interlock device is 125 days;

(2) For a person whose license has been revoked for a first offense for refusing a secondary chemical test, the minimum period of revocation for participation in the test and lock program is 45 days and the minimum period for the use of the ignition interlock device is one year;

(3) For a person whose license has been revoked for a first offense for driving with a blood alcohol concentration of 0.15 percent or more, by weight, the minimum period of revocation for participation in the test and lock program is 45 days and the minimum period for the use of the ignition interlock device is 270 days;

(4) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent or more, by weight, or did drive a motor vehicle while under the age of 21 years with an alcohol concentration in his or her blood of 0.02 percent or more, by weight, but less than 0.08 percent, by weight, and while driving does any act forbidden by law or fails to perform any duty imposed by law, which act or failure proximately causes the death of any person within one year next following the act or failure, and commits the act or failure in reckless disregard of the safety of others and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death, the minimum period of revocation before the person is eligible for participation in the test and lock program is 12 months and the minimum period for the use of the ignition interlock device is two years;

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(5) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure, the minimum period of revocation is six months and the minimum period for the use of the ignition interlock device is two years;

(6) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes bodily injury to any person other than himself or herself, the minimum period of revocation for participation in the program is two months and the minimum period for the use of the ignition interlock device is one year;

(7) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their 16th birthday, the minimum period of revocation for participation in the program is two months and the minimum period for the use of the ignition interlock device is 10 months.

(d) Notwithstanding any provision of the code to the contrary, a person shall participate in the program if the person is convicted under §17C-5-2 of this code or the person's license is revoked under §17C-5A-2 or §17C-5-7 of this code and the person was previously either convicted or his or her license was revoked under any provision cited in this subsection within the past 10 years. The minimum revocation period for a person required to participate in the program under this subsection is one year and the minimum period for the use of the ignition interlock device is two years, except that the minimum revocation period for a person required to participate because of a violation for driving while under the age of 21 with a blood alcohol concentration of 0.02 percent, or more, by weight, but less than 0.08 percent, or more, by weight, is two months and the minimum period of participation is one year. The division shall add an additional two months to the minimum period for the use of the ignition interlock device if the offense was committed while a minor was in the vehicle. The division shall add an additional six months to the minimum period for the use of the ignition interlock device if a person other than the driver received injuries. The division shall add an additional two years to the minimum period for the use of the ignition interlock device if a person other than the driver is injured and the injuries result in that person's death. The division shall add one year to the minimum period for the use of the ignition interlock device for each additional previous conviction or revocation within the past 10 years. Any person required to participate under this subsection must have an ignition interlock device installed on every vehicle he or she owns or operates.

(e)(1) If a person applies for and is accepted into the Motor Vehicle Alcohol and Drug Test and Lock Program prior to the effective date of the revocation for an offense involving alcohol, the commissioner shall defer the revocation period of such person under the provisions of this section. Such deferral shall continue throughout the applicable minimum period for the use of the ignition interlock device plus an additional period equal to the applicable minimum revocation period. If a person successfully completes all terms of the Motor Vehicle Alcohol and Drug Test and Lock Program for a period equal to the minimum period for the use of the ignition interlock device pursuant to subsection (c) of this section, plus any applicable minimum revocation period, the commissioner shall waive the revocation period.

(2) If a person applies for and is accepted into the Motor Vehicle Alcohol and Drug Test and Lock Program prior to the effective date of the revocation for an offense solely involving drugs, the commissioner may defer the revocation period of such person under the provisions of this section. Such deferral shall continue throughout the applicable minimum period for the use of the ignition interlock device plus an additional period equal to the applicable minimum revocation period. If a person successfully completes all terms of the Motor Vehicle Alcohol and Drug Test and Lock Program for a period equal to the minimum period for the use of the ignition interlock device pursuant to subsection (c) of this section, plus any applicable minimum revocation period, the commissioner shall waive the revocation period.

(f) The Division of Motor Vehicles may reduce any revocation period required of a person with a second or subsequent offense for driving under the influence of drugs to a minimum of one year and thereafter issue a restricted license on the conditions that the person is in the treatment and job program prescribed in §61-11-26a of this code, has satisfactorily performed in the treatment component of the program and that the person submits to two years of monthly drug testing. If the person is otherwise required to participate in the Alcohol and Drug Test and Lock Program for another offense, he or she may do so while meeting the conditions described in this subsection. If the person fails to submit to a drug test or submits to a test that reveals the presence of controlled substances or drugs, then the full revocation period is reinstated, and the person is only credited with revocation time actually served prior to receiving restricted privileges. The Commissioner of the Division of Motor Vehicles is hereby authorized to promulgate emergency rules to implement the provisions of this article.

(g) An applicant for the test and lock program convicted of any violation of §17B-4-3 of this code for driving while the applicant’s driver’s license was suspended or revoked within the six-month period preceding the date of application for admission to the test and lock program may still participate in the program by serving the revocation or suspension required by §17B-4-3 of this code as additional participation time in the program.

(h) Upon permitting an eligible person to participate in the program, the commissioner shall issue to the person, and the person is required to exhibit on demand, a driver’s license which shall reflect that the person is restricted to the operation of a motor vehicle which is

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equipped with an approved motor vehicle alcohol and drug test and lock system.

(i) The commissioner may extend the minimum period of revocation and the minimum period of participation in the program for a person who violates the terms and conditions of participation in the program as found in this section, or legislative rule, or any agreement or contract between the participant and the division or program service provider. If the commissioner finds that any person participating in the program pursuant to §17C-5-2b of this code must be removed therefrom for violation(s) of the terms and conditions thereof, he or she shall notify the person, the court that imposed the term of participation in the program, and the prosecuting attorney in the county wherein the order imposing participation in the program was entered.

(j) A person whose license has been suspended for a first offense of driving while under the age of 21 with a blood alcohol concentration of 0.02 percent, or more, by weight, but less than 0.08 percent, or more, by weight, who has completed the educational program and who has not violated the terms required by the commissioner of the person's participation in the program is entitled to the reinstatement of his or her driver's license six months from the date the person is permitted to operate a motor vehicle by the commissioner. When a license has been reinstated pursuant to this subsection, the records ordering the suspension, records of any administrative hearing, records of any blood alcohol test results, and all other records pertaining to the suspension shall be expunged by operation of law: *Provided*, That a person is entitled to expungement under the provisions of this subsection only once. The expungement shall be accomplished by physically marking the records to show that the records have been expunged and by securely sealing and filing the records. Expungement has the legal effect as if the suspension never occurred. The records may not be disclosed or made available for inspection and in response to a request for record information, the commissioner shall reply that no information is available. Information from the file may be used by the commissioner for research and statistical purposes so long as the use of the information does not divulge the identity of the person.

(k) In addition to any other penalty imposed by this code, any person who operates a motor vehicle not equipped with an approved motor vehicle alcohol and drug test and lock system during that person's participation in the Motor Vehicle Alcohol and Drug Test and Lock Program is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period not less than one month nor more than six months and fined not less than $100 nor more than $500. Any person who attempts to bypass the alcohol and drug test and lock system is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than six months and fined not less than $100 nor more than $1,000: *Provided*, That notwithstanding any provision of this code to the contrary, a person enrolled and participating in the test and lock program may operate a motor vehicle solely at his or her job site if the operation is a condition of his or her employment. For the purpose of this section, "job site" does not include any street or highway open to the use of the public for purposes of vehicular traffic.

WV Legislature

§17C-5A-4. Search for record of prior offenses by driver.

The commissioner shall immediately upon receipt of the statements required by section seven, article five of this chapter and section one of this article record the date and time of day of the receipt of such statements and shall forthwith cause a search of the appropriate records of the department to be made for any record of prior offenses under this article and such commissioner shall immediately report to the officer making such statement an abstract showing any such prior offense, the date thereof, the identity of any court in which any proceedings in regard thereto were instituted and the disposition thereof.

Any law-enforcement officer who fails to file the statements required by this chapter within forty-eight hours of the arrest of any person charged for any violation of section two, article five of this chapter or for any offense described in a municipal ordinance which has the same elements as an offense described in said section two of article five, shall be guilty of a misdemeanor and, shall be subject to a fine of not less than $20 nor more than $500. And if the commissioner shall willfully fail to post by United States mail or other adequate means of communication a written report addressed to the law-enforcement officer of any such offense, as required by this section, within a period of forty-eight hours after the receipt of the statement, the commissioner shall be guilty of a misdemeanor and, shall be subject to a fine of not less than $20 nor more than $500.

WV Legislature

§17C-5A-5.

Repealed.

Acts, 1981 Reg. Sess., Ch. 159.

WV Legislature

§17C-5A-6.

Repealed.

Acts, 1981 Reg. Sess., Ch. 159.

WV Legislature

§17C-5A-7.

Repealed.

Acts, 1981 Reg. Sess., Ch. 159.

WV Legislature

§17C-5A-8.

Repealed.

Acts, 1981 Reg. Sess., Ch. 159.

WV Legislature

§17C-5B-1. Blood test for alcohol in drivers and adult pedestrians killed in motor vehicle crashes; time limit for conducting test; who may conduct test; express consent to withdraw blood from dead body granted; granting civil and criminal immunity to person conducting test; fee for test.

(a) When any motor vehicle driver or adult pedestrian dies in a motor vehicle crash in this state or dies within four hours after having been involved in a motor vehicle crash in this state, the physician in attendance, or law-enforcement officer having knowledge of such death, or the funeral director, or any other person present when such death occurred, shall immediately report such death to the medical examiner of the county in which such death occurred. Upon receipt of such notice, the medical examiner shall take charge of the dead body and shall conduct, or shall cause to be conducted, within 12 hours after receiving such notice and before the dead body is embalmed, a blood test to determine the presence and percentage concentration of alcohol in the blood of such dead body.

(b) The blood test required under this section shall be conducted only by a person qualified to conduct an autopsy under §61-12-3 *et seq*. of this code or by a doctor of medicine, doctor of osteopathy, registered nurse, trained medical technician at the place of his or her employment or county coroner who is deemed qualified by the office of medical examinations to conduct such blood test.

(c) Any person who is to conduct a blood test under the provisions of this section is hereby expressly authorized to withdraw blood from the dead body in the quantity necessary to conduct such blood test. Any person withdrawing blood from the dead body and testing such blood and any hospital or clinic in which such blood is withdrawn and tested under the provisions of this section shall be immune from all civil and criminal liability which might otherwise be imposed.

(d) Any person conducting a blood test under the provisions of this section shall receive a standardized fee in the amount determined by the office of medical examinations, which fee shall be paid from funds appropriated to the office of medical examinations.

(e) Nothing contained in this section shall be construed to preclude the taking of a blood test by any other person having the right to take any such test or cause such test to be taken while the medical examiner has charge of the body.

WV Legislature

§17C-5B-1a. Drug and alcohol testing of surviving motor vehicle operator where fatality involved.

(a) When a law-enforcement officer has probable cause to believe a surviving operator of a motor vehicle in a crash resulting in the death of another person has committed an offense prohibited by §17C-5-2 of this code or by an ordinance of a municipality of this state which has the same elements as an offense described in §17C-5-2 of this code, the law-enforcement officer may require the surviving operator to submit to a preliminary breath analysis for the purpose of determining his or her blood alcohol content.

(b) When a law-enforcement officer has probable cause to believe a surviving operator of a motor vehicle in a crash resulting in the death of another person has committed an offense prohibited by §17C-5-2 of this code or by an ordinance of a municipality of this state which has the same elements as an offense described in §17C-5-2 of this code, the law-enforcement officer may require the surviving operator to submit to a secondary test of blood or breath for the purpose of determining his or her alcohol concentration in the blood, or the concentration in the blood of a controlled substance, drug, or any combination thereof: *Provided*, That absent written consent of the surviving operator, a secondary test of blood may not be performed without issuance of a warrant signed by a magistrate or a circuit judge.

(c) Only a doctor of medicine or osteopathy, or registered nurse, or trained medical technician at the place of his or her employment, acting at the request and direction of the law-enforcement officer, may withdraw blood to determine the alcohol concentration in the blood, or the concentration in the blood of a controlled substance, drug, or any combination thereof.

(d) Any person conducting a test required under the provisions of this section is immune from all civil and criminal liability which might otherwise be imposed.

(e) Nothing in this section shall be construed to abrogate, expand, or otherwise modify the existing testing requirements for individuals who do not survive motor vehicle crashes as more fully set forth in §17C-5B-1 of this code.

WV Legislature

§17C-5B-2. To whom and how county medical examiners report results of blood tests; such reports admissible as evidence; use of reports only for statistical and highway safety purposes.

(a) Each county medical examiner shall immediately report the results of each blood test conducted under the authority of §17C-5B-1 of this code by him or her, or conducted at his or her request, to the chief medical examiner of the Office of the Chief Medical Examiner and to the West Virginia State Police. Results of such blood test or any report thereof may be admissible in evidence, if material, in any action or proceeding of any kind in any court or before any tribunal, board, or agency.

(b) The West Virginia State Police shall compile the data from all such reports submitted to it on a monthly basis. The West Virginia State Police shall forward such compilations to the Governor's Highway Safety Program, and the Division of Motor Vehicles. Such compilations shall be for statistical purposes and highway safety information and be disclosed or revealed in any manner necessary. The identity of any dead person whose blood was tested under the provisions of §17C-5B-1 of this code may be disclosed or revealed when necessary for evidence in any action or proceeding of any kind in any court or before any tribunal, board, or agency.

(c) The West Virginia State Police, the Governor's Highway Safety Program, and the Division of Motor Vehicles shall make use of such compilations in a manner to provide accurate and useful statistical information to government and the public relative to achieving a reduction in motor vehicle crashes arising in whole or in part from the imbibing of alcohol by motor vehicle drivers and adult pedestrians.

WV Legislature

§17C-5C-1. Office created; appointment of Chief Hearing Examiner.

Repealed.

WV Legislature

§17C-5C-1a. Termination of Office of Administrative Hearings; transfer of jurisdiction.

Repealed.

WV Legislature

§17C-5C-2. Organization of office.

Repealed.

WV Legislature

§17C-5C-3. Jurisdiction of Office of Administrative Hearings.

Repealed.

WV Legislature

§17C-5C-4. Hearing procedures.

Repealed.

WV Legislature

§17C-5C-4a. Rule-making authority.

Repealed.

WV Legislature

§17C-5C-4b. Duty to provide notice of change of address.

Repealed.

WV Legislature

§17C-5C-5. Transition from Division of Motor Vehicles to the Office of Administrative Hearings.

Repealed.

WV Legislature

§17C-5D-1. Purpose.

The purpose of this article is to avoid the imposition of sanctions against this state and the loss of federal-aid highway construction funds under section 1405(a) of the federal Transportation Equity Act for the Twenty-first Century (23 U.S.C. §154), as amended, which requires states to enact and enforce a law that prohibits the consumption of an alcoholic beverage or the possession of an open alcoholic beverage container in the passenger area of a motor vehicle that is located on a public highway or the right-of-way adjacent to a public highway.

WV Legislature

§17C-5D-2. Definitions.

For the purposes of this article, the words or terms defined in this article have the meanings ascribed to them:

(a) "Alcoholic beverage" means:

(1) Alcoholic liquor as defined in section five, article one, chapter sixty of this code; and

(2) Nonintoxicating beer as defined in section three, article sixteen, chapter eleven of this code.

(b) "Motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail or rails.

(c) "Open alcoholic beverage container" means any bottle, can or other receptacle that:

(1) Contains any amount of alcoholic beverage; and

(2)(A) Is open or has a broken seal; or

(B) Has had its contents partially removed.

(d) "Passenger area of a motor vehicle" means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions. For purposes of this article, the passenger area of a motor vehicle does not include:

(1) (A) A locked glove compartment; or

(B) A fixed center console or other similar fixed compartment that is locked;

(2) In a motor vehicle that is not equipped with a trunk;

(A) The area behind the last upright seat; or

(B) An area not normally occupied by the driver or a passenger; or

(3) In a pickup truck that has no trunk, camper top or separate enclosed area other than the cab of the truck, in the area behind the front seat of the truck in a locked case or container located so as to not be readily accessible to the driver or passengers while in their seating positions.

(e) "Public highway or right-of-way of a public highway" means the entire width between and immediately adjacent to the boundary lines of every way that is publicly maintained, when any part thereof is open to the use of the public for purposes of vehicular travel.

WV Legislature

§17C-5D-3. Possession of an open alcoholic beverage container in the passenger area of a motor vehicle; exceptions; penalties.

(a) It is unlawful for the operator or a passenger of a motor vehicle to consume any alcoholic beverage in the passenger area of a motor vehicle located on a public highway or right-of-way of a public highway in this state, whether the vehicle is in motion or at rest.

(b) It is unlawful for the operator or a passenger of a motor vehicle to knowingly possess any open alcoholic beverage container in the passenger area of any motor vehicle that is located on a public highway or right-of-way of a public highway in this state, whether the vehicle is in motion or at rest. Possession by a person of one or more open containers in a single criminal occurrence is a single offense.

(c) The provisions of this section are not applicable to a passenger:

(1) In the passenger area of a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation including, but not limited to, a bus, taxicab or limousine; or

(2) In the living quarters of a motorized or nonmotorized house coach, house trailer, motor home or self-contained camper.

(d) A person who violates the provisions of subsection (a) or (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $100.

WV Legislature

§17C-5D-4. Procedure on arrest.

If a person is arrested for an offense under the provisions of this article, unless the provisions of section three, article nineteen of this chapter require that the person arrested be taken immediately before a magistrate for an offense described in that section, the provisions of article nineteen of this chapter regarding the issuance of a traffic citation containing a notice to appear applies.

WV Legislature

§17C-6-1. Speed limitations generally; penalty.

(a) No person may drive a vehicle on a highway at a speed greater than is reasonable and prudent under the existing conditions and the actual and potential hazards. In every event speed shall be controlled as necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highways in compliance with legal requirements and the duty of all persons to use due care.

(b) Where no special hazard exists that requires lower speed for compliance with subsection (a) of this section, the speed of any vehicle not in excess of the limits specified in this section or established as authorized in this section is lawful, but any speed in excess of the limits specified in this subsection or established as authorized in this section is unlawful. The following speed limits apply:

(1) Fifteen miles per hour in a school zone during school recess or while children are going to or leaving school during opening or closing hours. A school zone is all school property, including school grounds and any street or highway abutting the school grounds and extending 125 feet along the street or highway from the school grounds and, in the case of school property not abutting a street or highway but accessed through a right-of-way granted for entrance to school property, a school zone established by an engineering study conducted by the Division of Highways is all school property, including school grounds and any property within the access right-of-way, and extending 125 feet along the street or highway from the entrance to the access right-of-way. The West Virginia Division of Highways shall erect signage indicating the place of entry and exit of each school zone. Upon a formal vote and a written request by a county board of education, governing board of a public charter school, or governing body of a private school to expand a school zone to a road that is adjacent to school property or from the entrance to an access right-of-way, the West Virginia Division of Highways shall expand the school zone by erecting new signage indicating the expanded school zone's location and speed limit within 90 days of receiving the request: *Provided*, That the school zone may not be expanded more than 125 feet along an adjacent road unless the division determines that the additional extension is needed and necessary for the safety of the school children. The speed restriction does not apply to vehicles traveling on a controlled-access highway which is separated from the school or school grounds by a fence or barrier approved by the Division of Highways. For purposes of this subdivision, the term "school property" includes any public school, public charter school, and any private school that requests the Division of Highways to designate a school zone;

(2) Twenty-five miles per hour in any business or residence district; and

(3) Fifty-five miles per hour on open country highways, except as otherwise provided by this chapter.

The speeds set forth in this section may be altered as authorized in §17C-6-2 and §17C-6-3 of this code.

WV Legislature

(c) The driver of every vehicle shall, consistent with the requirements of subsection (a) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(d) The speed limit on controlled access highways and interstate highways, where no special hazard exists that requires a lower speed, shall be not less than 55 miles per hour and the speed limits specified in subsection (b) of this section do not apply.

(e) Unless otherwise provided in this section, any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100; upon a second conviction within one year thereafter, shall be fined not more than $200; and, upon a third or subsequent conviction within two years thereafter, shall be fined not more than $500: *Provided*, That if the third or subsequent conviction is based upon a violation of the provisions of this section where the offender exceeded the speed limit by 15 miles per hour or more, then upon conviction, shall be fined not more than $500 or confined in jail for not more than six months, or both fined and confined.

(f) Any person who violates the provisions of subdivision (1), subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500: *Provided*, That if the conviction is based upon a violation of the provisions of subdivision (1), subsection (b) of this section where the offender exceeded the speed limit by 15 miles per hour or more in the presence of one or more children, then upon conviction, shall be fined not less than $100 nor more than $500 or confined in jail for not more than six months, or both fined and confined: *Provided, however*, That if the signage required by subdivision (1), subsection (b) of this section is not present in the school zone at the time of the violation, then any person who violates said provision is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25.

(g) If an owner or driver is arrested under the provisions of this section for the offense of driving above the posted speed limit on a controlled access highway or interstate highway and if the evidence shows that the motor vehicle was being operated at 10 miles per hour or less above the speed limit, then, upon conviction thereof, that person shall be fined not more than $5, plus court costs.

(h) Any person operating a commercial motor vehicle engaged in the transportation of coal on the coal resource transportation road system who violates subsection (a), (b), or (c) of this section shall, upon conviction, be subject to fines in triple the amount otherwise provided in subsection (e) of this section.

(i) If an owner or driver is convicted under the provisions of this section for the offense of driving above the speed limit on a controlled access highway or interstate highway of this state and if the evidence shows that the motor vehicle was being operated at 10 miles per

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hour or less above the speed limit, then notwithstanding the provisions of §17B-3-4 of this code, a certified abstract of the judgment on the conviction may not be transmitted to the Division of Motor Vehicles or, if transmitted, may not be recorded by the division: *Provided*, That the provisions of this subsection do not apply to conviction of owners or drivers who have been issued a commercial driver's license as defined in chapter 17E of this code if the offense was committed while operating a commercial vehicle.

(j) If an owner or driver is convicted in another state for the offense of driving above the maximum speed limit on a controlled access highway or interstate highway and if the maximum speed limit in the other state is less than the maximum speed limit for a comparable controlled access highway or interstate highway in this state, and if the evidence shows that the motor vehicle was being operated at 10 miles per hour or less above what would be the maximum speed limit for a comparable controlled access highway or interstate highway in this state, then notwithstanding the provisions of §17B-3-4 of this code, a certified abstract of the judgment on the conviction may not be transmitted to the Division of Motor Vehicles or, if transmitted, may not be recorded by the division, unless within a reasonable time after conviction, the person convicted has failed to pay all fines and costs imposed by the other state: *Provided*, That the provisions of this subsection do not apply to conviction of owners or drivers who have been issued a commercial driver's license as defined in chapter 17E of this code, if the offense was committed while operating a commercial vehicle.

WV Legislature

§17C-6-2. Establishment of state speed zones.

Whenever the state road commissioner shall determine upon the basis of an engineering and traffic investigation that any speed limit set forth in this article is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a highway, said commissioner may determine and declare a reasonable and safe speed limit thereat which shall be effective at all times or during hours of daylight or darkness or at such other times as may be determined when appropriate signs giving notice thereof are erected at such intersection or other place or part of the highway.

WV Legislature

§17C-6-3. When local authorities may alter speed limits.

(a) At intersection. -- Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that the speed permitted under this chapter at any intersection is greater than is reasonable or safe under the conditions found to exist at such intersection, such local authority subject to subsection (e) of this section shall determine and declare a reasonable and safe speed limit thereat, which shall be effective at all times or during hours of daylight or darkness or at such other times as may be determined when appropriate signs giving notice thereof are erected at such intersection or upon the approaches thereto.

(b) Authority to increase twenty-five mile limit. -- Local authorities in their respective jurisdictions may in their discretion, but subject to subsection (e) of this section, authorize by ordinance higher speeds than those stated in section one of this article upon through highways or upon highways or portions thereof where there are no intersections or between widely spaced intersections, which higher speed shall be effective at all times or during hours of daylight or at such other times as may be determined when signs are erected giving notice of the authorized speed, but local authorities shall not have authority to modify or alter the basic rule set forth in subsection (a), section one of this article or in any event to authorize by ordinance a speed in excess of fifty-five miles per hour.

(c) Authority to decrease fifty-five mile limit. -- Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that the speed under this chapter upon open country highway outside a business or residence district is greater than is reasonable or safe under the conditions found to exist upon such street or highway, the local authority may determine and declare a reasonable and safe limit thereon but in no event less than thirty-five miles per hour and subject to subsection (e) of this section, which reduced limit shall be effective at all times or during hours of darkness or at other times as may be determined when appropriate signs giving notice thereof are erected upon such street or highway.

(d) Authority to decrease twenty-five mile limit. -- A municipality may in its discretion, but subject to subsection (e) of this section, authorize by ordinance lower speeds than those stated in subdivision (2), subsection (b), section one of this article upon local dedicated rights-of-way in a residential district or portions thereof, which lower speed shall be effective at all times or during hours of daylight or at such other times as may be determined when signs are erected giving notice of the authorized speed.

(e) Alteration of limits on state highways in municipalities. -- Alteration of limits on state highways or extensions thereof in a municipality by local authorities shall not be effective until such alteration has been approved by the commissioner of highways.

WV Legislature

§17C-6-3a. Minimum speed regulations; penalty.

(a) No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

(b) Whenever the commissioner or local authorities within their respective jurisdiction determine on the basis of an engineering and traffic investigation that slow speeds on any part of the highway consistently impede the normal and reasonable movement of traffic, the commissioner or such local authority may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with law.

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

WV Legislature

§17C-6-4. Special speed limitations on vehicles not designed for carrying passengers and equipped with pneumatic tires.

Subject to all other speed restrictions of this chapter no person shall drive a vehicle not designed for carrying passengers and equipped with pneumatic tires at a speed in excess of:

(1) Twenty miles per hour in any business district;

(2) Twenty-five miles per hour in any residence district;

(3) Forty miles per hour on open country highway;

(4) Trucks licensed at eight thousand pounds gross vehicle weight or less shall be permitted the same speed as passenger cars.

WV Legislature

§17C-6-5. Special speed limitations; penalty.

(a) No person shall drive any vehicle equipped with other than pneumatic tires at a speed greater than a maximum of ten miles per hour.

(b) No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is signposted as provided in this section.

(c) The commissioner of highways upon request from any local authority shall, or upon its own initiative may, conduct an investigation of any bridge or other elevated structure constituting a part of a highway, and if it shall thereupon find that such structure cannot with safety to itself withstand vehicles traveling at the speed otherwise permissible under this chapter, the commissioner shall determine and declare the maximum speed of vehicles which such structure can withstand, and shall cause or permit suitable signs stating such maximum speed to be erected and maintained at a distance of one hundred feet before each end of such structure.

(d) Upon the trial of any person charged with a violation of this section, proof of said determination of the maximum speed by said commissioner and the existence of said signs shall constitute conclusive evidence of the maximum speed which can be maintained with safety to such bridge or structure.

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

WV Legislature

§17C-6-6. Charging violations; rule in civil actions.

(a) In every charge of violation of any speed regulations in this chapter the complaint, also the summons or notice to appear, shall specify the speed at which the defendant is alleged to have driven, also the speed applicable within the district or at the location and in the event charge shall also be made of violation of any other provision of this chapter, the complaint and the summons or notice to appear shall also specify such other offense alleged to have been committed.

(b) The provision of this chapter declaring speed limitations shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence on the part of the defendant as the proximate cause of an accident.

WV Legislature

§17C-6-7. Prima facie evidence of speed by devices employing microwaves or reflected light; placing of signs relative to radar or laser.

The speed of a motor vehicle may be proved by evidence obtained by use of any device designed to measure and indicate or record the speed of a moving object by means of microwaves or reflected light, when such evidence is obtained by members of the State Police, by police officers of incorporated municipalities in classes one, two and three, as defined in chapter eight-a of this code, by police officers of incorporated class four municipalities except upon controlled access or partially controlled access highways, and by the sheriff and his or her deputies. The evidence so obtained shall be accepted as prima facie evidence of the speed of the vehicle: Provided, That the evidence of speed is obtained and detected by a certified law enforcement officer who has completed training for speed measuring devices used to obtain the speed of the motor vehicle: Provided, however, That the Governor's Committee on Crime, Delinquency and Correction shall, on or before January 1, 2012, establish or certify an eight-hour training and certification program and standards for speed measuring device training that certified law enforcement officers who utilize speed measuring devices must complete or otherwise satisfy in order for any evidence of speed detected by a speed measuring device put forward by the officer to be accepted of prima facie evidence. All certified law enforcement officers must have completed or otherwise satisfied the requirements of this section prior to January 1, 2013.

In order to inform and educate the public generally that speed of motor vehicles operating within the state is being tested by radar or laser mechanisms, the Division of Highways shall locate and place suitable and informative stationary and movable signs at strategic points on and along highways in each county of the state giving notice to the public that such radar or laser mechanisms are in use.

WV Legislature

§17C-6-7a. Prohibition of the use of traffic law photo-monitoring devices to detect or prove traffic law violations.

(a) As used in this section "traffic law photo-monitoring device" means an electronic system consisting of a photographic, video, or electronic camera and a means of sensing the presence of a motor vehicle that automatically produces photographs, videotape, or digital images of the vehicle, its operator, or its license plate.

(b) No police officer may utilize a traffic law photo-monitoring device to determine compliance with, or to detect a violation of, a municipal or county ordinance or any provision of this code that governs or regulates the operation of motor vehicles.

(c) A violation of a municipal or county ordinance or any provision of this code that governs or regulates the operation of motor vehicles may not be proved by evidence obtained by the use of a traffic law photo-monitoring device.

(d) The provisions of this section do not prohibit the use of any device designed to measure and indicate the speed of a moving object by means of microwaves or reflected light to obtain evidence to prove the speed of a motor vehicle pursuant to section seven of this article.

(e) The provisions of this section do not prohibit use of a traffic law photo-monitoring device for any other lawful purposes other than to obtain evidence to prove violations of municipal or county ordinances or any provision of this code governing or regulating the operation of motor vehicles.

WV Legislature

§17C-6-8. Racing on streets and highways prohibited; legislative findings; penalties; mandatory revocation of licenses.

The Legislature hereby determines and finds that the racing of motor vehicles on the public streets and highways of this state, whether within or in excess of the lawful speed limit (much of which racing is commonly referred to as "illegal street racing"), is extremely dangerous to life, limb, and property, and that such racing is an ever increasing problem. It is, therefore, hereby declared to be the public policy of this state to prohibit all forms of such racing on the public streets and highways, and to provide criminal penalties for, and require the revocation of, the operator's or chauffeur's license or nonresident privilege to drive, of those persons who are convicted of engaging in or aiding or abetting such racing.

(a) It is unlawful for any person to engage in, or aid or abet by serving as lookout or timer or in any other capacity whatever, any speed race, as defined herein, on any public street or highway in this state. For the purposes of this subdivision, "speed race" means:

(1) The operation of a motor vehicle in speed acceleration competition with another motor vehicle or motor vehicles; or

(2) The operation of a motor vehicle in speed acceleration competition against time; or

(3) The operation of a motor vehicle in speed competition with another motor vehicle, or motor vehicles where speed exceeds the lawful speed limit.

(b) Any person who violates the provisions of subdivision (a) of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be punished for a first offense by a fine of not less than $50 nor more than $100; and for a second offense by a fine of not less than $50 nor more than $500, or by imprisonment for not less than six days nor more than 60 days, or by both such fine and imprisonment; and for a third and each subsequent offense by a fine of not less than $100 nor more than $1000, or by imprisonment for not less than 60 days nor more than four months, or by both such fine and imprisonment. For the purposes of this section, a forfeiture of bail or collateral deposited to secure such person's appearance in court, which forfeiture has not been vacated, shall be equivalent to a final conviction. If at the time of any violation of the provisions of subdivision (a) of this section by any person as an operator of a motor vehicle, such person was not entitled to operate a motor vehicle in this state because his or her operator's or chauffeur's license, or privilege to drive in this state if such person be a nonresident, had earlier been suspended or revoked, then in addition to the offense, penalties, and mandatory revocation provided for in this section, the provisions of §17B-4-3 of this code shall be applicable.

(c) Whenever a person is convicted for a violation of the provisions of subdivision (a) of this section, which conviction has become final, the Commissioner of the Division of Motor Vehicles shall in addition to the penalties hereinbefore provided, forthwith:

(1) For a first offense, revoke the operator's or chauffeur's license of such person, or such

person's privilege to drive in this state if he or she be a nonresident, for a period of six months;

(2) For a second offense occurring within a two-year period, revoke the operator's or chauffeur's license of such person, or such person's privilege to drive in this state if he or she be a nonresident, for a period of two years; or

(3) For a third or any subsequent offense occurring within a five-year period, revoke the operator's or chauffeur's license of such person, or such person's privilege to drive in this state if he or she be a nonresident, for a period of five years.

Whenever a person is convicted as aforesaid for a second, third, or subsequent offense which occurred while such person's operator's or chauffeur's license, or privilege to drive in this state if he or she be a nonresident, was revoked pursuant to the provisions of this subdivision, the period or periods of mandatory revocation for such second, third, or subsequent offense shall be cumulative and shall run consecutively. If a person's junior or probationary operator's license is revoked in accordance with the provisions of this subdivision, such person may not apply for a regular operator's or chauffeur's license until he or she reaches 18 years of age or until the period of revocation has elapsed, whichever event shall last occur. Notwithstanding the provisions of §17B-3-8 of this code, any person whose operator's or chauffeur's license, or privilege to drive in this state if he or she be a nonresident, is revoked, under the provisions of this subdivision, may, following the period or periods of revocation, immediately apply for and obtain a new operator's or chauffeur's license or nonresident privilege to drive, as the case may be, if and only if the Commissioner of the Division of Motor Vehicles is satisfied, after investigation of the character, habits, and driving ability of such person, that it will be safe to permit such person to drive a motor vehicle on the public streets and highways. Any period of revocation imposed under the provisions of this subdivision shall be computed from the date of such revocation.

WV Legislature

§17C-6-9. Slow-moving vehicle emblem.

(a) All farm machinery and other machinery including all road construction machinery except when guarded by flagmen or flares, designed to operate at twenty-five miles per hour or less, traveling on a public highway during day or night shall display a triangular slow-moving emblem on the rear of the vehicle.

(b) The commissioner shall adopt standards and specifications for design and the position of mounting the slow- moving vehicle emblem, as well as requirements for certification of conformance. The requirements of such emblem shall be in addition to any lighting devices required by law.

(c) The use of this emblem shall be restricted to the use specified in subsection (a) and its use on any other type of vehicle or as a clearance marker on wide machinery or on stationary objects on the highway is prohibited.

WV Legislature

§17C-6-10. Enforcement of article with respect to operations of commercial motor vehicles.

In addition to enforcement by officers and other persons authorized by law, commercial vehicle enforcement officers of the Public Service Commission of West Virginia may enforce the provisions of this article as they relate to the operation of commercial motor vehicles.

WV Legislature

§17C-6-11. Special speed limitations when meeting or overtaking waste service vehicles; penalty.

(a) No person shall drive a motor vehicle and meet or overtake from either direction a stopped waste service vehicle at a speed in excess of fifteen miles per hour.

(b) For purposes of this section, "waste service vehicle" means any garbage collection vehicle, including a vehicle collecting recyclables or yard waste, which is used for curbside collection, makes frequent stops and is not fully automated.

(c) The speed limitation set forth in subsection (a) of this section applies only under the following circumstances:

(1) The waste service vehicle is identifiable as a waste service vehicle based on the vehicle configuration or markings on the vehicle;

(2) The waste service vehicle operator is giving a visual signal by means of a stationary sign to warn of the presence of workers or must use flashing lights as permitted in this code to caution other drivers; and

(3) The waste service vehicle is not located on a private driveway, controlled access highway, interstate highway, turnpike or road or highway with a center line and more than two lanes.

(d) Any person who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $300. If the person convicted of violating subsection (a) exceeded the speed limit by fifteen miles per hour or more or caused serious injury or death to a service vehicle worker, then the person shall be fined not less than $300 nor more than $1,000 or confined in jail for not more than one year, or both confined and fined.

WV Legislature

§17C-7-1. Driving on right side of roadway; exceptions; penalty.

(a) Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(2) When the right half of a roadway is closed to traffic while under construction or repair;

(3) Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or

(4) Upon a roadway designated and signposted for one-way traffic.

(b) Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

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

WV Legislature

§17C-7-2. Passing vehicles proceeding in opposite directions; penalty.

(a) Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one half of the main-traveled portion of the roadway as nearly as possible.

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

WV Legislature

§17C-7-3. Overtaking and passing vehicle or bicycle proceeding in same direction -- Passing on the left generally; penalty.

(a) The following rules govern the overtaking and passing of vehicles proceeding in the same direction subject to these limitations, exceptions, and special rules hereinafter stated:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall give an audible signal and pass to the left of the overtaken vehicle at a safe distance and may not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) The driver of a vehicle overtaking a bicycle traveling in the same direction shall pass to the left of the bicycle at a distance of not less than three feet at a careful and reduced speed, and may not again drive to the right side of the roadway until safely clear of the overtaken bicycle.

(3) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and may not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

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

WV Legislature

§17C-7-4. Same -- When overtaking on the right is permitted.

(a) The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:

(1) When the vehicle overtaken is making or about to make a left turn;

(2) Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction;

(3) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

(b) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main- traveled portion of the roadway.

WV Legislature

§17C-7-5. Same -- Limitations on overtaking on the left; penalty.

(a) No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within one hundred feet of any vehicle approaching from the opposite direction.

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

WV Legislature

§17C-7-6. Same -- Further limitations on driving to left of center of roadway; penalty.

(a) No vehicle shall at any time be driven to the left side of the roadway under the following conditions:

(1) When approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;

(2) When approaching within one hundred feet of or traversing any intersection or railroad grade crossing;

(3) When the view is obstructed upon approaching within one hundred feet of any bridge, viaduct, or tunnel.

(b) The foregoing limitations shall not apply upon a one-way roadway.

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

WV Legislature

§17C-7-7. Same -- No-passing zones; penalty.

(a) The commissioner of highways is hereby authorized to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones and when such signs or markings are in place and clearly visible to an ordinarily observant person every driver of a vehicle shall obey the directions thereof.

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

WV Legislature

§17C-7-8. One-way roadways and rotary traffic islands; penalty.

(a) The commissioner of highways may designate any highway or any separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof.

(b) Upon a roadway designated and signposted for one-way traffic a vehicle shall be driven only in the direction designated.

(c) A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

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

WV Legislature

§17C-7-9. Driving on roadways laned for traffic; penalty.

(a) Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane which is clearly marked as a left turn lane except in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation.

(3) Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such sign.

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

WV Legislature

§17C-7-10. Following too closely.

(a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(b) It shall be unlawful for the operator of any motor truck, registered for a gross weight of more than eight thousand pounds, bus, special mobile equipment or any motor vehicle drawing another vehicle operating upon any roadway outside of a business or residence district, to follow within two hundred feet of another motor truck, bus, special mobile equipment or any motor vehicle drawing another vehicle: Provided, That this provision shall not be construed to (1) prevent overtaking and passing, (2) apply upon any lane specially designated for the use of motor trucks or combinations of vehicles, or within any section of a roadway posted or marked as a "no-passing zone," (3) apply to any convoy of vehicles of the military service of the United States or of this state and (4) apply to funeral processions.

(c) Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to (1) funeral processions; or (2) any convoy of vehicles of the military service of the United States or of this state.

WV Legislature

§17C-7-11. Driving on divided highways; penalty.

(a) Whenever any highway has been divided into two roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway and no vehicle shall be driven over, across, or within any such dividing space, barrier, or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection established by public authority.

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

WV Legislature

§17C-7-12. Controlled-access roadway -- Driving onto or from; penalty.

(a) No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

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

WV Legislature

§17C-7-13. Restrictions on use of controlled-access roadway.

The state road commission may by resolution or order entered in its minutes and local authorities may by ordinance with respect to any controlled-access roadway under their respective jurisdictions prohibit the use of any such roadway by pedestrians, bicycles, or other nonmotorized traffic or by any person operating a motor-driven cycle.

The state road commission or the local authority adopting any such prohibitory regulation shall erect and maintain official signs on the controlled-access roadway on which such regulations are applicable and when so erected no person shall disobey the restrictions stated on such signs.

WV Legislature

§17C-8-1. Required position and method of turning at intersections.

The driver of a vehicle intending to turn at an intersection shall do so as provided in this article.

WV Legislature

§17C-8-2. Right turns; penalty.

(a) Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

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

WV Legislature

§17C-8-3. Left turns on two-way roadways; penalty.

(a) At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

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

WV Legislature

§17C-8-4. Left turns on other than two-way roadways; penalty.

(a) At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

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

WV Legislature

§17C-8-5. Local authorities may specify different course for turns.

Local authorities in their respective jurisdictions may cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this article be traveled by vehicles turning at an intersection, and when markers, buttons or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs.

WV Legislature

§17C-8-6. Turning on curve or crest of grade prohibited; penalty.

(a) No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet.

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

WV Legislature

§17C-8-7. Starting parked, etc., vehicle.

No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety.

WV Legislature

§17C-8-8. Turning movements and required signals; penalty.

(a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in sections two, three, four or five of this article, or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

(b) A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

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

WV Legislature

§17C-8-9. Signals to be given by hand and arm or signal device.

Any stop or turn signal when required herein shall be given either by means of the hand and arm or by a signal lamp or lamps or mechanical signal device, but when a vehicle is so constructed or loaded that hand-and-arm signal would not be visible both to the front and rear of such vehicle then said signals must be given by such a lamp or lamps or signal device.

WV Legislature

§17C-8-10. Method of giving hand-and-arm signals.

All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:

(1) Left turn. -- Hand and arm extended horizontally.

(2) Right turn. -- Hand and arm extended upward.

(3) Stop or decrease speed. -- Hand and arm extended downward.

WV Legislature

§17C-9-1. Vehicle approaching or entering intersection.

(a) The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different highway.

(b) When two vehicles enter an intersection from a different highway at approximately the same time the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

(c) The right-of-way rules declared in subsections (a) and (b) are modified at through highways and otherwise as hereinafter stated in this article.

WV Legislature

§17C-9-2. Vehicle turning left at intersection.

The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver, having so yielded and having given a signal when and as required by this chapter, may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right- of-way to the vehicles making the left turn.

WV Legislature

§17C-9-3. Vehicle entering through highway or stop intersections.

(a) The driver of a vehicle shall stop as required by section five, article twelve of this chapter at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection from said through highways or which are approaching so closely on said through highway as to constitute an immediate hazard, but said driver having so yielded may proceed.

(b) The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.

WV Legislature

§17C-9-4. Vehicle entering highway from private road or driveway.

The driver of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right-of-way to all vehicles approaching on said highway.

WV Legislature

§17C-9-5. Operation of vehicles and streetcars on approach of authorized emergency vehicles.

(a) Upon the immediate approach of an authorized emergency vehicle equipped with at least one flashing lighted lamp of a color authorized by section twenty-six, article fifteen of this chapter, which is visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle other than a police vehicle when operated as an authorized emergency vehicle, and when the driver is giving audible signal by siren, exhaust whistle, or bell:

(1) The driver of every other vehicle shall yield the right- of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(2) Upon the approach of an authorized emergency vehicle, as above stated, the motorman of every streetcar shall immediately stop such car clear of any intersection and keep it in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

WV Legislature

§17C-9-6. Misdemeanor to violate provisions of article; penalty.

Any person violating the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $200; upon a second conviction within one year thereafter, shall be fined not more than $300; and upon a third or subsequent conviction, shall be fined not more than $1,000.

WV Legislature

§17C-10-1. Pedestrians subject to traffic regulations; powers of local authorities.

(a) Pedestrians shall be subject to traffic-control signals at intersections as provided in section five, article three of this chapter unless required by local ordinance to comply strictly with such signals, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions stated in this article.

(b) Local authorities are hereby empowered by ordinance to require that pedestrians shall strictly comply with the directions of any official traffic-control signal and may by ordinance prohibit pedestrians from crossing any roadway in a business district or any designated highways except in a crosswalk.

WV Legislature

§17C-10-2. Pedestrians' right-of-way in crosswalks.

(a) When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield. This provision shall not apply under the conditions stated in section three paragraph (b) of this article.

(b) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

WV Legislature

§17C-10-3. Crossing at other than crosswalks.

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

WV Legislature

§17C-10-4. Drivers to exercise due care.

Notwithstanding the foregoing provisions of this article every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

WV Legislature

§17C-10-5. Pedestrians to use right half of crosswalks.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

WV Legislature

§17C-10-6. Pedestrians on roadways; soliciting rides.

(a) Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(b) Where sidewalks are not provided any pedestrian walking along and upon a highway shall when practicable walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

(c) No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any vehicle.

WV Legislature

§17C-10-7. Penalty for pedestrians violating the provisions of this article.

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

WV Legislature

§17C-10-8. Persons working on streets and highways.

The driver of a vehicle shall yield the right-of-way to persons engaged in maintenance or construction work on a street or highway whenever he is notified of their presence by an official traffic-control device or flagman.

WV Legislature

§17C-10A-1. Definitions.

For purposes of this article, the definition of an "electric personal assistive mobility device" is the same definition as previously set forth in section sixty-six, article one of this chapter, and "operator" shall refer to the operator of an electric personal assistive mobility device.

WV Legislature

§17C-10A-2. Equipment requirements and operating standards for electric personal assistive mobility devices; applicability of motor vehicle code; penalties.

(a) An electric personal assistive mobility device shall be equipped with:

(1) Front, rear and side reflectors;

(2) A braking system that enables the operator to bring the device to a controlled stop; and

(3) If operated at any time from one-half hour after sunset to one-half hour before sunrise, a lamp that emits a white light that sufficiently illuminates the area in front of the device.

(b) An operator of an electric personal assistive mobility device traveling on a sidewalk, roadway or bicycle path shall have the rights and duties of a pedestrian and shall exercise due care to avoid colliding with pedestrians. An operator shall yield the right of way to pedestrians.

(c) Except as provided in this section, no other provisions of the motor vehicle code shall apply to electric personal assistive mobility devices.

(d) An operator who violates a provision of subsection (a) or (b) of this section shall receive a warning for the first offense. For a second or subsequent offense, the operator shall be punished by a fine of no less than $10 and no greater than $100.

WV Legislature

§17C-11-1. Obedience to article; duty of parents and guardians; applicability of article to bicycles.

(a) It is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this article.

(b) The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this chapter.

(c) These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

WV Legislature

§17C-11-2. Traffic laws apply to persons riding bicycles.

Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except as to special regulations in this article and except as to those provisions of this chapter which by their nature can have no application.

WV Legislature

§17C-11-3. Riding on bicycle seats; carrying more than one person on bicycle.

(a) A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.

(b) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

WV Legislature

§17C-11-4. Clinging to vehicles.

No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle shall attach the same or himself to any streetcar or vehicle upon a roadway.

WV Legislature

§17C-11-5. Riding on roadways and bicycle paths.

(a) Any person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride in the lane marked for bicycle use or, if no lane is marked for bicycle use, as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:

(1) When overtaking and passing another bicycle or vehicle proceeding in the same direction;

(2) When preparing for a left turn at an intersection or into a private road or driveway; or

(3) When reasonably necessary to avoid any condition or potential conflict, including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane. For the purposes of this subsection, a "substandard-width lane" is a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

(b) Any person operating a bicycle upon a one-way roadway with two or more marked traffic lanes may ride as near the left-hand curb or edge of such roadway as practicable.

(c) Persons riding bicycles upon a roadway may not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

WV Legislature

§17C-11-6. Carrying articles.

No person operating a bicycle shall carry any package, bundle, or article which prevents the driver from keeping at least one hand upon the handle bars.

WV Legislature

§17C-11-7. Lamps and other equipment on bicycles.

(a) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which emits a white light visible from a distance of at least five hundred feet to the front and with a red reflector on the rear of a type approved by the department which shall be visible from all distances from fifty feet to three hundred feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred feet to the rear may be used in addition to the red reflector.

(b) Every bicycle shall be equipped with a brake that enables the operator to make the braked wheels skid on dry, level and clean pavement.

WV Legislature

§17C-11-8. Electric bicycles; requirements; exclusions; age restrictions.

(a) The operator of an electric bicycle has all of the rights and privileges and is subject to all of the duties applicable to the driver of a vehicle subject to this chapter, except as otherwise provided by this section and except as to those provisions of this chapter which by their nature can have no application.

(b) A person owning or operating an electric bicycle is not subject to the provisions of §17A-1-1 *et seq.*, §17B-1-1 *et seq.*, or §17D-1-1 *et seq.* of this code, relating to registration, title, driver's license, and financial responsibility requirements.

(c) A person may not tamper with or modify an electric bicycle so as to change the motor-powered speed capability or motor engagement between pedal-assist and throttle-assist types of engagement. If a motor on an electric bicycle is modified so that a limit established in §17C-1-70 of this code is exceeded, that vehicle is no longer an electric bicycle. The provisions of this subsection are not applicable to a modified electric bicycle operated solely and exclusively on a person's own property.

(d) An electric bicycle must comply with the equipment and manufacturing requirements for bicycles adopted by the United States Consumer Product Safety Commission (16 C.F.R. Part 1512).

(e) The motor on an electric bicycle must disengage or cease to propel the electric bicycle when the operator stops pedaling, or when the operator applies the brakes and stops pedaling.

(f) A Class 3 electric bicycle must be equipped with a speedometer that displays the speed the electric bicycle is traveling in miles per hour.

(g) Class 2 electric bicycles are permitted to use a throttle to propel the bicycle.

(h) Electric bicycles operated on public roadways, public bicycle paths, public multiuse paths, and other public rights-of-way where bicycles are permitted to travel are subject to the following restrictions:

(1) Class 1, and Class 2 electric bicycles being used on roads and trails where traditional, non-electronic bicycle use is allowed will be given the same rights and privileges of a traditional, non-electric bicycle and will be subject to all of the duties of a traditional, non-electric bicycle. This rule intends to facilitate increased access to public lands that may otherwise be inaccessible to those with disabilities, health issues, or age-related limitations.

(2) A Class 3 electric bicycle may not be operated on a bicycle path, multiuse trail, or single-use trail unless it is within a highway or roadway: *Provided*, That the provisions of this subdivision are not applicable to a bicycle path, multiuse trail, or single-use trail if the municipality, local authority, or governing body of a state agency that has jurisdiction over the bicycle path, multiuse trail, or single-use trail expressly permits that operation.

WV Legislature

(3) Electric bicycles will not be given special access beyond what traditional or non-electric bicycles are allowed. For example, electric bicycles will not be allowed on roads or trails or in areas where traditional, non-electric bicycle travel is prohibited.

(4) This subsection may not be construed to limit the authority of the owner of a private way or the owner of private property to restrict or allow the operation of electric bicycles on the way or property.

(i) Age restrictions related to the operation of electric bicycles are as follows:

(2) A person under 15 years of age who is an operator or passenger on an electric bicycle shall wear a properly fitted and fastened bicycle helmet, pursuant to the Child Bicycle Safety Act, §17C-11A-1 *et seq*. of this code.

(j) A person under the influence of alcohol or controlled substances shall not operate a Class 1, Class 2 or Class 3 electric bicycle.

WV Legislature

§17C-11A-1. Short title.

This article shall be known and may be cited as the "Child Bicycle Safety Act".

WV Legislature

§17C-11A-2. Legislative findings and purpose.

(a) The Legislature hereby finds and declares that:

(1) Disability and death of children resulting from injuries sustained in bicycling accidents are a serious threat to the public health, welfare and safety of the people of this state, and the prevention of such disability and death is a goal of such people;

(2) Head injuries are the leading cause of disability and death from bicycling accidents; and

(3) The risk of head injury from bicycling accidents is significantly reduced for bicyclists who wear proper protective bicycle helmets; yet helmets are worn by fewer than five percent of child bicyclists nationwide.

(b) The purpose of this article is to reduce the incidence of disability and death resulting from injuries incurred in bicycling accidents by requiring that while riding on a bicycle on public roads, public bicycle paths and other public rights-of-way of this state, all bicycle operators and passengers under fifteen years of age wear approved protective bicycle helmets.

WV Legislature

§17C-11A-3. Definitions.

As used in this article:

(a) "Bicycle" means a human-powered vehicle with wheels designed to transport, by the action of pedaling, one or more persons seated on one or more saddle seats on its frame. Such term also includes a human-powered vehicle, and any attachment to such vehicle designed to transport by pedaling when the vehicle is used on a public roadway, public bicycle path or other public right-of-way, but does not include a tricycle.

(b) "Tricycle" means a three-wheeled human-powered vehicle designed for use as a toy by a single child under the age of six years, the seat of which is no more than two feet from ground level.

(c) "Public roadway" means a right-of-way under the jurisdiction and control of this state or a local political subdivision thereof for use primarily by motor vehicles.

(d) "Public bicycle path" means a right-of-way under the jurisdiction and control of this state or a local political subdivision thereof for use primarily by bicycles and pedestrians.

(e) "Other public right-of-way" means any right-of-way other than a public roadway or public bicycle path that is under the jurisdiction and control of this state or a local political subdivision thereof and is designed for use and used by vehicular or pedestrian traffic.

(f) "Protective bicycle helmet" means a piece of headgear which meets or exceeds the impact standards for protective bicycle helmets set by the American national standards institute (ANSI) or the snell memorial foundation's standards for protective headgear or American society for testing and materials (ASTM) for use in bicycling.

(g) "Passenger" means any person who travels on a bicycle in any manner except as an operator.

(h) "Operator" means a person who travels on a bicycle seated on a saddle seat from which that person is intended to and can pedal the bicycle.

WV Legislature

§17C-11A-4. Requirements for helmet use.

(a) It is unlawful for any person under fifteen years of age to operate or be a passenger on a bicycle or any attachment to a bicycle used on a public roadway, public bicycle path or other public right-of-way unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit, fastened securely upon the head with the straps of the helmet.

(b) It is unlawful for any parent or legal guardian of a person under fifteen years of age to knowingly permit such person to operate or be a passenger on a bicycle or on any attachment to a bicycle used on a public roadway, public bicycle path or other public right-of-way unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit, fastened securely upon the head with the straps of the helmet.

WV Legislature

§17C-11A-5. Sale of bicycle helmets.

Any helmet sold or offered for sale for use by operators and passengers of bicycles shall be conspicuously labeled in accordance with the standard described in subsection (f), section three of this article, which shall constitute the manufacturer's certification that the helmet conforms to the applicable safety standards.

WV Legislature

§17C-11A-6. Civil actions.

A violation of section four of this article is not admissible as evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages, and shall not be admissible in mitigation of damages.

WV Legislature

§17C-11A-7. Penalties.

(a) Notwithstanding the provisions of section one, article eighteen of this chapter, any parent or legal guardian violating any requirement set forth in section four of this article shall be fined $10 or be required to perform two hours in community service related to a child injury prevention program which includes injury prevention education or both fined and required to perform such community service. Notwithstanding the provisions of section one, article eleven, chapter eight of this code, no court costs may be assessed to any person violating the requirements of section four of this article.

(b) In the case of a first violation of section four of this article, the court may waive the fine upon receipt of satisfactory proof that the person has a helmet or within a reasonable time from the date of the violation, purchased or otherwise obtained, a protective bicycle helmet.

(c) It is an absolute defense to a charge for a violation of this article that a parent or legal guardian is unable to pay for the protective bicycle helmet. Inability to pay may be demonstrated by the filing of a financial affidavit in accordance with the provisions of subsection (c), section one, article two, chapter fifty-nine of this code. Any person who demonstrates inability to pay shall be referred to the Governor's highway safety program for assistance in obtaining the appropriate helmet or helmets.

WV Legislature

§17C-11A-8. Ordinances.

Nothing in this article shall limit the right of any municipality to enact an ordinance on the use of bicycle helmets.

WV Legislature

§17C-11A-9. Bicycle safety program.

(a) Commencing on July 1, 1996, the Governor's highway safety program shall initiate and conduct an educational and public awareness program designed to encourage people to comply with the requirements of this article.

(b) The Governor's highway safety program shall make application for grants or any other funding to subsidize the costs of purchasing helmets for people who qualify under the provisions of subsection (c), section seven of this article.

WV Legislature

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

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

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

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

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

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

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

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

WV Legislature

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

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

WV Legislature

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

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

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

(1) Every bus transporting passengers;

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

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

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

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

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

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

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

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

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

(f) No stop need be made at:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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§17C-13-1. Stopping, standing or parking outside of business or residence districts; penalty.

(a) Upon any highway outside of a business or residence district no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practicable to stop, park, or so leave such vehicle off such part of said highway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicles shall be available from a distance of two hundred feet in each direction upon such highway. (b) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100; upon a second conviction within one year thereafter, shall be fined not more than $200; and upon a third or subsequent conviction, shall be fined not more than $500.

(c) This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

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§17C-13-2. Officers authorized to remove illegally stopped vehicles.

(a) Whenever any police officer finds a vehicle standing upon a highway in violation of any of the foregoing provisions of this article such officer is hereby authorized to move such vehicle, or require the driver or other person in charge of the vehicle to move the same, to a position off the paved or main- traveled part of such highway.

(b) Whenever any police officer finds a vehicle unattended upon any bridge or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic, such officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or other place of safety.

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§17C-13-3. Stopping, standing or parking prohibited in specified places; penalty.

(a) No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:

(1) On a sidewalk;

(2) In front of a public or private driveway;

(3) Within an intersection;

(4) Within fifteen feet of a fire hydrant;

(5) In a properly designated fire lane;

(6) On a crosswalk;

(7) Within twenty feet of a crosswalk at an intersection;

(8) Within thirty feet upon the approach to any flashing beacon, stop sign or traffic-control signal located at the side of a roadway;

(9) Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;

(10) Within fifty feet of the nearest rail of a railroad crossing;

(11) Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of the entrance (when properly signposted);

(12) Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;

(13) On the roadway side of any vehicle stopped or parked at the edge or curb of a street;

(14) On any bridge or other elevated structure on a highway or within a highway tunnel;

(15) At any place where official signs prohibit stopping;

(16) Within twenty feet of any mail receptacle served regularly by a carrier using a motor vehicle for daily deliveries, if the parking interferes with or causes delay in the carrier's schedule;

(17) On any controlled-access highway;

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(18) At any place on any highway where the safety and convenience of the traveling public is thereby endangered;

(19) In front of a wheelchair accessible ramp or curb cut which is part of a sidewalk designed for use by the general public when the ramp or curb cut is properly marked with blue paint.

(b) No person shall move a vehicle not lawfully under his or her control into any prohibited area or away from a curb such distance as is unlawful.

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

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§17C-13-4. Right and left parallel parking; angle parking; highway signs restricting parking, etc.; penalty.

(a) Except as otherwise provided in this section, every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within eighteen inches of the right-hand curb. Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100; upon a second conviction within one year thereafter, shall be fined not more than $200; and upon a third or subsequent conviction, shall be fined not more than $500.

(b) Local authorities may by ordinance permit parking of vehicles with the left-hand wheels adjacent to and within eighteen inches of the left-hand curb of a one-way roadway.

(c) Local authorities may by ordinance permit angle parking on any roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the Division of Highways has determined by resolution or order entered in its minutes that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(d) The Division of Highways with respect to highways under its jurisdiction may place signs prohibiting or restricting the stopping, standing, or parking of vehicles on any highway where in its opinion, as evidenced by resolution or order entered in its minutes, such stopping, standing, or parking is dangerous to those using the highway or where the stopping, standing, or parking of vehicles would unduly interfere with the free movement of traffic thereon. Such signs shall be official signs and no person shall stop, stand, or park any vehicle in violation of the restrictions stated on such signs. Any person violating the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100; upon a second conviction within one year thereafter, shall be fined not more than $200; and upon a third or subsequent conviction, shall be fined not more than $500.

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§17C-13-5. Removal of vehicles parked, etc., on highways in emergencies; liability for costs of removal and storage; liens for towing and storage.

Whenever a vehicle has been stopped, parked or left standing upon any part of a highway or constitutes an obstruction to the restoration of traffic flow as the result of an accident or other emergency, any police officer or employee of the Division of Highways, duly authorized by the commissioner, may remove or order the removal of the vehicle, by towing or otherwise, to the nearest available established garage or parking lot for storage until called for by the owner or his or her agent. The owner is liable for the reasonable cost of removal and storage, and until payment of the cost the garage or parking lot operator may retain possession of the vehicle subject to a lien for the amount due. The garage or parking lot operator may enforce his or her lien for towing and storage in the manner provided in section fourteen, article eleven, chapter thirty-eight of this code for the enforcement of other liens.

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§17C-13-6. Stopping, standing, or parking privileges for persons with a mobility impairment; disabled veterans and Purple Heart designations; definitions; qualification; special registration plates and removable windshield placards; expiration, application; violation; penalties.

(a)(1) The commissioner may issue up to two special registration plates or removable windshield placards to a person with a mobility impairment or a West Virginia organization which transports persons with disabilities and facilitates the mobility of its customers, patients, students, or persons otherwise placed under its responsibility.

(2) Special registration plates or placards may only be issued for placement on a Class A or Class G motor vehicle registered under the provisions of §17A-3-1 *et seq.* of this code.

(3) The applicant shall specify whether he or she is applying for a special registration plate, a removable windshield placard, or both on the application form prescribed and furnished by the commissioner.

(4) The applicant shall submit, with the application, a certificate issued by any physician, chiropractor, advanced nurse practitioner, or physician assistant who is licensed in this state, stating that the applicant has a mobility impairment, or that the applicant is an organization which regularly transports a person with a mobility impairment as defined in this section. The physician, chiropractor, advanced nurse practitioner, or physician assistant shall specify in the certificate whether the disability is temporary or permanent. A disability which is temporary is one expected to last for a limited duration and improve during the applicant's life. A disability which is permanent is one which is expected to last during the duration of the applicant's life.

(5) Upon receipt of the completed application, the physician's certificate, and the regular registration fee for the applicant's vehicle class, if the commissioner finds that the applicant qualifies for the special registration plate or a removable windshield placard as provided in this section, he or she shall issue to the applicant a special registration plate (upon remittance of the regular registration fee) or a removable windshield placard (red for temporary and blue for permanent), or both. Upon request, the commissioner shall also issue to any otherwise qualified applicant one additional placard having the same expiration date as the applicant's original placard. The placard shall be displayed by hanging it from the interior rearview mirror of the motor vehicle so that it is conspicuously visible from outside the vehicle when parked in a designated accessible parking space. The placard may be removed from the rearview mirror whenever the vehicle is being operated to ensure clear vision and safe driving. Only in the event that there is no suitable rearview mirror in the vehicle may the placard be displayed on the dashboard of the vehicle.

(6) Organizations which transport people with disabilities will be provided with a placard which will permit them to park in a designated area for the length of time necessary to load and unload passengers. These vehicles must be moved to a non-designated space once the loading or unloading process is complete.

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(b) As used in this section, the following terms have the meanings ascribed to them in this subsection:

(1) A person or applicant with a "mobility impairment" means a person who is a citizen of West Virginia and as determined by a physician, allopath or osteopath, chiropractor, advanced nurse practitioner, or physician assistant licensed to practice in West Virginia:

(A) Cannot walk 200 feet without stopping to rest;

(B) Cannot walk without the use of or assistance from a brace, cane, crutch, prosthetic device, wheelchair, other assistive device, or another person;

(C) Is restricted by lung disease to such an extent that the person’s force (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than 60 mm/hg on room air at rest;

(D) Uses portable oxygen;

(E) Has a cardiac condition to such an extent that the person’s functional limitations are classified in severity as Class III or Class IV according to standards established by the American Heart Association; or

(F) Is severely limited in his or her ability to walk because of an arthritic, neurological, or other orthopedic condition.

(2) "Special registration plate" means a registration plate that displays the international symbol of access, as adopted by the Rehabilitation International Organization in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled, in a color that contrasts with the background, in letters and numbers the same size as those on the plate, and which may be used in lieu of a regular registration plate.

(3) "Removable windshield placard" (permanent or temporary) means a two-sided, hanger-style placard measuring three inches by nine and one-half inches, with all of the following on each side:

(A) The international symbol of access, measuring at least three inches in height, centered on the placard, in white on a blue background for permanent designations and in white on a red background for temporary designations;

(B) An identification number measuring one inch in height;

(C) An expiration date in numbers measuring one inch in height for a temporary placard; and

(D) The seal or other identifying symbol of the issuing authority.

(4) "Regular registration fee" means the standard registration fee for a vehicle of the same

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class as the applicant’s vehicle.

(5) "Public entity" means state or local government or any department, agency, special purpose district, or other instrumentality of a state or local government.

(6) "Public facility" means all or any part of any buildings, structures, sites, complexes, roads, parking lots, or other real or personal property, including the site where the facility is located.

(7) "Place or places of public accommodation" means a facility or facilities operated by a private entity whose operations affect commerce and fall within at least one of the following categories:

(A) Inns, hotels, motels, and other places of lodging;

(B) Restaurants, bars, or other establishments serving food or drink;

(C) Motion picture houses, theaters, concert halls, stadiums, or other places of exhibition or entertainment;

(D) Auditoriums, convention centers, lecture halls, or other places of public gatherings;

(E) Bakeries, grocery stores, clothing stores, hardware stores, shopping centers, or other sales or rental establishments;

(F) Laundromats, dry cleaners, banks, barber and beauty shops, travel agencies, shoe repair shops, funeral parlors, gas or service stations, offices of accountants and attorneys, pharmacies, insurance offices, offices of professional health care providers, hospitals, or other service establishments;

(G) Terminals, depots, or other stations used for public transportation;

(H) Museums, libraries, galleries, or other places of public display or collection;

(I) Parks, zoos, amusement parks, or other places of recreation;

(J) Public or private nursery, elementary, secondary, undergraduate, or post-graduate schools or other places of learning and day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies, or other social services establishments; and

(K) Gymnasiums, health spas, bowling alleys, golf courses, or other places of exercise or recreation.

(8) "Commercial facility" means a facility whose operations affect commerce and which are intended for nonresidential use by a private entity.

(9) "Accessible parking" formerly known as "handicapped parking" is the present phrase

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consistent with language within the Americans with Disabilities Act (ADA).

(10) "Parking enforcement personnel" includes any law-enforcement officer as defined by §30-29-1 of this code, and private security guards, parking personnel, and other personnel authorized by a city, county, or the state to issue parking citations.

(11) “Purple Heart” means the decoration known as the Purple Heart that may only be awarded to a person who is a member of the armed forces at the time the person is killed or wounded under circumstances otherwise qualifying that person for award of the Purple Heart as set forth in 10 U.S.C. § 1131.

Any person who falsely or fraudulently obtains or seeks to obtain the special plate or the removable windshield placard provided for in this section, and any person who falsely certifies that a person is mobility impaired in order that an applicant may be issued the special registration plate or windshield placard under this section is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $500. Any person who fabricates, uses, or sells unofficially issued windshield placards to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $500 per placard fabricated, used, or sold. Any person who fabricates, uses, or sells unofficially issued identification cards to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $700 per identification card fabricated, used, or sold. Any person who fabricates, uses, or sells unofficially issued labels imprinted with a future expiration date to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $700. Any person covered by this section who sells or gives away their officially issued windshield placard to any person or organization not qualified to apply for or receive the placard and then reapplies for a new placard on the basis it was stolen is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she, or they may otherwise incur, shall lose their right to receive or use a special placard or special license plate for a period of not less than five years.

(c) The commissioner shall set the expiration date for special registration plates on the last day of a given month and year, to be valid for a minimum of one year but not more than five years, after which time a new application must be submitted to the commissioner. After the commissioner receives the new application, signed by a certified physician, chiropractor, advanced nurse practitioner, or physician assistant if required under this subsection, the commissioner shall issue: (1) A new special registration plate or new permanent or temporary removable windshield placard; or (2) official labels imprinted with the new expiration date and designed so as to be placed over the old dates on the original registration plate or windshield placard: *Provided*, That a new application under this subsection must not be accompanied by a certificate pursuant to the provisions of §17C-13-6(a)(4) if a prior application is on file with the commissioner, such application

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includes a certificate issued pursuant to the provisions of §17C-13-6(a)(4), such certificate specifies that the applicant's disability is permanent for life, and such certificate was made within 10 years of the new application.

(d) The commissioner shall set the expiration date of temporary removable windshield placards to be valid for a period of approximately six months after the application was received and approved by the commissioner. Permanent removable windshield placards are valid for the duration of the applicant's life.

(e) The commissioner shall issue to each applicant who is granted a special registration plate or windshield placard an identification card bearing the applicant's name, assigned identification number, and expiration date. The applicant shall thereafter carry this identification card on his or her person whenever parking in an accessible parking space. The identification card shall be identical in design for both registration plates and removable windshield placards.

(f) An accessible parking space should comply with the provisions of the Americans with Disabilities Act accessibility guidelines, contained in 28 C.F.R. Part 36, Appendix A, Section 4.6. In particular, the parking space should be a minimum of eight feet wide with an adjacent eight-foot access aisle for vans having side mounted hydraulic lifts or ramps, or a five-foot access aisle for standard vehicles. Access aisles should be marked using diagonal two- to four-inch-wide stripes spaced every 12 or 24 inches apart along with the words "no parking" in painted letters which are at least 12 inches in height. All accessible parking spaces must have a signpost in front or adjacent to the accessible parking space displaying the international symbol of access sign mounted at a minimum of eight feet above the pavement or sidewalk and the top of the sign. Lines or markings on the pavement or curbs for parking spaces and access aisles may be in any color, although blue is the generally accepted color for accessible parking.

(g) A vehicle displaying a disabled veterans special registration plate issued pursuant to §17A-3-14d of this code shall be recognized and accepted as meeting the requirements of this section.

(h) A vehicle from any other state, United States territory, or foreign country displaying an officially issued special registration plate, placard, or decal bearing the international symbol of access shall be recognized and accepted as meeting the requirements of this section, regardless of where the plate, placard, or decal is mounted or displayed on the vehicle.

(i) Stopping, standing, or parking places marked with the international symbol of access shall be designated in close proximity to all public entities, including state, county, and municipal buildings and facilities, places of public accommodation, and commercial facilities. These parking places shall be reserved solely for persons with a mobility impairment and disabled veterans at all times.

Any public entity, place of public accommodation, and commercial facility may designate any

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of its parking places for Purple Heart recipients by marking such parking place in purple color, adding “Purple Heart” or the Purple Heart symbol on or at the parking place, and posting a sign or instruction declaring such parking place to be designated for Purple Heart recipients. Any parking place so designated shall be reserved solely for vehicles that display a Purple Heart plate authorized pursuant to §17A-3-14d of this code in which a Purple Heart recipient is a driver or occupant when parking.

(j) Any person whose vehicle properly displays a valid, unexpired special registration plate or removable windshield placard may park the vehicle for unlimited periods of time in parking zones unrestricted as to length of parking time permitted: *Provided*, That this privilege does not mean that the vehicle may park in any zone where stopping, standing, or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard. To the extent any provision of any ordinance of any political subdivision of this state is contrary to the provisions of this section, the provisions of this section take precedence and apply.

The parking privileges provided for in this subsection apply only during those times when the vehicle is being used for the loading or unloading of a person with a mobility impairment. Any person who knowingly exercises, or attempts to exercise, these privileges at a time when the vehicle is not being used for the loading or unloading of a person with a mobility impairment is guilty of a misdemeanor and, upon first conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $200; upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $300; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $500.

(k) Any person whose vehicle does not display a valid, special registration plate or removable windshield placard may not stop, stand, or park a motor vehicle in an area designated, zoned, or marked for accessible parking with signs or instructions displaying the international symbol of access, either by itself or with explanatory text. The signs may be mounted on a post or a wall in front of the accessible parking space and instructions may appear on the ground or pavement, but use of both methods is preferred. Accessible parking spaces for vans having an eight-foot adjacent access aisle should be designated as "van accessible" but may be used by any vehicle displaying a valid special registration plate or removable windshield placard.

Any person whose vehicle does not display a Purple Heart plate authorized pursuant to §17A-3-14d of this code may not stop, stand, or park a motor vehicle in a parking place marked in purple color, with “Purple Heart” or the Purple Heart symbol, and posted with a sign or instruction declaring such parking place to be designated for Purple Heart recipients.

Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined $200; upon second conviction thereof, in addition to

any other penalty he or she may otherwise incur, shall be fined $300; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $500: *Provided*, that it a shall be an absolute defense to any alleged violation of this section for parking in a parking space designated for Purple Heart recipients, if the accused person, or their passenger, produces evidence that they are a valid recipient of the Purple Heart.

(l) All signs that designate areas as "accessible parking" or that display the international symbol of access or indicate that the space is designated or reserved for Purple Heart recipients shall also include the words "up to $500 fine".

(m) No person may stop, stand, or park a motor vehicle in an area designated or marked off as an access aisle adjacent to a van-accessible parking space or regular accessible parking space. Any person, including a driver of a vehicle displaying a valid removable windshield placard or special registration plate, who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined $200; upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $300; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined $500.

(n) Parking enforcement personnel who otherwise enforce parking violations may issue citations for violations of this section and shall reference the number on the vehicle’s license plate, since the driver normally will not be present.

(o) Law-enforcement agencies may establish a program to use trained volunteers to collect information necessary to issue citations to persons who illegally park in designated accessible or Purple Heart parking spaces. Any law-enforcement agency choosing to establish a program shall provide for workers’ compensation and liability coverage. The volunteers shall photograph the illegally parked vehicle and complete a form, to be developed by supervising law-enforcement agencies, that includes the vehicle’s license plate number, date, time, and location of the illegally parked vehicle. The photographs must show the vehicle in the accessible or Purple Heart space and a readable view of the license plate. Within the discretion of the supervising law-enforcement agency, the volunteers may issue citations or the volunteers may submit the photographs of the illegally parked vehicle and the form to the supervising law-enforcement agency, who may issue a citation, which includes the photographs and the form, to the owner of the illegally parked vehicle. Volunteers shall be trained on the requirements for citations for vehicles parked in marked, zoned, or designated accessible or Purple Heart parking areas by the supervising law-enforcement agency.

(p) Local authorities who adopt the basic enforcement provisions of this section and issue their own local ordinances shall retain all fines and associated late fees. These revenues shall be used first to fund the provisions of subsection (o) of this section, if adopted by local authorities, or otherwise shall go into the local authorities’ General Revenue Fund. Otherwise, any moneys collected as fines shall be collected for and remitted to the state.

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(q) The commissioner shall prepare and issue a document to applicants describing the privileges accorded a vehicle having a special registration plate and removable windshield placard as well as the penalties when the vehicle is being inappropriately used as described in this section and shall include the document along with the issued special registration plate or windshield placard. In addition, the commissioner shall issue a separate document informing the general public regarding the new provisions and increased fines being imposed either by way of newspaper announcements or other appropriate means across the state.

(r) The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code.

(s)(1) A public entity may not require a person to pay for parking a vehicle in an accessible parking space with a parking meter if the following requirements are met:

(A) The vehicle displays a special registration plate or placard that entitles the person to park in an accessible parking space pursuant to this section;

(B) The driver has a mobility impairment and is unable to walk;

(C) The parking meter is not accessible to the driver while sitting in a wheelchair or without traveling more than 30 feet from the parked vehicle; and

(D) The parked vehicle displays an unexpired parking certification that is plainly visible with pertinent information through its windshield. For purposes of this subsection, "parking certification" means a letter completed by a licensed medical provider on the provider's letterhead that is titled "Parking Certification pursuant to W.Va. Code §17C-13-6(s)" and that certifies that the person is physically able to drive but unable to walk, which means for purposes of this subsection that the person cannot ambulate without the aid of a wheelchair. Such letter shall specify whether the inability to walk is permanent or temporary. If the inability to walk is temporary, the letter shall include the date on which such temporary disability is anticipated to end, and the letter may not be displayed in a windshield after such date.

(2) By displaying a parking certification in the windshield of a vehicle that is parked in an accessible parking space with an expired parking meter, the person is swearing under penalty of false swearing that he or she is unable to access the parking meter without unreasonable effort.

(3) Parking enforcement personnel may not cite a vehicle that is parked in an accessible parking space of a public entity for parking at an expired meter if the requirements of this subsection are met: *Provided*, That if a parking citation is issued, it shall be prima facie evidence that the person was entitled to park in the accessible parking space with an expired meter if the person produces his or her parking certification.

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§17C-13-7. Signs on workers' and church buses; when lawful for such buses to stop on highways and streets.

Any bus used primarily for the transportation of workers only and any bus operated by a church may bear upon the front and rear thereof a plainly visible sign, either painted or affixed on the body of the bus proper, or attached securely to the bus, containing the words "workers bus" or "church bus," respectively, in letters not less than eight inches in height. Any bus used primarily for the transportation of workers only and any bus operated by a church and bearing signs in that manner may lawfully stop upon the paved portion of any highway or street where there is no loading zone or pull-off adjacent to the highway or street to load or discharge persons: Provided, That such bus shall be equipped with warning lamps permitted under subsection (d), section nineteen, article fifteen of this chapter, and shall use such warning lamps when stopped on the highway or decreasing speed in order to stop, in order to warn the operators of other vehicles of a possible traffic hazard.

WV Legislature

§17C-13-8. Disabled parking places on private facilities; signs designating places.

Upon request of operators of privately-owned facilities serving the general public, the director of the division of vocational rehabilitation may provide signs to designate disabled persons parking places.

WV Legislature

§17C-13A-1. Definitions.

The following words and phrases when used in this article have the meanings given to them in this section unless the context clearly indicates otherwise:

(a) "Bus" means the same as that term is defined in section thirteen, article one, chapter seventeen of this code.

(b) "Bus depot" means a location where buses are routinely kept overnight, including any garage structure or outdoor bus parking area or both.

(c) "Commission" or "public service commission" means the public service commission of West Virginia.

(d) "Diesel powered" means a type of engine that has operating characteristics significantly similar to the theoretical diesel combustion cycle.

(e) "Farm tractor" means the same as that term is defined in section ten, article one of this chapter.

(f) "Highway" means the same as that term is defined under section three, article one, chapter seventeen of this code.

(g) "Idle reduction technology" means any device or system of devices that is installed on a motor vehicle subject to this article and is designed to provide it those services, such as heat, air conditioning and electricity, that would otherwise require the operation of the main drive engine while the motor vehicle is temporarily parked or remains stationary.

(h) "Idling" means operation of the main propulsion engine of a motor vehicle while the vehicle is stationary.

(i) "Implement of husbandry" means the same as that term is defined in section one, article one, chapter seventeen-a of this code.

(j) "Motor home" means the same as that term is defined in section one, article one, chapter seventeen-a of this code.

(k) "Motor vehicle" means the same as that term is defined in section three, article one of this chapter.

(l) "School bus" means the same as that term is defined in section seven, article one of this chapter.

(m) "School grounds" means the same as that term is defined in section fifty-five, article one of this chapter.

WV Legislature

(n) "Stationary idle reduction technology" means equipment that transforms power from the electric grid for the purpose of delivering usable electric power, heat or air conditioning to a motor vehicle for the purpose of reducing main engine idling.

WV Legislature

§17C-13A-2. Restrictions on idling.

No driver or owner of a diesel-powered motor vehicle with a gross vehicle weight of ten thousand one pounds or more engaged in commerce may cause, and no owner or operator of the location where the vehicle loads, unloads or parks, may allow the engine of the vehicle to idle for more than fifteen minutes in any continuous sixty-minute period, except as provided under section three of this article.

WV Legislature

§17C-13A-3. Exceptions.

(a) The idling restrictions set forth in section two of this article do not apply to motor homes, commercial implements of husbandry, implements of husbandry or farm tractors.

(b) The idling restrictions set forth in section two of this article do not apply to construction equipment that cannot be licensed for on-road driving or construction equipment that is not designed primarily for on-road driving, notwithstanding that such equipment may be operated or driven on road from time to time and in the course of performing its primary functions: Provided, That idling is necessary to power work-related mechanical, safety or electrical operations related to construction operations other than propulsion.

(c) A diesel-powered motor vehicle with a gross weight of ten thousand one pounds or more may idle beyond the time allowed in subsection (a) for one or more of the following reasons:

(1) When a vehicle idles while forced to remain motionless because of on-highway traffic, an official traffic control device or signal or at the direction of a law-enforcement official.

(2) When a vehicle must idle to operate defrosters, heaters, air conditioners or cargo refrigeration equipment, or to install equipment, in order to prevent a safety or health emergency, and not for the purpose of a rest period, or as otherwise necessary to comply with manufacturers' operating requirements, specifications and warranties in accordance with federal or state motor carrier safety regulations or local requirements.

(3) When a police, fire, ambulance, public safety, military, utility service vehicle or other emergency or law-enforcement vehicle or any vehicle being used in an emergency or public safety capacity shall idle while in an emergency or training mode and not for the convenience of the driver.

(4) When the primary propulsion engine idles for maintenance, particulate matter trap regeneration, servicing or repair of the vehicle, or for vehicle diagnostic purposes, if idling is required for that activity.

(5) When a vehicle idles as part of a federal or state inspection to verify that all equipment is in good working order, if idling is required as part of the inspection.

(6) When idling of a primary propulsion engine is necessary to power work-related mechanical, safety or electrical operations other than propulsion. This exemption does not apply when idling is done for cabin comfort or to operate nonessential onboard equipment.

(7) When idling of a primary propulsion engine is necessary as part of a security inspection either entering or exiting a facility.

(8) When an armored vehicle must idle when a person remains inside the vehicle to guard contents or while the vehicle is being loaded or unloaded.

WV Legislature

(9) When a vehicle must idle due to mechanical difficulties over which the driver has no control, if the vehicle owner submits the repair paperwork or product repair verifying that the mechanical problem has been fixed, by mail to the commission within thirty days of the repair.

(10) When a bus or school bus must idle to provide heating or air conditioning when nondriver passengers are onboard. For the purposes of this exemption, the bus or school bus may idle for no more than a total of fifteen minutes in a continuous sixty-minute period, except when idling is necessary to maintain a safe temperature for bus passengers.

(11) An occupied vehicle with a sleeper-berth compartment that idles for purposes of air conditioning or heating during a rest or sleep period and the outside temperature at the location of the vehicle is less than forty degrees or greater than seventy-five degrees Fahrenheit at any time during the rest or sleep period. This applies to a motor vehicle subject to this article parked in any place that the vehicle is legally permitted to park, including, but not limited to, a fleet trucking terminal, commercial truck stop or designed rest area. This exemption does not apply if the vehicle is parked at a location equipped with stationary idle reduction technology that is available for use at the start of the rest period.

(12) When idling is necessary for sampling, weighing, active loading or active unloading or for an attended motor vehicle waiting for sampling, weighing, loading or unloading. For the purposes of this exemption, the vehicle may idle for up to a total of fifteen minutes in any continuous sixty-minute period.

(13) When idling by a school bus off school grounds during queuing for the sequential discharge or pickup of students is necessary because the physical configuration of a school or the school's surrounding streets does not allow for stopping.

(14) When idling is necessary for maintaining safe operating conditions while waiting for a police escort when transporting a load that requires the issuance of a permit in accordance with section eleven, article seventeen of this chapter.

(15) When actively engaged in solid waste collection or the collection of source-separated recyclable materials. This exemption does not apply when a vehicle is not actively engaged in solid waste collection or the collection of source-separated recyclable materials.

(16) When a diesel-powered motor vehicle exhibits a label issued by the California Air Resources Board under 13 CCR §1956.8(a)(6)(C) (relating to exhaust emissions standards and test procedures - 1985 and subsequent model heavy-duty engines and vehicles) showing that the vehicle's engine meets the optional NOx idling emission standard.

(17) When a diesel-powered motor vehicle is powered by clean diesel technology or bio-diesel fuels.

WV Legislature

§17C-13A-4. Increase of weight limit.

The maximum gross weight limit and axle weight limit for any motor vehicle equipped with idle reduction technology may be increased by an amount necessary to compensate for the additional weight of the idle reduction technology as provided under 23 U.S.C. §127(a)(12), as that section exists on the effective date of this article. The additional amount of weight allowed by this section may not be construed to be in addition to the tolerance authorized under section eleven-a, article seventeen of this chapter.

WV Legislature

§17C-13A-5. Penalties.

The driver or owner of a diesel-powered motor vehicle with a gross weight of ten thousand one pounds or more engaged in commerce or the owner or operator of a location where such vehicles load, unload or park that violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, pay a fine of not less than $150 and not more than $300 and court costs.

WV Legislature

§17C-13A-6. Notification.

If the driver of a diesel-powered motor vehicle subject to this article is convicted of a misdemeanor offense pursuant to this article is not the owner of the vehicle, the commission shall, under procedures established by the commission, notify the vehicle owner that the driver has been convicted.

WV Legislature

§17C-13A-7. Enforcement.

Enforcement of the article is limited to: (1) Any member of the division of public safety of this state; (2) any sheriff and any deputy sheriff of any county; (3) any member of a police department in any municipality as defined in section two, article one, chapter eight of this code; and (4) any officers the commission may designate to enforce the provisions of this article. The prosecuting attorneys of the several counties shall render to the commission without additional compensation such legal services as the commission may require to enforce the provisions of this article.

WV Legislature

§17C-13A-8. Permanent idling restriction signs.

An owner or operator of a location where vehicles subject to this article load or unload, or a location that provides fifteen or more parking spaces for vehicles subject to this article shall erect and maintain a permanent sign to inform drivers that idling is restricted in this state pursuant to the provisions of section three, article thirteen-a, chapter seventeen-c of this code.

WV Legislature

§17C-13A-9. Preemption.

(a) The provisions of this article preempt and supersede a local ordinance or rule concerning the subject matter of this article.

(b) This article does not prevent the Department of Environmental Protection as set forth in chapter twenty-two of this code from regulating motor vehicle emissions pursuant to the provisions of section fifteen, article five, chapter twenty-two of this code and any legislative rules promulgated pursuant to that section.

WV Legislature

§17C-14-1

Repealed

Acts, 2018 Reg. Sess., Ch. 43.

WV Legislature

§17C-14-2. Limitations on backing; penalty.

(a) The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.

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

WV Legislature

§17C-14-3.

Repealed.

Acts, 1971 Reg. Sess., Ch. 95.

WV Legislature

§17C-14-4. Obstruction to driver's view or driving mechanism; penalty.

(a) No person shall drive a vehicle when it is so loaded as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

(b) No passenger in a vehicle or streetcar shall ride in such position as to interfere with the driver's or operator's view ahead or to the sides, or to interfere with his or her control over the driving mechanism of the vehicle or streetcar.

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

WV Legislature

§17C-14-5. Passengers in seat with operator; penalty.

(a) No more than three persons including the operator shall ride or be permitted by such operator to ride in the seat with the operator of any motor vehicle while said motor vehicle is being operated on the streets or highways of this state: Provided, That the limitation of this section shall not apply to a truck cab or truck crew compartment properly designed for the occupancy of four persons including the operator, and so designated on the registration card by the Division of Motor Vehicles.

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

WV Legislature

§17C-14-6. Passengers on running board; penalty.

(a) No passenger shall ride nor shall the operator permit any passenger to ride on the running boards of any motor vehicle while such vehicle is being operated on the streets or highways of this state.

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

WV Legislature

§17C-14-7. Driving on mountain highways; penalty.

(a) The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold such motor vehicle under control and as near the right-hand edge of the highway as reasonably possible and, upon approaching any curve where the view is obstructed within a distance of two hundred feet along the highway, shall give audible warning with the horn of such motor vehicle.

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

WV Legislature

§17C-14-8. Coasting prohibited; penalty.

(a) The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears of such vehicle in neutral.

(b) The driver of a commercial motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged.

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

WV Legislature

§17C-14-9. Following authorized emergency vehicles; penalty.

(a) The driver of any vehicle other than one on official business may not follow any authorized emergency vehicle traveling in response to a fire alarm or other emergency closer than five hundred feet or drive into or park such vehicle within the block where such authorized emergency vehicle has stopped in answer to a fire alarm or other emergency.

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

WV Legislature

§17C-14-9a. Approaching stationary vehicles; penalties.

(a) The driver of any vehicle approaching a stationary vehicle, when the stationary vehicle is giving a signal by displaying alternately flashing red, red and white, blue, or red and blue lights or amber or yellow warning lights, emergency flashers or hazard lights, flares, or retroreflective warning sign shall:

(1) Proceed with due caution, yield the right-of-way by making a lane change not adjacent to that of the stationary vehicle, if possible with regard to safety and traffic conditions, if on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the approaching vehicle and reduce speed to a safe level for road conditions; or

(2) Proceed with due caution, reduce the speed of the vehicle, maintaining a safe speed not to exceed 15 miles per hour on any nondivided highway or street and 25 miles per hour on any divided highway depending on road conditions, if changing lanes would be impossible or unsafe.

(b) (1) Any person who violates any subsection of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500 or confined in the county or regional jail not more than 60 days, or both fined and confined.

(2) If violation of this section results in property damage in addition to any other penalty imposed, driving privileges of the persons causing the property damage shall be suspended for 90 days.

(3) If violation of this section results in injury to another person in addition to any other penalty imposed, the driving privileges of the person causing the injury shall be suspended for six months.

(4) If violation of this section results in the death of another person in addition to any other penalty imposed, the driving privileges of the person causing the death shall be suspended for two years.

(5) Any person who violates any provision of this section and while doing so also violates §17C-5-2 of this code is guilty of a misdemeanor and, upon conviction thereof, shall, in addition to the penalties set out in §17C-5-2 of this code and this section, be fined not less than $1,000 nor more than $5,000, or confined in jail for a period not more than six months, or both fined and confined.

WV Legislature

§17C-14-10. Crossing fire hose; penalty.

(a) No streetcar or vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, private driveway, or streetcar track, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

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

WV Legislature

§17C-14-11. Putting glass, etc., on highway.

(a) No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, or any other substance likely to injure any person, animal, or vehicle upon such highway.

(b) Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.

(c) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

WV Legislature

§17C-14-12. School bus rules.

(a) The West Virginia Board of Education by and with the advice of the motor vehicle commissioner shall adopt and enforce rules consistent with this chapter, including the provisions of subsection (c), section nineteen, article fifteen of this chapter, to govern the design and operation of all school buses used for the transportation of school children when owned and operated by any county board of education or privately owned and operated under contract with any county board of education in this state and these rules shall by reference be made a part of any such contract with a county board of education. Every county board of education, its officers and employees, and every person employed under contract by a county board of education shall be subject to these rules.

(b) Any officer or employee of any county board of education who violates any of said rules or who fails to include the obligation to comply with said rules in any contract executed by him or her on behalf of a county board of education is guilty of misconduct and subject to removal from office or employment. Any person operating a school bus under contract with a county board of education who fails to comply with any of said rules is guilty of breach of contract and the contract shall be canceled after notice and hearing by the responsible officers of the county board of education.

WV Legislature

§17C-14-13. Vehicles parked on private property; penalty.

(a) It shall be unlawful for any driver of a vehicle to stop, park or leave standing unattended any vehicle on a private road or driveway or on private property without having express or implied permission from the owner, tenant or lessee of such land.

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

(c) The owner, tenant or lessee of such private road or driveway or private property may move, or have moved, any vehicle stopped, parked or left standing unattended on his or her private road, driveway, or private property as above prohibited without any liability for the cost of moving any vehicle, nor shall he or she be liable to the owner of the vehicle for any damage done to such vehicle in moving it, unless the owner, tenant or lessee of such private road or driveway or private property was negligent in removing or authorizing the removal of the vehicle. The owner of such vehicle shall be responsible to the persons removing such vehicle for paying all removal costs. Any person who removes any vehicle under the provisions of this section shall notify the West Virginia state police of such action, and, if such vehicle is removed within a municipality, shall, in addition notify the police department of such municipality.

WV Legislature

§17C-14-13a. Police officers authorized to conduct investigations on private property.

Notwithstanding any provision of law to the contrary, nothing may prohibit any duly authorized municipal police officers, county deputy sheriffs or members of the department of public safety from entering upon private lands in order to investigate a motor vehicle accident when said private lands are open to the use of the public at-large for any purpose.

WV Legislature

§17C-14-14. Unlawful to litter from motor vehicle; penalty; rule making.

(a) It is unlawful for any driver or passenger of a motor vehicle or other conveyance to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown, any litter from a motor vehicle or other conveyance in or upon any public or private highway, road, street or alley; any private property; any public property; or the waters of the state or within one hundred feet of the waters of this state, except in a proper litter or other solid waste receptacle.

(b) For purposes of this section, "litter" means all waste material including, but not limited to, any garbage, refuse, trash, disposable package, container, can, bottle, paper, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof, or any other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.

(c) In addition to any penalty imposed for littering under the provisions of article fifteen-a, chapter twenty-two of this code, any driver of a motor vehicle or other conveyance convicted of violating this section shall have three points assessed against his or her driver's license.

(d) The Commissioner shall assess points against the driver's license of any driver of a motor vehicle or other conveyance found guilty of violating this section upon receiving notice from a circuit clerk, magistrate court or municipal court of this state of the conviction. Circuit clerks, magistrate courts and municipal courts of this state shall promptly notify the Commissioner of the convictions.

(e) When there is more than one occupant in a motor vehicle or other conveyance and it cannot be determined which occupant is responsible for violating this section, the driver shall be presumed to be responsible for the violation.

(f) The Commissioner of the Division of Motor Vehicles shall propose or amend legislative rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the purposes of this section.

WV Legislature

§17C-14-15. Electronically Distracted Driving Act.

(a) Definitions — As used in this section:

(1) “Smartwatch” means a wearable computer that provides a local touchscreen for daily use, associated with applications, and connected to a cellular or Wi-Fi network;

(2) “Stand-alone electronic device” means a portable device other than a wireless telecommunications device which stores audio or video data files to be retrieved on demand by a user;

(3) “Utility services” means and includes electric, natural gas, water, wastewater, cable, telephone, or telecommunications services, or the repair, location, relocation, improvement, or maintenance of utility poles, transmission structures, pipes, wires, fibers, cables, easements, rights-of-way, or associated infrastructure;

(4) “Wireless telecommunications device” means one of the following portable devices:

(A) A cellular telephone;

(B) A portable telephone;

(C) A text-messaging device;

(D) A personal digital assistant;

(E) A stand-alone computer including, but not limited to, a tablet, laptop, or notebook computer;

(F) A handheld global positioning system receiver;

(G) A device capable of displaying a video, movie, broadcast television image, or visual image; or

(H) Any substantially similar portable wireless device that is used to initiate or receive communication, information, or data;

(I) “Wireless telecommunications device” does not include a smartwatch, any type of radio including but not limited to, radios used by first responders or school bus operators; citizens band radio or radio hybrid; commercial two-way radio communication device or its functional equivalent; subscription-based emergency communication device; prescribed medical device; amateur or ham radio device, or any built-in vehicle equipment for security, navigation, communications, or remote diagnostics;

(5) “Voice-operated or hands-free feature or function” means a feature or function that allows a person to use a wireless telecommunications device without the use of either hand,

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except to activate, deactivate, or initiate the feature or function with a single touch or single swipe.

(b) The driver of a school bus shall not use or operate a wireless telecommunications device or two-way radio while loading or unloading passengers.

(c) The driver of a school bus shall not use or operate a wireless telecommunications device while the bus is in motion or while stationary in traffic or at a traffic control signal, unless that device is being used in a similar manner as a two-way radio to allow live communication between the driver and school officials or public safety officials.

(d) A driver shall exercise due care in operating a motor vehicle on the highways of this state and shall not engage in any actions involving any stand-alone electronic device or wireless telecommunications device that distracts such driver from the safe operation of the vehicle.

(e) While operating a motor vehicle on any street, highway, or property open to the public for vehicular traffic in this state, a driver may not:

(1) Physically hold or support, with any part of his or her body, a wireless communication device or stand-alone electronic device: *Provided*, That this prohibition does not apply to the wearing of a smartwatch;

(2) Write, send, or read any text-based communication including, but not limited to, a text message, instant message, e-mail, or social media interaction on a wireless telecommunications device or stand-alone electronic device: *Provided*, That this prohibition does not apply to a voice-operated or hands-free communication feature which is automatically converted by such device to be sent as a message in a written form;

(3) Make any communication involving a wireless telecommunications device, including a phone call, voice message, or one-way voice communication: *Provided*, That this prohibition does not apply to a voice operated or hands-free communication feature or function;

(4) Engage in any form of electronic data retrieval or electronic data communication on a wireless telecommunications device or stand-alone electronic device;

(5) Manually enter letters, numbers, or symbols into any website, search engine, or application on a wireless telecommunications device or stand-alone electronic device;

(6) Watch a video or movie on a wireless telecommunications device or standalone electronic device other than watching data related to the navigation of the vehicle;

(7) Record, post, send, or broadcast video, including a video conference on a wireless telecommunications device or stand-alone electronic device: *Provided*, That this prohibition does not apply to electronic devices used for the sole purpose of continuously recording or broadcasting video within or outside of the motor vehicle; or

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(8) Actively play any game on a wireless telecommunications device or stand-alone electronic device.

(f) While operating a commercial motor vehicle on any highway of this state, a driver may:

(1) Use more than a single button on a wireless telecommunications device to initiate or terminate a voice communication; or

(2) Reach for a wireless telecommunications device or stand-alone electronic device in such a manner that requires the driver to:

(A) No longer be in a seated driving position; or

(B) No longer be properly restrained by a safety belt.

(g) Each violation of this section shall constitutes a separate offense.

(h) It is a misdemeanor for any driver to violate any of the provisions of this section. Every driver convicted of a misdemeanor for a violation of any of the provisions of this section shall be punished as follows:

(1) For a first conviction with no prior conviction of and no plea of no contest accepted to a charge of violating this section within the previous 24-month period, as measured from the date of any prior conviction or plea, a fine of not more than $100;

(2) For a second conviction within a 24-month period, as measured from the date of any prior conviction or plea, a fine of not more than $200;

(3) For a third or subsequent conviction within a 24-month period, as measured from the date of any prior conviction or plea:

(A) A fine of not more than $350;

(B) Three points on the driver's record maintained by the Division of Motor Vehicles; and

(C) At the court's discretion, suspension of the driver's license for a period of 90 days;

(4) Any driver who causes physical harm to property as the proximate result of committing a violation of this section is guilty of a misdemeanor punishable up to 30 days in jail or a fine not less than $100 and not more than $500;

(5) Any driver who causes serious physical harm to another person as the proximate result of committing a violation of this section is guilty of a misdemeanor and shall be fined not less than $500 nor more than $1,000, or confined in jail up to 120 days, or both fined and confined, and the driver shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year; and

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(6) Any driver who causes the death of another as the proximate result of committing a violation of this section is also subject to prosecution under the applicable vehicular homicide provision of §17C-5-1 of this code.

(i) The Department of Transportation shall cause to be erected signs upon any highway entering the state of West Virginia on which a welcome to West Virginia sign is posted, and any other highway where the Division of Highways deems appropriate, posted at a distance of not more than one mile from each border crossing, each sign to bear an inscription clearly communicating to motorists entering the state that texting, or the use of a wireless communication device without hands-free equipment, is illegal within this state.

(j) Nothing contained in this section shall be construed to authorize seizure of a cell phone or electronic device by any law-enforcement agency.

(k) No policy providing liability coverage for personal lines insurance shall contain a provision which may be used to deny coverage or exclude payment of any legal damages recoverable by law for injuries proximately caused by a violation of this section, as long as such amounts are within the coverage limits of the insured.

(l) This section shall not apply to:

(1) Drivers reporting to state, county, or local authorities a traffic accident, medical emergency, fire, an actual or potential criminal or delinquent act, or a road condition that causes an immediate and serious traffic or safety hazard;

(2) An employee or contractor of a utility services provider acting within the scope of his or her employment while responding to a utility emergency;

(3) A driver operating a commercial vehicle while using a mobile data terminal that transmits and receives data;

(4) A law-enforcement officer, firefighter, emergency medical services personnel, ambulance driver, or other similarly employed public safety first responder during the performance of his or her official duties; or

(5) A person in a motor vehicle that is lawfully parked.

(m) This section does not supersede the provisions of §17B-2-3a of this code, or any more restrictive provisions for drivers of commercial motor vehicles prescribed either by the provisions of §17E-1-1 *et seq.* of this code or by federal law or rule.

(n) The amendments to this section adopted during the regular session of the Legislature in 2023, shall be known as the Robin W. Ames Memorial Act.

WV Legislature

§17C-15-1. Unsafe and improperly equipped vehicles; additional parts and accessories; applicability of article to farm and road equipment.

(a) It is a misdemeanor for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person, or which does not contain those parts or is not at all times equipped with such lamps and other equipment in proper condition and adjustment as required in this article, or which is equipped in any manner in violation of this article, or for any person to do any act forbidden or fail to perform any act required under this article.

(b) Nothing contained in this article shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this article.

(c) The provisions of this article with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as herein made applicable. Every farm tractor equipped with an electric lighting system shall at all times mentioned in section two of this article display a red tail lamp and either multiple-beam or single-beam head lamps meeting the requirements of sections two, twenty and twenty-two of this article, respectively.

WV Legislature

§17C-15-2. When lighted lamps are required.

Every vehicle other than a school bus, motorcycle, motor-driven cycle or moped operated upon a highway within this state at any time from sunset to sunrise, or during fog, smoke, rain or other unfavorable atmospheric conditions, or at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred feet ahead, shall display lighted head lamps and illuminating devices as hereinafter respectively required for different classes of vehicles, subject to exceptions with respect to parked vehicles as provided for in subsection (c), section fifteen-c of this article. Every school bus, motorcycle, motor-driven cycle and moped shall display lighted head lamps at all times when upon the highway. Lighted lamps and other lighting devices that consist of multiple light-emitting diodes (LEDs) or other illuminating components that function as a single lighting unit are deemed to be functional so long as at least sixty-six percent of the LEDs or other illuminating components are functional: Provided, That the lighted lamps or lighting devices must still project sufficient illumination to satisfy all other requirements contained in this article.

WV Legislature

§17C-15-3. Visibility distance and mounted height of lamps.

(a) Whenever requirement is hereinafter declared as to the distance from which certain lamps and devices shall render objects visible or within which such lamps or devices shall be visible said provisions shall apply during the times stated in section two of this article in respect to a vehicle without load when upon a straight, level, unlighted highway under normal atmospheric conditions unless a different time or condition is expressly stated.

(b) Whenever requirement is hereinafter declared as to the mounted height of lamps or devices it shall mean from the center of such lamp or device to the level ground upon which the vehicle stands when such vehicle is without a load.

WV Legislature

§17C-15-4. Head lamps on motor vehicles.

(a) Every motor vehicle other than a motorcycle, motor- driven cycle or moped shall be equipped with at least two head lamps with at least one on each side of the front of the motor vehicle, which head lamps shall comply with the requirements and limitations set forth in this article.

(b) Every motorcycle, motor-driven cycle and moped shall be equipped with at least one and not more than two head lamps which shall comply with the requirements and limitations of this article.

(c) Every head lamp upon every motor vehicle, including every motorcycle, motor-driven cycle and moped, shall be located at a height measured from the center of the head lamp of not more than fifty-four inches nor less than twenty-four inches to be measured as set forth in section three of this article.

WV Legislature

§17C-15-5. Tail lamps.

(a) Every motor vehicle, trailer or semitrailer, and any other vehicle which is being drawn at the end of a train of vehicles, shall be equipped with at least one tail lamp mounted on the rear, which, when lighted as hereinbefore required, shall emit a red light plainly visible from a distance of five hundred feet to the rear, provided that in the case of a train of vehicles only the tail lamp on the rearmost vehicle need actually be seen from the distance specified.

(b) Every tail lamp upon every vehicle shall be located at a height of not more than sixty inches nor less than twenty inches to be measured as set forth in section three (b) of this article.

(c) Either a tail lamp or a separate lamp shall be so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of fifty feet to the rear. Any tail lamp or tail lamps, together with any separate lamp for illuminating the rear registration plate, shall be so wired as to be lighted whenever the head lamps or auxiliary driving lamps are lighted.

WV Legislature

§17C-15-6. Penalty for violations of the provisions of this article.

(a) Unless otherwise provided for in this article and, except as otherwise provided in subsection (b) of this section, any person violating the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100; upon a second conviction within one year thereafter, shall be fined not more than $200; and upon a third or subsequent conviction, shall be fined not more than $500.

(b) Any person violating the provisions of sections thirty-one or thirty-two of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100, or confined in the county or regional jail for not more than ten days, or both; upon a second conviction within one year thereafter, shall be fined not more than $200, or confined in the county or regional jail for not more than twenty days, or both; and upon a third or subsequent conviction, shall be fined not more than $500, or confined in the county or regional jail not more than six months, or both.

WV Legislature

§17C-15-7.

Repealed.

Acts, 1996 Reg. Sess., Ch. 90.

WV Legislature

§17C-15-8. Application of §§ 17C-15-9 to 17C-15-13.

Those sections of this chapter which follow immediately, including sections nine, ten, eleven, twelve and thirteen of this article, and relating to clearance and marker lamps, reflectors, and stop lights shall apply as stated in said sections to vehicles of the type therein enumerated, namely passenger busses, trucks, truck tractors, and certain trailers, semitrailers, and pole trailers, respectively, when operated upon any highway, and said vehicles shall be equipped as required and all lamp equipment required shall be lighted at the times mentioned in section two of this article except that clearance and side marker lamps need not be lighted on any said vehicle when operated within any municipality where there is sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred feet.

WV Legislature

§17C-15-9. Additional lighting and reflector equipment required on certain vehicles.

In addition to other equipment required in this chapter the following vehicles shall be equipped as herein stated under the conditions stated in section eight of this article.

(a) On every bus or truck, whatever its size, there shall be the following:

On the rear, two reflectors, one at each side, and one stop light.

(b) On every bus or truck eighty inches or more in overall width, in addition to the requirements in paragraph (a):

On the front, two clearance lamps, one at each side.

On the rear, two clearance lamps, one at each side.

On each side, two side marker lamps, one at or near the front and one at or near the rear.

On each side, two reflectors, one at or near the front and one at or near the rear.

(c) On every truck tractor:

On the front, two clearance lamps, one at each side.

On the rear, one stop light.

(d) On every trailer or semitrailer having a gross weight in excess of three thousand pounds:

On the front, two clearance lamps, one at each side.

On each side, two side marker lamps, one at or near the front and one at or near the rear.

On each side, two reflectors, one at or near the front and one at or near the rear.

On the rear, two clearance lamps, one at each side, also two reflectors, one at each side, and one stop light.

(e) On every pole trailer in excess of three thousand pounds gross weight:

On each side, one side marker lamp and one clearance lamp which may be in combination, to show to the front, side, and rear.

On the rear of the pole trailer or load, two reflectors, one at each side.

(f) On every trailer, semitrailer, or pole trailer weighing three thousand pounds gross or less:

On the rear, two reflectors, one on each side. If any trailer or semitrailer is so loaded or is of

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such dimensions as to obscure the stop light on the towing vehicle, then such vehicle shall also be equipped with one stop light.

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§17C-15-10. Color of clearance lamps, side marker lamps and reflectors.

(a) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(b) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(c) All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except the stop light or other signal device, which may be red, amber, or yellow, and except that the light illuminating the license plate or the light emitted by a back-up light shall be white.

WV Legislature

§17C-15-11. Mounting of reflectors, clearance lamps and side marker lamps.

(a) Reflectors when required by section nine of this article shall be mounted at a height not less than twenty-four inches and not higher than sixty inches above the ground on which the vehicle stands, except that if the highest part of the permanent structure of the vehicle is less than twenty-four inches the reflector at such point shall be mounted as high as that part of the permanent structure will permit.

The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.

Any required red reflector on the rear of a vehicle may be incorporated with the tail lamp, but such reflector shall meet all the other reflector requirements of this chapter.

(b) Clearance lamps shall be mounted on the permanent structure of the vehicle in such manner as to indicate its extreme width and as near the top thereof as practicable. Clearance lamps and side marker lamps may be mounted in combination provided illumination is given as required herein with reference to both.

WV Legislature

§17C-15-12. Visibility of reflectors, clearance lamps and marker lamps.

(a) Every reflector upon any vehicle referred to in section nine of this article shall be of such size and characteristics and so maintained as to be readily visible at nighttime from all distances within five hundred feet to fifty feet from the vehicle when directly in front of lawful upper beams of head lamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides, and those mounted on the rear shall reflect a red color to the rear.

(b) Front and rear clearance lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred feet from the front and rear, respectively, of the vehicle.

(c) Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred feet from the side of the vehicle on which mounted.

WV Legislature

§17C-15-13. Obstructed lights not required to be lighted.

Whenever motor and other vehicles are operated in combination during the time that lights are required, any lamp (except tail lamps) need not be lighted which, by reason of its location on a vehicle of the combination, would be obscured by another vehicle of the combination, but this shall not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps, nor that all lights required on the rear of the rearmost vehicle of any combination shall be lighted.

WV Legislature

§17C-15-14. Lamp or flag on projecting load.

Whenever the load upon any vehicle extends to the rear four feet or more beyond the bed or body of such vehicle there shall be displayed at the extreme rear end of the load, at the times specified in section two of this article, a red light or lantern plainly visible from a distance of at least five hundred feet to the sides and rear. The red light or lantern required under this section shall be in addition to the red rear light required upon every vehicle. At any time there shall be displayed at the extreme rear end of such load a red flag or cloth not less than twelve inches square and so hung that the entire area is visible to the driver of a vehicle approaching from the rear.

WV Legislature

§17C-15-15. Lamps on parked vehicles.

(a) Whenever a vehicle is lawfully parked upon a street or highway during the hours between sunset and sunrise and in the event there is sufficient light to reveal any person or object within a distance of five hundred feet upon such street or highway no lights need be displayed upon such parked vehicle.

(b) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between sunset and sunrise and there is not sufficient light to reveal any person or object within a distance of five hundred feet upon such highway, such vehicle so parked or stopped shall be equipped with one or more lamps meeting the following requirements: At least one lamp shall display a white or amber light visible from a distance of five hundred feet to the front of the vehicle, and the same lamp or at least one other lamp shall display a red light visible from a distance of five hundred feet to the rear of the vehicle, and the location of said lamp or lamps shall always be such that at least one lamp or combination of lamps meeting the requirements of this section is installed as near as practicable to the side of the vehicle which is closest to passing traffic. The foregoing provisions shall not apply to a motorcycle, motor-driven cycle or moped.

(c) Any lighted head lamps upon a parked vehicle shall be depressed or dimmed.

WV Legislature

§17C-15-16. Lamps on animal-drawn and other vehicles and equipment.

All vehicles including animal-drawn vehicles and including those referred to in section one (c) of this article not hereinbefore specifically required to be equipped with lamps, shall at the times specified in section two of this article be equipped with at least one lighted lamp or lantern exhibiting a white light visible from a distance of five hundred feet to the front of such vehicle and with a lamp or lantern exhibiting a red light visible from a distance of five hundred feet to the rear.

WV Legislature

§17C-15-17. Spot lamps and other auxiliary lamps.

For the purposes of this section, a lamp or lighting device meets the requirements specified below so long as any portion of the illuminating surface of the lamp or lighting device is within the specified range.

All lamps and lighting devices covered in this section may be installed so that the entire lamp or lighting device exceeds forty-two inches above the level surface upon which the vehicle stands so long as such lamps or lighting devices are either covered or dimmable.

(a) Spot lamps. — Any motor vehicle except a public utility company maintenance vehicle may be equipped with not more than one spot lamp and every lighted spot lamp shall be so aimed and used upon approaching another vehicle that no part of the high-intensity portion of the beam will be directed to the left of the prolongation of the extreme left side of the vehicle nor more than one hundred feet ahead of the vehicle. A public utility company maintenance vehicle may be equipped with more than one spot lamp but all lighted spot lamps shall be aimed and used in conformity to the requirements of this subsection.

(b) Fog lamps. — Any motor vehicle may be equipped with not more than two fog lamps mounted on the front at a height not less than twelve inches nor more than thirty inches above the level surface upon which the vehicle stands and so aimed that when the vehicle is not loaded none of the high-intensity portion of the light to the left of the center of the vehicle shall at a distance of twenty-five feet ahead project higher than a level of four inches below the level of the center of the lamp from which it comes.

(c) Auxiliary passing lamp. — Any motor vehicle may be equipped with not more than two auxiliary passing lamps mounted on the front at a height not less than twenty-four inches nor more than forty-two inches above the level surface upon which the vehicle stands and every auxiliary passing lamp shall meet the requirements and limitations set forth in this article.

(d) Auxiliary driving lamp. — Any motor vehicle may be equipped with not more than two auxiliary driving lamps mounted on the front at a height not less than sixteen inches nor more than forty-two inches above the level surface upon which the vehicle stands and every such auxiliary driving lamp shall meet the requirements and limitations set forth in this article.

(e) Roof-mounted off-road light bar lighting device. — Any motor vehicle may be equipped with a roof-mounted off-road light bar lighting device comprised of multiple lamps: Provided, That whenever the vehicle is operated or driven upon any road or highway of this state, the roof-mounted off-road light bar lighting device shall be turned off while the vehicle is being operated on any road or highway of this state.

WV Legislature

§17C-15-18. Signal lamps and signal devices.

(a) Any motor vehicle may be equipped and when required under this chapter shall be equipped with the following signal lamps or devices:

(1) A stop lamp on the rear which shall emit a red or yellow light and which shall be actuated upon application of the service (foot) brake and which may but need not be incorporated with a tail lamp.

(2) A lamp or lamps or mechanical signal device capable of clearly indicating any intention to turn either to the right or to the left and which shall be visible both from the front and rear.

(b) A stop lamp shall be plainly visible and understandable from a distance of one hundred feet to the rear both during normal sunlight and at nighttime and a signal lamp or lamps indicating intention to turn shall be visible and understandable during daytime and nighttime from a distance of one hundred feet both to the front and rear. When a vehicle is equipped with a stop lamp or other signal lamps, such lamp or lamps shall at all times be maintained in good working condition. No stop lamp or signal lamp shall project a glaring or dazzling light.

(c) All mechanical signal devices shall be self-illuminated when in use at the times mentioned in section two of this article.

WV Legislature

§17C-15-19. Additional lighting equipment.

(a) Any motor vehicle may be equipped with not more than two side cowl or fender lamps which shall emit an amber or white light without glare.

(b) Any motor vehicle may be equipped with not more than one running board courtesy lamp on each side thereof which shall emit a white or amber light without glare.

(c) All motor vehicles shall be equipped with a minimum of at least two functioning back-up lamps either separately or in combination with other lamps, unless the vehicle was originally equipped with one lamp. Any such back-up lamp shall not be lighted when the motor vehicle is in forward motion. School buses used for the transportation of school children in this state, whether owned and operated by a county board of education or privately owned and operated under contract with a county Board of Education, shall be equipped with at least two back-up lamps, one on each side of the rear door, with white lens or reflectors, capable of lighting the roadway and objects to the rear of the bus for safe backing during darkness, and which, at the option of the county board of education, may each provide fifty candlepower in illumination intensity instead of thirty-two candlepower.

(d) Any vehicle may be equipped with lamps which may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing, and when so equipped may display such warning in addition to any other warning signals required by this article. The lamps used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights, or any shade of color between white and amber. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously flashing amber or red lights, or any shade of color between amber and red.

(e) Vehicles used by "rural mail carriers" in carrying or delivering mail in rural areas may be equipped with amber flashing lights. Such lights shall be on the front and rear of the vehicle and may be activated when the vehicle is stopped or decreasing speed in order to stop in the course of carrying, delivering or picking up mail along the route.

(f) Vehicles used as the lead car in a funeral procession are hereby authorized to be equipped with, but are not required to use, purple lamps or purple flashing lights. Such lamps may be used for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing a funeral procession, and when so equipped may display such warning in addition to any other warning signals required by this article. The lamps or flashing lights used to display such warning to the front shall be mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously either illuminated or flashing purple lights. The lamps used to display such warning to the rear shall be mounted at the same level and as widely spaced laterally as practicable, and shall show simultaneously

flashing or illuminated purple light.

WV Legislature

§17C-15-20. Multiple-beam road-lighting equipment -- Requirements generally.

Except as hereinafter provided, the head lamps or the auxiliary driving lamp or the auxiliary passing lamp or combinations thereof on motor vehicles other than a motorcycle, motor-driven cycle or moped shall be so arranged that the driver may select at will between distributions of light projected to different elevations and such lamps may, in addition, be so arranged that such selection can be made automatically, subject to the following limitations:

(a) There shall be an uppermost distribution of light, or composite beam, so aimed and of such intensity as to reveal persons and vehicles at a distance of at least three hundred and fifty feet ahead for all conditions of loading.

(b) There shall be a lowermost distribution of light, or composite beam, so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred feet ahead; and on a straight level road under any condition of loading none of the high-intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

(c) Every new motor vehicle, other than a motorcycle, motor- driven cycle or moped, registered in the state after January 1, 1952, which has multiple- beam road-lighting equipment shall be equipped with a beam indicator, which shall be lighted whenever the uppermost distribution of light from the head lamps is in use, and shall not otherwise be lighted. Said indicator shall be so designed and located that when lighted it will be readily visible without glare to the driver of the vehicle so equipped.

WV Legislature

§17C-15-21. Same -- Use of; dimming lights upon approaching or overtaking.

(a) Whenever a motor vehicle is being operated on a roadway or shoulder adjacent thereto during the times specified in section two, the driver shall use a distribution of light, or composite beam, directed high enough and of sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(b) Whenever a driver of a vehicle approaches an oncoming vehicle within five hundred feet, such driver shall use a distribution of light, or composite beam, so aimed that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light, or composite beam specified in section twenty, subdivision (b) shall be deemed to avoid glare at all times, regardless of road contour and loading.

(c) Whenever the driver of a vehicle follows another vehicle within two hundred feet to the rear, except when engaged in the act of overtaking and passing, such driver shall use a distribution of light permissible under this chapter other than the uppermost distribution of light specified in subdivision (a) of section twenty.

WV Legislature

§17C-15-22. Single-beam road-lighting equipment.

Head lamps arranged to provide a single distribution of light shall be permitted on motor vehicles manufactured and sold prior to one year after the effective date of this chapter in lieu of multiple-beam road-lighting equipment herein specified if the single distribution of light complies with the following requirements and limitations:

(1) The head lamps shall be so aimed that when the vehicle is not loaded none of the high-intensity portion of the light shall at a distance of twenty-five feet ahead project higher than a level of five inches below the level of the center of the lamp from which it comes, and in no case higher than forty-two inches above the level on which the vehicle stands at a distance of seventy-five feet ahead.

(2) The intensity shall be sufficient to reveal persons and vehicles at a distance of at least two hundred feet.

WV Legislature

§17C-15-23. Lighting equipment on motorcycles, motor-driven cycles and mopeds.

The head lamp or head lamps upon every motorcycle, motor- driven cycle and moped may be of the single-beam or multiple-beam type but in either event shall comply with the requirements and limitations as follows:

(1) Every head lamp or head lamps shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred feet when the motorcycle, motor-driven cycle or moped is operated at any speed less than twenty-five miles per hour and at a distance of not less than two hundred feet when it is operated at a speed of twenty-five or more miles per hour.

(2) If the motorcycle, motor-driven cycle or moped is equipped with a multiple-beam type head lamp or head lamps the upper beam shall meet the minimum requirements set forth above and not exceed the limitations set forth in section twenty (a) of this article and the lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in section twenty (b) of this article.

(3) If the motorcycle, motor-driven cycle or moped is equipped with a single-beam lamp or lamps, the lamp or lamps shall be so aimed that when the vehicle is loaded none of the high-intensity portion of light, at a distance of twenty-five feet ahead, shall project higher than the level of the center of the lamp from which it comes.

(4) (A) Subject to paragraph (B) of this subdivision, a motorcycle may be equipped with, and an operator of a motorcycle may use, the following auxiliary lighting:

(I) Amber and white illumination;

(ii) Standard bulb running lights; or

(iii) Light-emitting diode pods and strips.

(B) Lighting under this subdivision shall be:

(I) Nonblinking;

(ii) Nonflashing;

(iii) Nonoscillating; and

(iv) Directed toward the engine and the drive train of the motorcycle to prevent interference with the driver's operation of the vehicle.

WV Legislature

§17C-15-24. Alternate road-lighting equipment.

Any motor vehicle may be operated under the conditions specified in section two of this article when equipped with two lighted lamps upon the front thereof capable of revealing persons and objects seventy-five feet ahead in lieu of lamps required in section twenty or section twenty-two of this article: Provided, however, That at no time shall it be operated at a speed in excess of twenty miles per hour.

WV Legislature

§17C-15-25. Number of driving lamps required or permitted.

(a) At all times specified in section two of this article at least two lighted lamps shall be displayed, one on each side at the front of every motor vehicle other than a motorcycle, motor-driven cycle or moped, except when such vehicle is parked subject to the regulations governing lights on parked vehicles.

(b) Whenever a motor vehicle equipped with head lamps as herein required is also equipped with any auxiliary lamps or a spot lamp or any other lamp on the front thereof projecting a beam of intensity greater than three hundred candlepower, not more than a total of four of any such lamps on the front of a vehicle shall be lighted at any one time when upon a highway.

WV Legislature

§17C-15-26. Special restrictions on lamps.

(a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps, or flashing front-direction signals which projects a beam of light of an intensity greater than 300 candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than 75 feet from the vehicle.

(b) No person may drive or move any vehicle or equipment upon any highway with any lamp or device on the vehicle displaying other than a white or amber light visible from directly in front of the center of the vehicle except as authorized by §17C-15-26(d) of this code.

(c) Except as authorized in §17C-15-26(d) and §17C-15-26(g) of this code and authorized in §17C-15-19 of this code, flashing lights are prohibited on motor vehicles: *Provided*, That any vehicle as a means for indicating right or left turn or any vehicle as a means of indicating the same is disabled or otherwise stopped for an emergency may have blinking or flashing lights.

(d) Notwithstanding any other provisions of this chapter, the following colors of flashing warning lights are restricted for the use of the type of vehicle designated:

(1) Blue flashing warning lights are restricted to police vehicles. Authorization for police vehicles shall be designated by the chief administrative official of each police department.

(2) Except for standard vehicle equipment authorized by §17C-15-19 of this code, red flashing warning lights are restricted to the following:

(A) Ambulances;

(B) Fire-fighting vehicles;

(C) Hazardous material response vehicles;

(D) Industrial fire brigade vehicles;

(E) Rescue squad vehicles not operating out of a fire department;

(F) School buses;

(G) Class A vehicles, as defined by §17A-10-1 *et seq*. of this code, of those firefighters who are authorized by their fire chiefs to have the lights;

(H) Class A vehicles of members of duly chartered rescue squads not operating out of a fire department;

(I) Class A vehicles of members of ambulance services or duly chartered rescue squads who

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are authorized by their respective chiefs to have the lights;

(J) Class A vehicles of out-of-state residents who are active members of West Virginia fire departments, ambulance services, or duly chartered rescue squads who are authorized by their respective chiefs to have the lights;

(K) West Virginia Department of Agriculture emergency response vehicles;

(L) Vehicles designated by the Secretary of the Department of Homeland Security for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services, and Division of Homeland Security and Emergency Management;

(M) Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the Department of Homeland Security and the county commission of the county of residence; and

(N) Emergency management and operations vehicles operated by airports.

Red flashing warning lights attached to a Class A vehicle may be operated only when responding to or engaged in handling an emergency requiring the attention of the firefighters, members of the ambulance services, or chartered rescue squads.

(3) The use of red flashing warning lights is authorized as follows:

(A) Authorization for all ambulances shall be designated by the Department of Health and the sheriff of the county of residence.

(B) Authorization for all fire department vehicles shall be designated by the fire chief and the State Fire Marshal's Office.

(C) Authorization for all hazardous material response vehicles and industrial fire brigades shall be designated by the chief of the fire department and the State Fire Marshal's Office.

(D) Authorization for all rescue squad vehicles not operating out of a fire department shall be designated by the squad chief, the sheriff of the county of residence and the Department of Health.

(E) Authorization for school buses shall be designated as set out in §17C-14-12 of this code.

(F) Authorization for firefighters to operate Class A vehicles shall be designated by their fire chiefs and the State Fire Marshal's Office.

(G) Authorization for members of ambulance services or any other emergency medical service personnel to operate Class A vehicles shall be designated by their chief official, the Department of Health, and the sheriff of the county of residence.

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(H) Authorization for members of duly chartered rescue squads not operating out of a fire department to operate Class A vehicles shall be designated by their squad chiefs, the sheriff of the county of residence, and the Department of Health.

(I) Authorization for out-of-state residents operating Class A vehicles who are active members of a West Virginia fire department, ambulance services, or duly chartered rescue squads shall be designated by their respective chiefs.

(J) Authorization for West Virginia Department of Agriculture emergency response vehicles shall be designated by the Commissioner of the Department of Agriculture.

(K) Authorization for vehicles for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services, and Division of Homeland Security and Emergency Management shall be designated by the Secretary of the Department of Homeland Security.

(L) Authorization for Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the Department of Homeland Security and the county commission of the county of residence.

(M) Authorization for emergency management and operations vehicles operated by airports shall be designated by the airport director and the Secretary of the Department of Homeland Security.

(4) Yellow or amber flashing warning lights are restricted to the following:

(A) All other emergency vehicles, including tow trucks and wreckers, authorized by this chapter and by §17C-15-27 of this code;

(B) Postal service vehicles and rural mail carriers, as authorized in §17C-15-19 of this code;

(C) Rural newspaper delivery vehicles;

(D) Flag car services;

(E) Vehicles providing road service to disabled vehicles;

(F) Service vehicles of a public service corporation;

(G) Snow removal equipment;

(H) School buses; and

(I) Automotive fire apparatus owned by a municipality or other political subdivision, by a volunteer or part-volunteer fire company or department, or by an industrial fire brigade.

(5) The use of yellow or amber flashing warning lights shall be authorized as follows:

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(A) Authorization for tow trucks, wreckers, rural newspaper delivery vehicles, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation, and postal service vehicles shall be designated by the sheriff of the county of residence.

(B) Authorization for snow removal equipment shall be designated by the Commissioner of the Division of Highways.

(C) Authorization for school buses shall be designated as set out in §17C-14-12 of this code.

(D) Authorization for automotive fire apparatus shall be designated by the fire chief in conformity with the NFPA 1901 Standard for Automotive Fire Apparatus as published by the National Fire Protection Association (NFPA) on July 18, 2003, and adopted by the state Fire Commission by legislative rule (87 CSR 1, *et seq*.), except as follows:

(i) With the approval of the State Fire Marshal, used automotive fire apparatus may be conformed to the NFPA standard in effect on the date of its manufacture or conformed to a later NFPA standard; and

(ii) Automotive fire apparatus may be equipped with blinking or flashing headlamps.

(e) Notwithstanding the foregoing provisions of this section, any vehicle belonging to a county board of education, an organization receiving funding from the state or Federal Transit Administration for the purpose of providing general public transportation or hauling solid waste may be equipped with a white flashing strobotron warning light. This strobe light may be installed on the roof of a school bus, a public transportation vehicle, or a vehicle hauling solid waste not to exceed one-third the body length forward from the rear of the roof edge. The light shall have a single clear lens emitting light 360 degrees around its vertical axis and may not extend above the roof more than six and one-half inches. A manual switch and a pilot light must be included to indicate the light is in operation.

(f) Notwithstanding the foregoing provisions of this section, any waste service vehicle as defined in §17C-6-11 of this code may be equipped with yellow or amber flashing warning lights.

(g) It is unlawful for flashing warning lights of an unauthorized color to be installed or used on a vehicle other than as specified in this section, except that a police vehicle may be equipped with either or both blue or red warning lights.

WV Legislature

§17C-15-27. Standards for lights on snow removal equipment.

(a) The state road commission shall adopt standards and specifications applicable to head lamps, clearance lamps, identification and other lamps on snow removal equipment when operated on the highways of this state in lieu of the lamps otherwise required on motor vehicles by this chapter. Such standards and specifications may permit the use of flashing lights for purposes of identification on snow removal equipment when in service upon the highways. The standards and specifications for lamps referred to in this section shall correlate with and, so far as possible, conform with those approved by the American association of state highway officials.

(b) It shall be unlawful to operate any snow removal equipment on any highway unless the lamps thereon comply with and are lighted when and as required by the standards and specifications adopted as provided in this section.

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§17C-15-28. Selling and using unapproved lamps or equipment; legibility of name, etc., of approved equipment; use of improperly mounted, etc., equipment.

(a) No person shall have for sale, sell, or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer, or use upon any such vehicle any head lamp, auxiliary, or fog lamp, rear lamp, signal lamp, or reflector, which reflector is required hereunder, or parts of any of the foregoing which tend to change the original design or performance, unless of a type which has been submitted to the state road commissioner and approved by him The foregoing provisions of this section shall not apply to equipment in actual use when this section is adopted or replacement parts therefor, provided that such equipment complies with the laws relating thereto prior to the enactment hereof.

(b) No person shall have for sale, sell, or offer for sale for use upon or as a part of the equipment of a motor vehicle, trailer, or semitrailer any lamp or device mentioned in this section which has been approved by the state road commissioner unless such lamp or device bears thereon the trademark or name under which it is approved so as to be legible when installed.

(c) No person shall use upon any motor vehicle, trailer, or semitrailer any lamps mentioned in this section unless said lamps are mounted, adjusted and aimed in accordance with instructions of the state road commissioner.

WV Legislature

§17C-15-29

Repealed

Acts, 2018 Reg. Sess., Ch. 42.

WV Legislature

§17C-15-30. Revocation of certificate of approval on lighting devices.

When the state road commissioner has reason to believe that an approved device as being sold commercially does not comply with the requirements of this chapter, he may, after giving thirty days' previous notice to the person holding the certificate of approval for such device in this state, conduct a hearing upon the question of compliance of said approved device. After said hearing the state road commissioner shall determine whether said approved device meets the requirements of this chapter. If said device does not meet the requirements of this chapter he shall give notice to the person holding the certificate of approval for such device in this state.

If at the expiration of ninety days after such notice the person holding the certificate of approval for such device has failed to satisfy the state road commissioner that said approved device as thereafter to be sold meets the requirements of this chapter, the state road commissioner shall suspend or revoke the approval issued therefor until or unless such device is resubmitted to and retested by an authorized testing agency and is found to meet the requirements of this chapter, and may require that all said devices sold since the notification following the hearing be replaced with devices that do comply with the requirements of this chapter. The state road commissioner may at the time of the retest purchase in the open market and submit to the testing agency one or more sets of such approved devices, and if such device upon such retest fails to meet the requirements of this chapter, the state road commissioner may refuse to renew the certificate of approval of such device.

WV Legislature

§17C-15-31. Brakes -- Generally.

(a) Brake equipment required. -- (1) Every motor vehicle, other than a motorcycle, motor-driven cycle or moped, when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

(2) Every motorcycle, motor-driven cycle and moped, when operated upon a highway, shall be equipped with at least one brake which may be operated by hand or foot.

(3) Every trailer or semitrailer of a gross weight of three thousand pounds or more when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle and so designed as to be applied by the driver of the towing motor vehicle from its cab, and said brakes shall be so designed and connected that in case of an accidental breakaway of the towed vehicle the brakes shall be automatically applied.

(4) Every new motor vehicle, trailer or semitrailer hereinafter sold in this state and operated upon the highways shall be equipped with service brakes upon all wheels, with the following exceptions: (1) That trucks and truck-tractors having three or more axles need not have brakes on the front wheels, except when such vehicles are equipped with at least two steerable axles, the wheels of one such axle need not be equipped with brakes, (2) any motorcycle, motor-driven cycle or moped, and (3) that any semitrailer of less than one thousand five hundred pounds gross weight need not be equipped with brakes.

(5) In any combination of motor-driven vehicles, means shall be provided for applying the rearmost trailer brakes, of any trailer equipped with brakes, in approximate synchronism with the brakes on the towing vehicle and developing the required braking effort on the rearmost wheels at the fastest rate; or means shall be provided for applying braking effort first on the rearmost trailer equipped with brakes; or both of the above means capable of being used alternatively may be employed.

(6) Every such vehicle and combination of vehicles, except motorcycles, motor-driven cycles and mopeds, shall be equipped with parking brakes adequate to hold the vehicle on any grade on which it is operated, under all conditions of loading on a surface free from snow, ice or loose material. The parking brakes shall be capable of being applied in conformance with the foregoing requirements by the driver's muscular effort or by spring action or by equivalent means. Their operation may be assisted by the service brakes or other source of power provided that failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements. The parking brakes shall be so designed that when once applied

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they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be so constructed that a failure of any one part shall not leave the vehicle without operative brakes.

(7) The brake shoes operating within or upon the drums on the vehicle wheels of any motor vehicle may be used for both service and hand operation.

(b) Performance ability of brakes. -- Every motor vehicle or combination of motor-drawn vehicles shall be capable, at all times and under all conditions of loading, of being stopped on a dry, smooth, level road free from loose material, upon application of the service (foot) brake, within the distances specified below, or shall be capable of being decelerated at a sustained rate corresponding to these distances:

Feet to stop Deceleration

from 20 miles in feet per

per hour second

Vehicles or combinations

of vehicles having

brakes on all wheels 30 14

Vehicles or combinations

of vehicles not having brakes

on all wheels 40 10.7

(c) Maintenance of brakes. -- All brakes shall be maintained in good working order and shall be so adjusted as to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

WV Legislature

§17C-15-32. Brakes on motorcycles, motor-driven cycles and mopeds.

(a) The commissioner is authorized to require an inspection of the brake on any motorcycle, motor-driven cycle or moped and to disapprove any such brake which he finds will not comply with the performance ability standard set forth in section thirty-one of this article, or which in his opinion is not so designed or constructed as to insure reasonable and reliable performance in actual use.

(b) The commissioner may refuse to register or may suspend or revoke the registration of any vehicle referred to in this section when he determines that the brake thereon does not comply with the provisions of this section.

(c) No person shall operate on any highway any vehicle referred to in this section in the event the commissioner has disapproved the brake equipment upon such vehicle or type of vehicle.

WV Legislature

§17C-15-33. Horns and warning devices.

(a) Every motor vehicle when operated upon a highway shall be equipped with a horn in good working order and capable of emitting sound audible under normal conditions from a distance of not less than two hundred feet, but no horn or other warning device shall emit an unreasonably loud or harsh sound or a whistle. The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with his horn but shall not otherwise use such horn when upon a highway.

(b) No vehicle shall be equipped with nor shall any person use upon a vehicle any siren, whistle, or bell, except as otherwise permitted in this section.

(c) It is permissible but not required that any commercial vehicle be equipped with a theft alarm signal device which is so arranged that it cannot be used by the driver as an ordinary warning signal.

Any authorized emergency vehicle may be equipped with a siren, whistle, or bell, capable of emitting sound audible under normal conditions from a distance of not less than five hundred feet and of a type approved by the department, but such siren shall not be used except when such vehicle is operated in response to an emergency or in the immediate pursuit of an actual or suspected violator of the law, in which said latter events the driver of such vehicle shall sound said siren when reasonably necessary to warn pedestrians and other drivers of the approach thereof.

WV Legislature

§17C-15-34. Mufflers; prevention of noise, fumes and smoke.

(a) Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise. Such muffler shall be the muffler originally installed by the manufacturer of the vehicle or, if a replacement, the equivalent thereof. No person shall use a muffler cutout, bypass, or similar device upon a motor vehicle on a highway.

(b) The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke.

WV Legislature

§17C-15-35. Mirrors.

Every motor vehicle which is so constructed or loaded as to obstruct the driver's view to the rear thereof from the driver's position shall be equipped with a mirror so located as to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of such vehicle.

WV Legislature

§17C-15-36. Windshields must be unobstructed and equipped with wipers.

(a) No person shall drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows of such vehicle which obstructs the driver's clear view of the highway or any intersecting highway.

(b) The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which device shall be so constructed as to be controlled or operated by the driver of the vehicle.

(c) Every windshield wiper upon a motor vehicle shall be maintained in good working order.

WV Legislature

§17C-15-36a. Sun-screening devices; penalty.

(a) No person may operate a motor vehicle that is registered or required to be registered in the state on any public highway, road or street that has a sun-screening device on the windshield, the front side wings and side windows adjacent to the right and left of the driver and windows adjacent to the rear of the driver that do not meet the requirements of this section: Provided, That law-enforcement K-9 and other emergency vehicles that are designed to haul animals, unmarked law-enforcement vehicles primarily used for covert or undercover enforcement and automobiles that have sun-screening devices installed at the factory by the manufacturer are exempt from this requirement. No unmarked law-enforcement vehicle, herein exempted, may engage in routine traffic stops.

(b) A sun-screening device when used in conjunction with the windshield must be nonreflective and may not be red, yellow or amber in color. A sun-screening device may be used only along the top of the windshield and may not extend downward beyond the ASI line or more than five inches from the top of the windshield whichever is closer to the top of the windshield.

(c) A sun-screening device when used in conjunction with the automotive safety glazing materials of the side wings or side windows located at the immediate right and left of the driver shall be a nonreflective type with reflectivity of not more than twenty percent and have a light transmission of not less than thirty-five percent. The side windows behind the driver and the rear most windows may have a sun-screening device that is designed to be used on automotive safety glazing materials that has a light transmission of not less than thirty-five percent and a reflectivity of not more than twenty percent. If a sun-screening device is used on glazing behind the driver, one right and one left outside rear view mirror is required.

(d) Each manufacturer shall:

(1) Certify to the West Virginia State Police and Division of Motor Vehicles that a sun-screening device used by it is in compliance with the reflectivity and transmittance requirements of this section;

(2) Provide a label not to exceed one and one-half square inches in size, with a means for the permanent and legible installations between the sun-screening material and each glazing surface to which it is applied that contains the manufacturer's name and its percentage of light transmission; and

(3) Include instructions with the product or material for proper installation, including the affixing of the label specified in this section. The labeling or marking must be placed in the left lower corner of each glazing surface when facing the vehicle from the outside.

(e) No person may:

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(1) Offer for sale or for use any sun-screening product or material for motor vehicle use not in compliance with this section; or

(2) Install any sun-screening product or material on vehicles intended for use on public roads without permanently affixing the label specified in this section.

(f) The provisions of this section do not apply to a motor vehicle registered in this state in the name of a person, or the person's legal guardian, who has an affidavit signed by a physician or an optometrist licensed to practice in this state that states that the person has a physical condition that makes it necessary to equip the motor vehicle with sun-screening material which would be of a light transmittance or luminous reflectance in violation of this section. The affidavit must be in the possession of the person so afflicted, or the person's legal guardian, at all times while being transported in the motor vehicle.

(g) The light transmittance requirement of this section does not apply to windows behind the driver on trucks, buses, trailers, mobile homes and multipurpose passenger vehicles.

(h) As used in this section:

(1) "Bus" means a motor vehicle with motive power, except a trailer, designed for carrying more than ten persons.

(2) "Light transmission" means the ratio of the amount of total light to pass through a product or material to the amount of the total light falling on the product or material.

(3) "Luminous reflectants" means the ratio of the amount of total light that is reflected outward by the product or material to the amount of the total light falling on the product or materials.

(4) "Manufacturer" means any person engaged in the manufacturing or assembling of sun-screening products or materials designed to be used in conjunction with vehicle glazing materials for the purpose of reducing the effects of the sun.

(5) "Motor homes" means vehicular units designed to provide temporary living quarters built into and an integral part of or permanently attached to a self-propelled motor vehicle chassis.

(6) "Multipurpose passenger vehicle" means a motor vehicle with motive power, except a trailer, designed to carry ten persons or less which is constructed either on a truck chassis or with special features for occasional off-road operation.

(7) "Nonreflective" means a product or material designed to absorb light rather than to reflect it.

(8) "Passenger car" means a motor vehicle with motive power, except a multipurpose passenger vehicle, motorcycle or trailer, designed for carrying ten persons or less.

WV Legislature

(9) "Sun-screening device" means film material or device that is designed to be used in conjunction with motor vehicle safety glazing materials for reducing the effects of the sun.

(10) "Truck" means a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment.

(i) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $200.

WV Legislature

§17C-15-37. Tire equipment restrictions; rules and regulations as to certain tires.

(a) Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.

(b) No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the roadway.

(c) No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike, or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire, except that: (1) It shall be permissible to use farm machinery with tires having protuberances which will not injure the highway; (2) it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid; and (3) it shall be permissible to use studded tires during the period from November 1 of each year until April 15 of the following year: *Provided*, That in the interest of highway maintenance, no vehicle moved on a highway, other than school buses, shall be equipped with studded tires which are operational with a recommended air pressure greater than 40 pounds per square inch.

(d) The Commissioner of the Division of Highways and local authorities in their respective jurisdictions may in their discretion issue special permits authorizing the operation upon the highway of traction engines or tractors having movable tracks with transverse corrugations upon the periphery of such movable tracks or farm tractors or other farm machinery, the operation of which upon a highway would otherwise be prohibited under this chapter.

WV Legislature

§17C-15-38

Repealed

Acts, 2018 Reg. Sess., Ch. 42.

WV Legislature

§17C-15-39. Flares and other warning devices to be carried in certain vehicles.

(a) No person shall operate any motor truck, passenger bus, road tractor or truck tractor upon any highway outside the corporate limits of municipalities at any time from a half hour after sunset to a half hour before sunrise unless there shall be carried in such vehicle the following equipment except as provided in subsection (b):

(1) At least three flares or three red electric lanterns each of which shall be capable of being seen and distinguished at a distance of five hundred feet under normal atmospheric conditions at nighttime.

Each flare (liquid-burning pot torch) shall be capable of burning for not less than twelve hours in five miles per hour wind velocity and capable of burning in any air velocity from zero to forty miles per hour. Every such flare shall be substantially constructed so as to withstand reasonable shocks without leaking. Every such flare shall be carried in the vehicle in a metal rack or box. Every such red electric lantern shall be capable of operating continuously for not less than twelve hours and shall be substantially constructed so as to withstand reasonable shock without breakage.

(2) At least three red-burning fusees unless red electric lanterns are carried.

Every fusee shall be made in accordance with specifications of the Bureau of Explosives, Thirty Vesey Street, New York City, and so marked and shall be capable of burning at least fifteen minutes.

(3) At least two red cloth flags, not less than twelve inches square, with standards to support same.

(b) No person shall operate at the time and under the conditions stated in subsection (a) any motor vehicle used in the transportation of flammable liquids in bulk, or transporting compressed flammable gases, unless there shall be carried in such vehicle three red electric lanterns meeting the requirements above stated, and there shall not be carried in any said vehicle any flares, fusees, or signal produced by a flame.

(c) As an alternative it shall be deemed a compliance with this section in the event a person operating any motor vehicle described in this section shall carry in such vehicle three portable reflector units on standards of a type approved by the state road commissioner. No portable reflector unit shall be approved unless it is so designed and constructed as to include two reflectors, one above the other, each of which shall be capable of reflecting red light clearly visible from all distances within five hundred feet to fifty feet under normal atmospheric conditions at nighttime when directly in front of lawful upper beams of head lamps.

WV Legislature

§17C-15-40. Display of warning devices when vehicle is disabled.

(a) Whenever any motor truck, passenger bus, truck tractor, trailer, semitrailer, or pole trailer is disabled upon the traveled portion of any highway or the shoulder thereof outside of any municipality at any time when lighted lamps are required on vehicles the driver of such vehicle shall display the following warning devices upon the highway during the time the vehicle is so disabled on the highway except as provided in subsection (b):

(1) A lighted fusee shall be immediately placed on the roadway at the traffic side of the motor vehicle unless electric lanterns are displayed.

(2) Within the burning period of the fusee and as promptly as possible three lighted flares (pot torches) or three electric lanterns shall be placed on the roadway as follows:

One at a distance of approximately one hundred feet in advance of the vehicle, one at a distance of approximately one hundred feet to the rear of the vehicle, each in the center of the lane of traffic occupied by the disabled vehicle, and one at the traffic side of the vehicle approximately ten feet rearward or forward thereof.

(b) Whenever any vehicle used in the transportation of flammable liquids in bulk, or transporting compressed flammable gases is disabled upon a highway at any time or place mentioned in subsection (a) of this section, the driver of such vehicle shall display upon the roadway the following lighted warning devices: One red electric lantern shall be immediately placed on the roadway at the traffic side of the vehicle and two other red electric lanterns shall be placed to the front and rear of the vehicle in the same manner prescribed in subsection (a) above for flares.

When a vehicle of a type specified in subsection (b) is disabled the use of flares, fusees, or any signal produced by flame as warning signals is prohibited.

(c) Whenever any vehicle of a type referred to in this section is disabled upon the traveled portion of a highway or the shoulder thereof outside of any municipality at any time when the display of fusees, flares, or electric lanterns is not required, the driver of such vehicle shall display two red flags upon the roadway in the lane of traffic occupied by the disabled vehicle, one at a distance of approximately one hundred feet in advance of the vehicle, and one at a distance of approximately one hundred feet to the rear of the vehicle.

(d) In the alternative it shall be deemed a compliance with this section in the event three portable reflector units on standards of a type approved by the state road commissioner are displayed at the times and under the conditions specified in this section either during the daytime or at nighttime and such portable reflector units shall be placed on the roadway in the locations as described with reference to the placing of electric lanterns and lighted flares.

(e) The flares, fusees, lanterns, and flags to be displayed as required in this section shall

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conform with the requirements of section thirty-nine of this article applicable thereto.

WV Legislature

§17C-15-41. Vehicles transporting explosives.

Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the provisions of this section.

(a) Said vehicle shall be marked or placarded on each side and the rear with the word "Explosives" in letters not less than eight inches high, or there shall be displayed on the rear of such vehicle a red flag not less than twenty-four inches square marked with the word "Danger" in white letters six inches high.

(b) Every said vehicle shall be equipped with not less than two fire extinguishers, filled and ready for immediate use, and placed at a convenient point on the vehicle so used.

(c) The state road commissioner is hereby authorized and directed to promulgate such additional regulations governing the transportation of explosives and other dangerous articles by vehicles upon the highways as he shall deem advisable for the protection of the public.

WV Legislature

§17C-15-42. Video screens, video monitors and television receivers in view of driver prohibited; exceptions.

(a) No motor vehicle may be operated on a street or highway in this state when equipped with a television receiver, video monitor, television or video screen unless the receiver, screen or monitor is configured so that the moving images are not in view of the operator while the vehicle is in motion, or it falls within one or more of the categories set forth in subsections (b) or (c) of this section.

(b) This prohibition does not apply to the following equipment installed in a vehicle:

(1) A visual display if it does not show video or television broadcast images in view of the operator while the motor vehicle is in motion;

(2) A global positioning device;

(3) A mapping display;

(4) A visual display used to enhance or supplement the driver's view forward, behind or to the sides of a motor vehicle for the purpose of maneuvering the vehicle;

(5) A visual display used to enhance or supplement a driver's view of vehicle occupants; or

(6) Television-type receiving equipment used exclusively for safety or traffic engineering information.

(c) A television receiver, video monitor, television or video screen or other similar means of visually displaying a television broadcast or video signal is not prohibited if the equipment has an interlock device that, when the motor vehicle is driven, disables the equipment for all uses except as a visual display described in subdivisions (1) through (6) of subsection (b) of this section.

WV Legislature

§17C-15-43. Vehicles to be equipped with safety belts.

No dealer in new or used automobiles shall sell, lease, transfer or trade, at retail, any passenger automobile which is manufactured after January 1, 1965, unless such vehicle is equipped with safety seat belts for the front seat, which seat belts shall meet the standards set and approved by the Society of Automotive Engineers, Inc.

WV Legislature

§17C-15-44. Safety equipment and requirements for motorcyclists, motorcycles, motor-driven cycles and mopeds; motorcycle safety standards and education committee.

(a) A person may not operate or be a passenger on any motorcycle or motor-driven cycle unless the person is wearing securely fastened on his or her head by either a neck or chin strap a protective helmet designed to deflect blows, resist penetration, and spread impact forces. Any helmet worn by an operator or passenger shall meet the current performance specifications established by the American National Standards Institute Standard, Z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard No. 218, or Snell Safety Standards for Protective Headgear for Vehicle Users.

(b) A person may not operate or be a passenger on any motorcycle or motor-driven cycle unless the person is wearing safety, shatter-resistant eyeglasses, excluding contact lenses, or eye goggles or face shield that complies with the performance specifications established by the American National Standards Institute for Head, Eye and Respiratory Protection, Z 2.1. In addition, if any motorcycle, motor-driven cycle or moped is equipped with a windshield or windscreen, the windshield or windscreen shall be constructed of safety, shatter-resistant material that complies with the performance specifications established by Department of Transportation Federal Motor Vehicle Safety Standard No. 205 and American National Standards Institute, Safety Glazing Materials for Glazing Motor Vehicles Operated on Land Highways, Standard Z 26.1.

(c) A person may not operate a motorcycle, motor-driven cycle or moped on which the handlebars or grips are more than 15 inches higher than the uppermost part of the operator’s seat when the seat is not depressed in any manner.

(d) A person operating a motorcycle, motor-driven cycle, or moped shall face forward and either sit astride a permanent operator’s seat attached to the vehicle or stand astride the vehicle with both feet on the vehicle’s footpegs or pedals. An operator may not carry any other person and any other person may not ride on the vehicle unless the vehicle is designed to carry more than one person, in which case a passenger may ride: (i) behind the operator upon the permanent operator’s seat if it is designed for two persons; (ii) upon another seat firmly attached to the vehicle to the rear of the operator’s seat and equipped with footrests designed and located for use by the passenger; or (iii) in a sidecar firmly attached to the vehicle. A person may not ride side saddle on a seat. An operator may carry as many passengers as there are seats and footrests to accommodate those passengers. Additional passengers may be carried in a factory-produced sidecar so long as there is one passenger per seat. Any passenger riding in a sidecar shall be restrained by a safety belt.

(e) Every motorcycle, motor-driven cycle, and moped shall be equipped with a rearview mirror affixed to the handlebars or fairings and adjusted so that the operator has a clear view of the road and condition of traffic behind him or her for a distance of at least two hundred feet.

WVLegislature

(f) Notwithstanding any provision of this code to the contrary, a person with a valid driver's license who is operating a fully enclosed autocycle, as defined in §17C-1-69 of this code, is exempt from the provisions of this section.

WV Legislature

§17C-15-45. Certification labels on mopeds.

Every moped sold in this state shall have permanently affixed to it a certification label which shall contain the following information:

(1) Name of manufacturer;

(2) Month and year of manufacture;

(3) Gross vehicle weight rating (GVWR);

(4) Gross axle weight rating for front and rear axles (GAWR);

(5) Vehicle identification number;

(6) Classification type; and

(7) Statement of conformance to federal standards as required by federal law.

WV Legislature

§17C-15-46. Child passenger safety devices required; child safety seats and booster seats.

Every driver who transports a child under the age of eight years in a passenger automobile, van or pickup truck other than one operated for hire shall, while the motor vehicle is in motion and operated on a street or highway of this state, provide for the protection of the child by properly placing, maintaining and securing the child in a child passenger safety device system meeting applicable federal motor vehicle safety standards: Provided, That if a child is under the age of eight years and at least four feet nine inches tall, a safety belt shall be sufficient to meet the requirements of this section.

Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $10 nor more than $20.

A violation of this section does not by virtue of the violation constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity may not affect other provisions or applications of this section and to this end the subsections of this section are declared to be severable.

If all seat belts in a vehicle are being used at the time of examination by a law officer and the vehicle contains more passengers than the total number of seat belts or other safety devices as installed in compliance with federal motor vehicle safety standards, the driver may not be considered in violation of this section.

WV Legislature

§17C-15-47. Commercial towing vehicles to employ safety chains.

Every vehicle used in any business in West Virginia for towing wrecked or disabled vehicles shall carry a safety chain at all times. No such towing vehicle may tow a wrecked or disabled vehicle unless a safety chain is securely in place coupling the towing vehicle to the vehicle being towed. For purposes of this section, safety chain means chain or cable of sufficient strength to keep the towing and towed vehicles connected in the event that the towing sling or other primary connection fails.

WV Legislature

§17C-15-48. Alteration of motor vehicles; bumper height limits; other modifications; exceptions; required inspection; and rules of division of public safety.

(a) No person may operate upon a public highway any motor vehicle registered or required to be registered in this state if it has been modified by alteration of its height from the ground to the extent that its bumpers, measured to any point on the lower edge of the main horizontal bumper bar, exclusive of any bumper guards, do not fall within the limits specified herein for its gross vehicle weight rating category. The front and rear bumper height of motor vehicles whose gross vehicle weight rating is ten thousand pounds or less may be no less than six inches and no more than thirty-one inches. In the absence of bumpers, and in cases where bumper heights have been altered or modified, height measurements shall be made to the bottom of the frame rail. If a motor vehicle has a bumper, the bumper must be at least three inches in vertical width, centered on the center line of the motor vehicle and not less than the width of the wheel track distance. The provisions of this subsection do not apply to motor vehicles with a gross vehicle weight rating in excess of ten thousand pounds. For the purpose of this subsection, the term "gross vehicle weight ratings" means the manufacturer's gross vehicle weight ratings established for that vehicle.

(b) The maximum distance between the vehicle body to the vehicle frame may not exceed three inches. The distance from the vehicle body to the vehicle frame shall be measured from the vehicle body mount seat to the vehicle frame mount seat: Provided, That the maximum distance limitation shall not prohibit a body lift kit up to three inches to be added to the manufacturer's original spacer between the body and the frame. No vehicle may be modified to cause the vehicle body or chassis to come in contact with the ground, expose the fuel tank to damage from collision, or cause the wheels to come in contact with the body under normal operation. No part of the original suspension system may be disconnected to defeat the safe operation of the suspension system. Modification of the front end suspension by the use of lift blocks is expressly prohibited.

(c) Nothing contained in this section prevents the installation of heavy duty equipment, including shock absorbers and overload springs.

(d) Nothing contained in this section prohibits the operation on a public highway of a motor vehicle with normal wear to the suspension system if such normal wear does not adversely affect the control of the vehicle.

(e) This section does not apply to specially designed or modified motor vehicles when operated off the public highways in races and similar events. Such motor vehicles may be lawfully towed on the highways of this state.

(f) Modifications to motor vehicles, not prohibited herein, shall be made subject to inspection as provided in subsection (g) herein.

(g) Nothing contained in this section shall subject a vehicle modified solely by the installation of tires not larger than two sizes beyond the maximum specified by the

WV Legislature

manufacturer to inspection as provided in subsection (h) herein.

(h) Any motor vehicle which has been altered from the manufacturer's specification with respect to bumper height for that vehicle make and model but within the allowable limits of subsection (a) or any motor vehicle which has been altered from the manufacturer's specification for that vehicle make and model with respect to the distance from the vehicle body to vehicle frame but within the allowable limits of subsection (b) may be operated upon a public highway in this state, subject to inspection hereunder: Provided, That any motor vehicle which has been altered from the manufacturer's specification by lowering the bumper height for that vehicle make and model within the allowable limits of subsection (a) shall be exempt from the inspection requirements hereunder and may be operated upon a public highway in this state subject to provisions of article sixteen of this chapter. If a motor vehicle and its equipment subject to inspection under this section are inspected and found to be in compliance with the provisions of this section and to be otherwise in safe condition, an official "modified vehicle sticker" shall be issued for display on the vehicle. The fee for the modified vehicle stickers will be $25 with the division of public safety establishing rules concerning such inspection. Each municipal, county and state law-enforcement agency must record on accident report forms whether a modified vehicle was involved in the accident.

(i) The division of public safety shall promulgate rules governing a complete safety inspection of these vehicles and other rules as necessary to fully enforce and implement the provisions of this section. Notwithstanding the provisions of article three, chapter twenty-nine-a of this code, the division of public safety may promulgate emergency legislative rules relating to vehicle modifications under this section and such rules shall be effective for a period of fifteen months beginning with November, 1991.

WV Legislature

§17C-15-49. Operation of vehicles with safety belts; exception; penalty; educational program by West Virginia State Police.

(a) A person may not operate a passenger vehicle on a public street or highway of this state unless the person, any passenger in the back seat under 18 years of age, and any passenger in the front seat of the passenger vehicle is restrained by a safety belt meeting applicable federal motor vehicle safety standards. For the purposes of this section, the term "passenger vehicle" means a motor vehicle which is designed for transporting 15 passengers or less, including the driver, except that the term does not include a motorcycle, a trailer, or any motor vehicle which is not required on the date of the enactment of this section under a federal motor vehicle safety standard to be equipped with a belt system. The provisions of this section apply to all passenger vehicles manufactured after January 1, 1967, and being 1968 models and newer.

(b) The required use of safety belts as provided in this section does not apply to a duly appointed or contracted rural mail carrier of the United States Postal Service who is actually making mail deliveries or to a passenger or operator with a physically disabling condition whose physical disability would prevent appropriate restraint in the safety belt if the condition is duly certified by a physician who states the nature of the disability as well as the reason the restraint is inappropriate. The Division of Motor Vehicles shall adopt rules, in accordance with §29A-3-1 *et seq*. of this code, to establish a method to certify the physical disability and to require use of an alternative restraint system where feasible or to waive the requirement for the use of any restraint system.

(c) Any person who violates the provisions of this section shall be fined $25. No court costs or other fees may be assessed for a violation of this section.

(d) Notwithstanding any other provision of this code to the contrary, no points may be entered on any driver's record maintained by the Division of Motor Vehicles as a result of a violation of this section.

(e) The Governor's Highway Safety Program, in cooperation with the West Virginia State Police and any other state departments or agencies and with county and municipal law-enforcement agencies, shall initiate and conduct an educational program designed to encourage compliance with safety belt usage laws. This program shall be focused on the effectiveness of safety belts, the monetary savings, and the other benefits to the public from usage of safety belts and the requirements and penalties specified in this law.

(f) This section does not abrogate or alter the provisions of §17C-15-46 of this code relating to the mandatory use of child passenger safety devices.

WV Legislature

§17C-15-49a. Admissibility of use or nonuse of safety belts in civil actions.

The admissibility of evidence of the failure of an occupant of a passenger vehicle to use a safety belt in any civil action is governed by the following rules:

(a) *Definitions*. — For the purposes of this section:

(1) "Adult" means a person who is 18 years of age or older;

(2) "Child" means a person who is under 18 years of age;

(3) "Claimant" means any person asserting a claim;

(4) "Driver" means a person, whether an adult or child, who is operating the passenger vehicle on a public street or highway of this state;

(5) "Passenger" means a person in the passenger vehicle other than the driver of the passenger vehicle while it is being operated on a public street or highway of this state; and

(6) "Passenger vehicle" means a passenger vehicle as defined in §17C-15-49(a) of this code.

(b) *Admissibility as evidence of negligence*. —

(1) *Claimant as driver*. —

(A) When a person making a claim for damages in a civil action was the driver of a passenger vehicle involved in the collision from which the damages suffered by the claimant driver are alleged to have arisen, evidence that the claimant driver of the passenger vehicle was not wearing a safety belt at the time of the collision is not admissible to show his or her negligence.

(B) The prohibition on the admissibility of evidence provided by this paragraph does not apply in an action against the manufacturer or seller of the passenger vehicle being driven by the claimant driver and/or a manufacturer or seller of any component or system incorporated into the passenger vehicle.

(2) *Claimant as adult passenger*. —

(A) When a person making a claim for damages in a civil action was an adult passenger in a passenger vehicle involved in the collision from which the damages suffered by that claimant adult passenger are alleged to have arisen, evidence that the claimant adult passenger was not wearing a safety belt at the time of the collision is not admissible to show his or her negligence.

(B) The prohibition on the admissibility of evidence provided by this paragraph does not apply in an action against the manufacturer or seller of the passenger vehicle in which the

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claimant adult passenger was a passenger and/or a manufacturer or seller of any component or system incorporated into the passenger vehicle.

(3) *Claimant as child passenger.* —

When a person making a claim for damages in a civil action was a child passenger, or when the person making a claim for damages in a civil action is making the claim on behalf of a child who was a passenger, in a passenger vehicle involved in the collision from which the damages suffered by that claimant child passenger are alleged to have arisen, evidence that said claimant child passenger was not wearing a safety belt at the time of the collision is not admissible to show any negligence of the claimant child passenger: *Provided*, That the evidence may be admissible, subject to the West Virginia Rules of Evidence, to show negligence of the driver of the passenger vehicle in which the claimant child was a passenger.

(c) *Admissibility as evidence of exacerbation of or contribution to a claimant's damages.* —

(1) *Claimant as driver.* — When a person making a claim for damages in a civil action was the driver of a passenger vehicle involved in the collision from which the damages suffered by the claimant driver are alleged to have arisen, evidence that the claimant driver of the passenger vehicle was not wearing a safety belt at the time of the collision may be admissible to show that his or her failure to wear a safety belt exacerbated or contributed to the claimant driver's damages: *Provided*, That the defendant's burden of proof as set forth in subdivision (d) of this subsection must be supported by expert testimony, subject to a finding by the court that the expert testimony satisfies the threshold requirements of Rule 702 of the West Virginia Rules of Evidence.

(2) *Claimant as adult passenger.* — When a person making a claim for damages in a civil action was an adult passenger in a passenger vehicle involved in the collision from which the damages suffered by that claimant adult passenger are alleged to have arisen, evidence that the claimant adult passenger was not wearing a safety belt at the time of the collision may be admissible to show that his or her failure to wear a safety belt exacerbated or contributed to that claimant adult passenger's damages: *Provided*, That the defendant's burden of proof as set forth in subdivision (d) of this subsection must be supported by expert testimony, subject to a finding by the court that the expert testimony satisfies the threshold requirements of Rule 702 of the West Virginia Rules of Evidence.

(3) *Claimant as child passenger.* — When a person making a claim for damages in a civil action was child passenger at the time of the accident, or when the person making a claim for damages in a civil action is making the claim on behalf of a child who was a passenger, in a passenger vehicle involved in the collision from which the damages suffered by that claimant child passenger are alleged to have arisen, evidence that the claimant child passenger was not wearing a safety belt at the time of the collision is not admissible to show that the claimant child passenger's failure to wear a safety belt exacerbated or contributed to the claimant child passenger's damages.

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(4) The admissibility of evidence provided by paragraphs (1) and (2) of this subdivision does not apply if any driver with fault was driving in an "impaired state" as defined by §17C-5-2 of this code, or if the driver is found to have concurrently violated §61-5-17(h), §61-5-17(i), or §61-5-17(j) of this code.

(d) Subject to subdivision (e) of this subsection, a claimant's failure to wear a safety belt shall constitute an affirmative defense.

(e) *Court to instruct jury.* — In a civil action for damages in which the court has determined that evidence that a person was not wearing a safety belt at the time of the collision is to be admitted, the court shall instruct the jury as to the purposes for which the jury may consider, and may not consider, the evidence.

(f) *Court's discretion as to bifurcation*. — In the discretion of the court, if the court determines that it is necessary to prevent prejudice or avoid confusion of the jury, the court may, upon request of a party, bifurcate the trial so that the questions of liability are tried first and the question of damages is presented separately thereafter. If the court, in its discretion, grants bifurcation, the court should consider whether it is possible to bifurcate these issues within a single trial, so that all of the issues to be tried in the case are tried together in a single trial with the same jury, but with the presentation of the evidence on the separate issues and the deliberations of the same jury ordered in such a way so as to achieve separation of the issues within a single trial.

(g) *Immunities not abrogated*. — It is the intent of the Legislature that the amendments made during the regular session of the Legislature, 2021, to this section and §17C-15-49 of this code do not abrogate or modify any immunities recognized by the law.

(h) *Effective date*. — This section and the amendments made during the regular session of the Legislature, 2021, to §17C-15-49 of this code applies to collisions occurring on or after the effective date of those amendments and this section.

(i) This section does not abrogate or alter the provisions of §17C-15-46 of this code relating to the mandatory use of child passenger safety devices.

WV Legislature

§17C-15-50. Air bag fraud; counterfeit and nonfunctional air bags prohibited; penalties; applicability; exceptions.

(a) For purposes of this section:

(1) "Air bag" means an inflatable occupant supplemental restraint system, including all component parts, such as the cover, sensors, controllers, inflators, and wiring, designed to activate in a motor vehicle in the event of a crash to mitigate injury or ejection and that meets the federal motor vehicle safety standards set forth in 49 C.F.R. 571.208 for the make, model, and model year of the motor vehicle.

(2) "Counterfeit air bag" means an air bag or component of an air bag displaying a mark identically or substantially similar to the genuine mark of a motor vehicle manufacturer or supplier of parts to a motor vehicle manufacturer, without the authorization of the motor vehicle manufacturer or supplier, respectively.

(3) "Disable" means to deliberately disconnect or otherwise render inoperable and includes the failure to replace a previously deployed airbag with a functional airbag.

(4) "Nonfunctional air bag" means any of the following:

(A) A replacement air bag that has been previously deployed or damaged;

(B) A replacement air bag that has an electric fault that is detected by the vehicle's air bag diagnostic system when the installation procedure is completed and the vehicle is returned to the customer who requested the work to be performed or when ownership is intended to be transferred;

(C) A counterfeit air bag, air bag cover, or some other object that is installed in a motor vehicle in order to mislead or deceive an owner or operator of the motor vehicle into believing that a functional air bag has been installed; or

(D) An air bag subject to the prohibitions of 49 U.S.C. § 30120(j).

(b) A person who does any of the following is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000, or confined in a regional jail for not more than one year, or both fined and confined: *Provided*, That if the violation results in the serious bodily injury or death of any person, the person in violation of this section is guilty of a felony, and, upon conviction thereof, shall be fined not less than $2,500 nor more than $10,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned:

(1) Knowingly import, manufacture, sell, offer for sale, install, or reinstall in a motor vehicle, a counterfeit air bag, a nonfunctional air bag, or an object that does not comply with Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208) for the make, model, and year of the motor vehicle;

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(2) Knowingly sell, offer for sale, install, or reinstall in any motor vehicle a device that causes a motor vehicle's diagnostic system to inaccurately indicate that the motor vehicle is equipped with a properly functioning air bag; or

(3) Knowingly sell, lease, trade or transfer a motor vehicle if the person knows that a counterfeit air bag, a nonfunctional air bag, or an object that does not comply with Federal Motor Vehicle Safety Standard Number 208 (49 CFR 571.208) for the make model, and year of the motor vehicle has been installed as part of the motor vehicle's inflatable restraint system.

(c) This section does not apply to an owner or employee of a motor vehicle dealership or the owner of a vehicle who, before the sale of the vehicle, does not have knowledge that the vehicle's air bag, or another component of the vehicle's supplemental restraint system, is counterfeit or nonfunctioning.

(d) Nothing in this section shall be construed as to limit the liability in a civil action of any person who violates the provisions of this section.

(e) Nothing in this section shall be construed as to create a duty that, before the sale of a vehicle, an owner or employee of a motor vehicle dealership or the owner of a vehicle inspect a vehicle in possession of the dealership or owner to determine whether the air bag, or another component of the vehicle's supplemental restraint system is counterfeit or nonfunctional.

(f) The provisions of this section do not apply where:

(1) An individual who disables an airbag in a passenger vehicle owned by him or her and which is used exclusively for his or her personal use;

(2) An individual renders assistance in disabling an airbag in a passenger vehicle which is used exclusively for personal use; and

(3) An individual sells a passenger vehicle used exclusively for his or her personal use with an airbag he or she knows to be disabled, and the individual selling the passenger vehicle discloses in writing to the buyer that the airbag of the vehicle is disabled.

WV Legislature

§17C-16-1. Vehicles not to operate without required equipment or in unsafe condition.

No person shall drive or move on any highway any motor vehicle, trailer, semitrailer, or pole trailer, or any combination thereof unless the equipment upon any and every said vehicle is in good working order and adjustment as required in this chapter and said vehicle is in such safe mechanical condition as not to endanger the driver or other occupant or any person upon any highway.

WV Legislature

§17C-16-2. Inspection by department of public safety.

(a) The department of public safety may at any time upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law, or that its equipment is not in proper adjustment or repair, require the driver of such vehicle to stop and submit such vehicle to an inspection and such test with reference thereto as may be appropriate.

(b) In the event such vehicle and its equipment are found to be in safe condition and in full compliance with the law, the officer making such inspection shall issue to the driver an official certificate of inspection and approval of such vehicle specifying those parts or equipment so inspected and approved.

(c) In the event such vehicle is found to be in unsafe condition or any required part or equipment is not present or is not in proper repair and adjustment the officer shall give a written notice to the driver and shall send a copy to the department. Said notice shall require that such vehicle be placed in safe condition and its equipment in proper repair and adjustment specifying the particulars with reference thereto and that a certificate of inspection and approval be obtained within five days.

WV Legislature

§17C-16-3. Owners and drivers to comply with inspection laws.

(a) No person driving a vehicle shall refuse to submit such vehicle to an inspection and test when required to do so by the department of public safety.

(b) Every owner or driver, upon receiving a notice as provided in section two of this article shall comply therewith and shall within five days secure an official certificate of inspection and approval which shall be issued in duplicate, one copy to be retained by the owner or driver and the other copy to be forwarded to the department. In lieu of compliance with this paragraph the vehicle shall not be operated, except as provided in the next succeeding paragraph.

(c) No person shall operate any vehicle after receiving a notice with reference thereto as above provided, except as may be necessary to return such vehicle to the residence or place of business of the owner or driver, or to a garage, until said vehicle and its equipment has been placed in proper repair and adjustment and otherwise made to conform to the requirements of this chapter and a certificate of inspection and approval shall be obtained as promptly as possible thereafter.

(d) In the event repair or adjustment of any vehicle or its equipment is found necessary upon inspection, the owner of said vehicle may obtain such repair or adjustment at any place he may choose, but in every event an official certificate of inspection and approval must be obtained, otherwise such vehicle shall not be operated upon the highways of this state.

(e) "Inspection and test," as used in this article, shall mean inspections and tests as related to the actual mechanical and operating ability of such vehicle.

WV Legislature

§17C-16-4. Superintendent of the West Virginia State Police to require periodic inspection; acceptance of certificate of inspection from another state; suspension of registration of unsafe vehicles.

(a) The Superintendent of the West Virginia State Police shall require that every motor vehicle, trailer, semitrailer, and pole trailer registered in this state be inspected once every two years; and that an official certificate of inspection and approval be obtained for each vehicle: *Provided*, That commercial motor vehicles which are subject to the federal motor carrier safety administration rules and regulations should be inspected at least once annually to meet the requirements of federal motor carrier safety regulations which require a commercial motor vehicle registered in this state to pass an annual inspection of all safety equipment. The inspections shall be made and the certificates obtained with respect to the mechanism, brakes, and equipment of every vehicle designated by the superintendent.

The superintendent may make necessary rules for the administration and enforcement of this section and may designate any period or periods during which owners of any vehicles, subject to this section, shall display upon the vehicles certificates of inspection and approval or shall produce the certificates upon demand of any officer or employee of the State Police designated by the superintendent or any police or peace officer when authorized by the superintendent.

(b) The superintendent may authorize the acceptance in this state of a certificate of inspection and approval issued in another state having an inspection law similar to this chapter and may extend the time within which the resident owner of a vehicle which was not in this state during the time an inspection was required must obtain a certificate.

(c) At the request of the superintendent, the Commissioner of the Division of Motor Vehicles may suspend the registration of any vehicle which the superintendent determines is in such an unsafe condition that it constitutes a menace to safety, or which after notice and demand is not equipped as required in this chapter, or for which the vehicle's owner has not obtained the required certificate.

(d) If requested by the owner of the vehicle, the superintendent shall also cause to be inspected a Class A farm use motor vehicle exempt from annual registration certificate and licensing as provided in §17A-3-2 of this code. If the Class A farm use motor vehicle passes the inspection, the superintendent shall cause a certificate of inspection to be issued for that vehicle.

(e) (1) If requested by the owner of the vehicle, the superintendent shall also cause to be inspected on an annual basis any commercial motor vehicle which is subject to the federal motor carrier safety administration rules and regulations. If the commercial motor vehicle passes the inspection, the superintendent shall cause a certificate of inspection to be issued for that vehicle and the validity period of that inspection will be for one year, expiring at the end of the month one year after the inspection: *Provided*, That, notwithstanding the provisions of §17C-16-5, a charge of $3 per sticker shall be charged to the inspection station,

and the funds received shall be deposited in the State Treasury and credited to the account of the State Police for application in the administration and enforcement of the provisions of this article and for the purchase of vehicles, equipment for vehicles, and maintenance of vehicles. For inspections provided pursuant to this subsection, the total charge, including the cost of the sticker, shall not exceed $14.

(2) For purposes of this section, "Commercial motor vehicle" is defined as any vehicle registered in this state used on a highway, in interstate commerce, that: (1) has a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR), or gross vehicle weight (GVW) or gross combination weight (GCW) of 10,001 pounds or more, whichever is greater; (2) is designed to transport more than eight (8) passengers (including the driver) for compensation; (3) is designed to transport 16 or more people, including the driver, and is not used to transport passengers for compensation; or, (4) is transporting hazardous materials in quantities requiring the vehicle to be placarded.

WV Legislature

§17C-16-5. Permit for official inspection stations; fees for and certificate of inspection.

(a) The Superintendent of the State Police is responsible for the inspection as provided in this article and shall prescribe requirements and qualifications for official inspection stations. He or she shall select and designate the stations and shall issue permits for official inspection stations and furnish instructions and all necessary forms for the inspection of vehicles as required in this article and the issuance of official certificates of inspection and approval. The certificate of inspection shall be a paper sticker or decal to be affixed to the windshield of a motor vehicle, shall be serially numbered, and shall properly identify the official inspection station which issued it. A charge of $6 per sticker shall be charged by the State Police to the inspection station, and the funds received shall be deposited into the State Treasury and credited to the account of the State Police for application in the administration and enforcement of the provisions of this article and for the purchase of vehicles, equipment for vehicles, and maintenance of vehicles. The superintendent may exchange stickers or make refunds to official inspection stations for stickers on hand when permits are revoked or when, for any reason, the stickers become obsolete. The amendments made to this subsection during the 2023 regular session of the Legislature shall become effective on January 1, 2024.

(b) A person shall apply for a permit upon an official form prescribed by the superintendent and the superintendent shall grant permits only when the superintendent is satisfied that the station is properly equipped, has competent personnel to make the inspections and adjustments, and that the inspections and adjustments will be properly conducted. The superintendent, before issuing a permit, may require the applicant to file a bond with surety approved by the superintendent, conditioned that such applicant, as a station operator, will make compensation for any damage to a vehicle during an inspection or adjustment due to negligence on the part of the station operator or employees thereof.

(c) The superintendent shall properly supervise and cause inspections to be made of the stations. Upon finding that a station is not properly equipped or conducted, the superintendent may, upon a first violation, suspend the permit for a period of up to one year. Upon a second or subsequent finding that a station is not properly equipped or conducted, the superintendent shall permanently revoke and require the surrender of the permit. The superintendent may reinstate the permit of any person whose permit was permanently revoked prior to the effective date of this section upon a first finding that a station was not properly equipped or conducted, upon application, at any time after the expiration of six months from the time of revocation and shall reinstate the permit, upon application, after the expiration of one year. He or she shall maintain and post at his or her office and at any other places as he or she may select lists of all stations holding permits and of those whose permits have been suspended or revoked.

WV Legislature

§17C-16-6. Assignment, transfer, and posting of official inspection station permit; issuance and record of certificate of inspection; inspection fee.

(a) No permit for an official inspection station shall be assigned or transferred or used at any location other than designated in the permit and every permit shall be posted in a conspicuous place at the station location designated in the permit.

(b) The person operating the station shall issue a certificate of inspection and approval, upon an official form, to the owner of a vehicle upon inspecting the vehicle and determining that its equipment required under this article is in good condition and proper adjustment, but otherwise no certificate shall be issued, except one issued pursuant to section two of this article. When required by the superintendent, a record and report shall be made of every inspection and every certificate issued.

(c) A fee of not more than $19 may be charged for an inspection and any necessary headlight adjustment to proper focus, not including any replacement parts required, and the issuance of the certificate, but the imposition of the charge is not mandatory. The amendments made to this subsection during the 2023 regular session of the Legislature shall become effective on January 1, 2024.

WV Legislature

§17C-16-7. Improper representation as official stations.

(a) No person shall in any manner represent any place as an official inspection station unless such station is operating under a valid permit issued by the department.

(b) No person shall issue a certificate of inspection and approval unless then holding a valid permit hereunder.

WV Legislature

§17C-16-8. False certificates.

(a) No person shall make, issue, or knowingly use any imitation or counterfeit of an official certificate of inspection.

(b) No person shall display or cause or permit to be displayed upon a vehicle any certificate of inspection and approval knowing the same to be fictitious or issued for another vehicle or issued without an inspection having been made.

WV Legislature

§17C-16-9. Operation without certificate or failure to produce certificate; penalty for misdemeanor.

It is a misdemeanor for any owner or operator, or both owner and operator, of any vehicle required to be inspected under subsection (a), section four of this article, to operate or permit to be operated such vehicle without having displayed thereon a current and valid certificate of inspection and approval or fail to produce same upon demand of any authorized person as designated under said subsection: Provided, That a dealer licensed to sell new vehicles under the provision of article six, chapter seventeen-a of this code shall not be required to display a certificate of inspection and approval upon any new vehicle if the vehicle is driven for an operational purpose including all activities associated with dealer preparation for sale of a motor vehicle belonging to such dealer when such vehicle has not been titled or delivered to a purchaser, and when such car is not to be used in the demonstrator fleet or otherwise routinely driven on the highways or roads of this state.

Unless another penalty is by the laws of this state provided, every person convicted of a misdemeanor for operating a vehicle without having displayed thereon a current and valid certificate of inspection and approval or for failure to produce such certificate upon demand of an authorized person shall be punished by a fine of not more than $100: Provided, That any person who obtains an inspection and a current and valid certificate of inspection and who, within five days of the issuance of a citation for a violation of the provisions of this section, provides a receipt of inspection to and makes the vehicle so operated available for examination by a court of competent jurisdiction, shall not be guilty of a violation of the provisions of this section: Provided, however, That the misdemeanor penalty shall be imposed if the certificate of inspection has not been valid for a period exceeding three months prior to the date of the issuance of a citation.

WV Legislature

§17C-17-1. Unlawful to exceed size and weight limitations; application of article to fire apparatus, farm machinery, etc.;"operate a vehicle or combination of vehicles" construed.

(a) It shall be unlawful for any owner, lessee or borrower of a vehicle or combination of vehicles to operate on any highway such vehicle or combination of vehicles, whether driven by such owner, lessee or borrower, or by some person on behalf of such owner, lessee or borrower, of a size or weight exceeding any limitation stated in this article, or otherwise in violation of any provision of this article, whether such limitation or provision be specifically stated in this article or set by express authority granted in this article, and the maximum size and weight of vehicles herein specified shall be lawful throughout this state, and local authorities shall have no power or authority to alter said limitations or provisions except as express authority shall be granted in this article. Subject to the penalties for weight violations provided in section fourteen of this article, violation of this section shall constitute a misdemeanor.

(b) The provisions of this article governing size, weight, and load shall not apply to fire apparatus, road machinery, or to implements of husbandry, including farm tractors, temporarily moved upon a highway, or to a vehicle operated under the terms of a special permit issued as herein provided.

(c) The phrase "operate a vehicle or combination of vehicles" shall in this article be interpreted to mean the use of such vehicle or combination of vehicles on behalf of the owner, lessee or borrower, whether driven by him or by some person on behalf of him

WV Legislature

§17C-17-2. Width of vehicles.

(a) The total outside width, exclusive of safety equipment authorized by the United States Department of Transportation, of any vehicle or the load thereon may not exceed ninety-six inches except as otherwise provided in this article: Provided, That any vehicle with a total outside width of one hundred two inches, exclusive of safety equipment authorized by the United States Department of Transportation, may be operated on any highway within the state designated by the United States Department of Transportation or the commissioner of the department of highways or on any highway having a minimum lane width of ten feet.

(b) Motor homes, travel trailers, truck campers, motor buses and trackless trolley coaches with a total outside width of one hundred two inches, excluding safety equipment authorized by the United States Department of Transportation, may operate on any highway.

WV Legislature

§17C-17-3. Projecting loads on passenger vehicles.

(a) No passenger-type vehicle shall be operated on any highway with any load carried thereon extending beyond the line of the fenders of the left side of such vehicle nor extending more than six inches beyond the line of the fenders on the right side thereof.

(b) A motor home, travel trailer or truck camper may exceed the maximum width prescribed section two of this article, if the excess width is attributable to an appurtenance that does not exceed more than six inches beyond the body of the vehicle.

WV Legislature

§17C-17-4. Height and length of vehicles and loads.

(a) A vehicle, including any load thereon, may not exceed a height of thirteen feet six inches, but the owner or owners of such vehicles shall be responsible for damage to any bridge or highway structure and to municipalities for any damage to traffic control devices or other highway structures where such bridges, devices or structures have a vehicle clearance of less than thirteen feet six inches.

(b) A motor vehicle, including any load thereon, may not exceed a length of forty feet extreme overall dimension, inclusive of front and rear bumpers: Provided, That a motor home and a school bus may not exceed a length of forty-five feet, exclusive of front and rear bumpers.

(c) Except as hereinafter provided in this subsection or in subsection (d) of this section, a combination of vehicles coupled together may not consist of more than two units and no combination of vehicles including any load thereon shall have an overall length, inclusive of front and rear bumpers, in excess of fifty-five feet except as provided in section eleven-b of this article and except as otherwise provided in respect to the use of a pole trailer as authorized in section five of this article. The limitation that a combination of vehicles coupled together may not consist of more than two units may not apply to: (1) A combination of vehicles coupled together by a saddle-mount device used to transport motor vehicles in a drive-away service when no more than three saddle mounts are used, if equipment used in the combination meets the requirements of the safety regulations of the United States Department of Transportation and may not exceed an overall length of more than seventy-five feet; or (2) a combination of vehicles coupled together, one of which is a travel trailer or folding camping trailer having an overall length, exclusive of front and rear bumpers, not exceeding sixty-five feet.

(d) A combination of two vehicles coupled together, one of which is a motor home, or a combination of vehicles coupled together, one of which is a travel trailer or folding camping trailer, may not exceed an overall length, exclusive of front and rear bumpers of sixty-five feet.

(e) Notwithstanding the provisions of subsections (a), (b), (c) and (d) of this section, the commissioner may designate, upon his or her own motion or upon the petition of an interested party, a combination vehicle length not to exceed seventy feet.

(f) The length limitations for truck tractor-semitrailer combinations and truck tractor-semitrailer-trailer combinations operating on the national system of interstate and defense highways and those classes of qualifying federal-aid primary system highways so designated by the United States secretary of transportation and those highways providing reasonable access to and from terminals, facilities for food, fuel, repairs and rest and points of loading and unloading for household goods carriers from such highways and further, as to other highways so designated by the West Virginia commissioner of highways, shall be as follows: The maximum length of a semitrailer unit operating in a truck tractor-semitrailer

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combination shall not exceed forty-eight feet in length except where semitrailers have an axle spacing of not more than thirty-seven feet between the rear axle of the truck tractor and the front axle of the semitrailer, such semitrailer shall be allowed to be not more than fifty-three feet in length and the maximum length of any semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination may not exceed twenty-eight feet in length and in no event shall any combinations exceed three units, including the truck tractor: Provided, That nothing herein contained shall impose an overall length limitation as to commercial motor vehicles operating in truck tractor-semitrailer or truck tractor-semitrailer-trailer combinations.

(g) The commissioner shall publish annually an official map designating the highways of the state and the various maximum vehicle lengths relating thereto.

WV Legislature

§17C-17-5. Special load limits.

(a) Subject to the foregoing provisions of this article limiting the length of vehicles and loads, the load upon any vehicle operated alone or the load upon the front vehicle of a combination of vehicles shall not extend more than three feet beyond the foremost part of the vehicle, and the load upon any vehicle operated alone or the load upon the rear vehicle of a combination of vehicles shall not extend more than six feet beyond the rear of the bed or body of such vehicle: Provided, That a digger/derrick line truck may be operated with a load of no more than forty-five feet in length, with the load extending no more than nine feet beyond the foremost part of the truck and no more than eleven feet beyond the rear of the bed of the body of the truck, between sunrise and sunset except in an emergency, and the operation of the truck shall comply with the provisions of section fourteen, article fifteen of this chapter.

(b) The limitations as to length of vehicles and loads heretofore stated in section four of this article and subsection (a) of this section shall not apply to any load upon a pole trailer when transporting poles or pipes or structural material which cannot be dismembered: Provided, That no pole or pipe or other material exceeding eighty feet in length shall be so transported unless a permit has first been obtained as authorized in section eleven of this article.

WV Legislature

§17C-17-6. Loads to be securely fastened and not allowed to leak, escape, etc.

(a) No vehicle or combination of vehicles shall be operated on any highway unless such vehicle or combination of vehicles is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a roadway in cleaning or maintaining such roadway.

(b) It shall be unlawful to operate on any highway any vehicle or combination of vehicles with any load unless said load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached, or in any manner a hazard to other users of the highway.

WV Legislature

§17C-17-6a. Vehicles transporting compressed gas containers.

It is unlawful for any person operating a vehicle transporting any container of compressed gas as a cargo or part of a cargo upon a highway in an open motor vehicle unless it is securely braced, equipped with an individual shutoff valve that must be tightly closed while in transit and its valves are protected by one of the following methods:

(1) By equipping the cylinder with securely attached metal caps of sufficient strength to protect valves from damage during transportation;

(2) By boxing or crating the cylinder with securely attached metal caps of sufficient strength so as to protect valves from damage during transportation; or

(3) By constructing the cylinder so that the valve is recessed into the cylinder or otherwise protected to the extent that it will not be subjected to a blow when the container is dropped onto a flat surface.

The requirements of this section are not applicable to propane gas used for household purposes or to respiratory health care products in use by the person operating the vehicle.

The Commissioner of the Division of Highways is hereby authorized and directed to propose a legislative rule governing the transportation of compressed gas containers by vehicles upon the highways for promulgation in accordance with the provisions of chapter twenty-nine-a of this code.

WV Legislature

§17C-17-7. Trailers and towed vehicles.

(a) When one vehicle is towing another the drawbar or other connection shall be of sufficient strength to pull all weight towed thereby and said drawbar or other connection shall not exceed fifteen feet from one vehicle to the other except the connection between any two vehicles transporting poles, pipe, machinery, or other objects of structural nature which cannot readily be dismembered.

(b) When one vehicle is towing another and the connection consists of a chain, rope, or cable, there shall be displayed upon such connection a white flag or cloth not less than twelve inches square.

WV Legislature

§17C-17-8. Single-axle load limit.

(a) The gross weight imposed on the highway by the wheels of any one axle of a vehicle shall not exceed twenty thousand pounds.

(b) For the purpose of this article an axle load shall be defined as the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes forty inches apart, extending across the full width of the vehicle.

WV Legislature

§17C-17-8a. Tandem-axle load limit for the national system of interstate and defense highways.

(a) The gross weight imposed on the national system of interstate and defense highways by the wheels of a tandem-axle of a vehicle shall not exceed thirty-four thousand pounds.

(b) For the purpose of this article a tandem-axle load shall be defined as the total load transmitted to the road by two or more consecutive axles whose centers may be included between parallel transverse vertical planes spaced more than forty inches and not more than ninety-six inches apart, extending the full width of the vehicle.

WV Legislature

§17C-17-9. Gross weight of vehicles and loads for the national system of interstate and defense highways.

(a) It shall be unlawful for any owner, lessee or borrower of a vehicle or combination of vehicles to operate on any national system of interstate and defense highways such vehicle or combination of vehicles with a gross weight in excess of the gross weight for which such vehicle or combination of vehicles is registered or in excess of any weight limitation set forth in this chapter, whether such limitation be specifically stated in this chapter or set by express authority granted in this chapter.

(b) Subject to the limit upon the weight imposed upon the highway through any one axle as set forth in section eight of this article, or the limit imposed upon the highway through any tandem-axle as set forth in section eight-a of this article, the total gross weight with load imposed upon the highway by any one group of two or more consecutive axles of a vehicle or combination of vehicles shall not exceed the gross weight given for the respective distance between the first and last axle of the total group of axles measured longitudinally to the nearest foot as set forth in the following table:

Distance in feet between the extremes of any groups of two or more consecutive	Maximum load in pounds carried on any group of two or more consecutive axles				
axles	2 axles	3 axles	4 axles	5 axles	6 axles
4	34000				
5	34000				
6	34000				
7	34000				
8	34000	34000			
9	39000	42500			
10	40000	43500			
11		44000			
12		45000	50000		
13		45500	50500		
14		46500	51200		
15		47000	52000		
16		48000	52500	58000	
17		48500	53500	58500	
18		49500	54000	59000	
19		50000	54500	60000	

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20	51000	55500	60500	66000
21	51500	56000	61000	66500
22	52500	56500	61500	67000
23	53000	57500	62500	68000
24	54000	58000	63000	68500
25	54500	58500	63500	69000
26	55500	59500	64000	69500
27	56000	60000	65000	70000
28	57000	60500	65500	71000
29	57500	61500	66000	71500
30	58500	62000	66500	72000
31	59000	62500	67500	72500
32	60000	63500	68000	73000
33		64000	68500	74000
34		64500	69000	74500
35		65500	70000	75000
36		66000	70500	75500
37		66500	71000	76000
38		67500	72000	77000
39		68000	72500	77500
40		68500	73000	78000
41		69500	73500	78500
42		70000	74000	79000
43		70500	75000	80000
44		71500	75500	80500
45		72000	76000	81000
46		72500	76500	81500
47		73500	77500	82000
48		74000	78000	83000
49		74500	78500	83500
50		75500	79000	84000
51		76000	80000	84500
52		76500	80500	85000
53		77500	81000	86000
54		78000	81500	86500
55		78500	82500	87000
56		79500	83000	87500
57		80000	83500	88000

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58	84000	89000
59	85000	89500
60	85500	90000

Provided, That no vehicle or combination of vehicles shall have a gross weight, including the load, in excess of sixty-five thousand pounds, except that the maximum gross weight of vehicles operating on the national system of interstate and defense highways and any highway providing reasonable access to and from terminals and facilities for food, fuel, repairs and rest within the state shall not be in excess of eighty thousand pounds and except as otherwise provided in this article. Notwithstanding the limits prescribed in this subsection, two consecutive sets of tandem-axles may carry a gross load of thirty-four thousand pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem-axles is thirty-six feet or more: Provided, however, That the limits prescribed in this subsection shall not prohibit the operation of any vehicle or combination of vehicles of a type which could be lawfully operated in accordance with gross vehicle weights in effect on January 1, 1975: Provided further, That no maximum weight in excess of or in conflict with any weight limitations prescribed by or pursuant to any act of Congress shall be permitted on the national system of interstate and defense highways.

WV Legislature

§17C-17-9a. Gross weight of vehicles and loads.

(a) It is unlawful for any owner, lessee or borrower of a vehicle or combination of vehicles to operate on any highway other than the national system of interstate and defense highways that vehicle or combination of vehicles with a gross weight in excess of the gross weight for which such vehicle or combination of vehicles is registered or in excess of any weight limitation set forth in this chapter, whether such limitation be specifically stated in this chapter or set by express authority granted this chapter: Provided, That if any vehicle is operated within the tolerances established in this section for the gross weight of that vehicle, then that vehicle shall be deemed for all purposes to be operating at the gross weight for which it is registered and the registered weight is deemed to include the ten percent tolerance associated with it under this section.

(b) Subject to the limit upon the weight imposed upon the highway through any one axle as set forth in section eight of this article, the total gross weight on vehicles or combination of vehicles operated on any highway other than the national system of interstate and defense highways shall be as follows:

(1) A single unit truck having one steering axle and two axles in tandem shall be limited to a maximum gross weight of sixty thousand pounds with a tolerance of ten percent.

(2) A single unit truck having one steering axle and three axles in tridem arrangement shall be limited to a maximum gross weight of seventy thousand pounds with a tolerance of ten percent.

(3) A single unit truck having one steering axle and four axles in quadem arrangement shall be limited to a maximum gross weight of seventy-three thousand pounds with a tolerance of ten percent.

(4) A tractor-semitrailer combination with five axles, a tractor-semitrailer combination with six or more axles, a single unit truck having one steering axle and two axles in tandem in combination with a trailer with two axles and a single unit truck having one steering axle and three axles in tridem in combination with a trailer with two axles, shall be limited to a maximum gross weight of eighty thousand pounds with a tolerance of ten percent

WV Legislature

§17C-17-10. Officers may weigh, measure or examine vehicles and require removal or rearrangement of excess loads.

(a) Any police officer or employee of the Division of Highways or the Public Service Commission designated as a commercial vehicle enforcement officer or member of an official weighing crew by his or her representative agency may require the driver of any vehicle or combination of vehicles located on or within one hundred feet of any public highway or right-of-way, and whether moving or stopped, to submit the vehicle or combination of vehicles to a weighing with portable or stationary weighing devices or submit the vehicle or combination of vehicles to a measuring or to any other examination necessary to determine if the vehicle or combination of vehicles is in violation of any of the provisions of this article or article seventeen-a of this chapter, and may require that the vehicle or combination of vehicles be driven to the nearest weighing device.

No vehicle or combination of vehicles may be detained for weighing unless a portable or stationary weighing device is actually present at the location where, and at the time, the vehicle or combination of vehicles is stopped or unless the vehicle or combination of vehicles is escorted immediately after being stopped to the nearest portable or stationary weighing device. In no case may a vehicle or combination of vehicles be detained more than one hour from the time it is stopped for weighing unless the vehicle or combination of vehicles is impounded for another violation or placed out of service for a safety violation.

(b) Whenever a police officer or a member of an official weighing crew or a commercial vehicle enforcement officer determines that a vehicle or combination of vehicles is in violation of any of the provisions of this article or article seventeen-a of this chapter, he or she may require the driver to remain in place or be moved to a suitable location until the vehicle or combination of vehicles is brought into conformity with the provisions violated.

In the case of a weight violation all material unloaded shall be cared for by the owner, lessee or borrower of the vehicle or combination of vehicles at the risk of the owner, lessee or borrower: *Provided*, That no criminal charge shall be preferred against any driver, operator or owner of a vehicle when a rearrangement of the load upon the vehicle, without removal of the load from the vehicle, reduces the axle loads of the vehicle to the limit permitted under this chapter.

(c) Any driver of a vehicle or combination of vehicles who fails or refuses to comply with any requirement or provision of this section shall be guilty of a misdemeanor, or in the case of any driver of a vehicle engaged in the transportation of coal, any other additional penalties that may be applicable under the provisions of article seventeen-a of this chapter.

WV Legislature

§17C-17-11. Permits for excess size and weight.

(a) The Commissioner of the Division of Highways may, in his or her discretion, upon application in writing and good cause shown, issue a special permit in writing authorizing:

(1) The applicant, in crossing any highway of this state, to operate or move a vehicle or combination of vehicles of a size or weight or load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter, whether the operation is continuous or not, provided the applicant agrees to compensate the Commissioner of the Division of Highways for all damages or expenses incurred in connection with the crossing;

(2) The applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter; and

(3) The applicant to move or operate, for limited or continuous operation, a vehicle hauling containerized cargo in a sealed, seagoing container to or from a seaport or inland waterway port that has or will be transported by marine shipment where the vehicle is not, as a result of hauling the container, in conformity with the provisions of this article relating to weight limitations, upon the conditions that:

(A) The container be hauled only on the roadways and highways designated by the Commissioner of the Division of Highways;

(B) The contents of the container are not changed from the time it is loaded by the consignor or the consignor's agent to the time it is delivered to the consignee or the consignee's agent; and

(C) Any additional conditions as the Commissioner of the Division of Highways or the Public Service Commission may impose to otherwise ensure compliance with the provisions of this chapter.

(b)(1) The Commissioner of the Division of Highways may issue a special permit to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter over routes designated by the Commissioner of the Division of Highways upon terms and restrictions prescribed by the Public Service Commission, together with the Commissioner of the Division of Highways.

(2) For purposes of this section, "nondivisible load" means any load exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(A) Compromise the intended use of the vehicle, to the extent that the separation would make it unable to perform the function for which it was intended;

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(B) Destroy the value of the load or vehicle, to the extent that the separation would make it unusable for its intended purpose; or

(C) Require more than eight work hours to dismantle using appropriate equipment: *Provided*, That the applicant for a nondivisible load permit has the burden of proof as to the number of work hours required to dismantle the load.

(3) The Commissioner of the Division of Highways may, in his or her discretion, upon application in writing and based upon an engineering analysis, issue a special permit in writing authorizing the applicant, when operating upon any highway of this state designated by the commissioner, to operate or move a vehicle or combination of vehicles, hauling commodities manufactured for interstate commerce, of a size or weight or divisible load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter, whether the operation is continuous or not.

(A) The engineering analysis must demonstrate that the vehicle permitted under this subdivision does not adversely affect the designated routes when compared to the size, weight, and load provisions of this chapter.

(B) The maximum gross vehicle weight permitted under this subsection is 120,000 pounds.

(C) The permit may contain any additional conditions the Commissioner of the Division of Highways or the Public Service Commission may impose to otherwise ensure compliance with the provisions of this chapter.

(4) The Commissioner of the Division of Highways may, in his or her discretion, upon application in writing, issue a special permit in writing authorizing the applicant to transport logs, wood chips, timber, other natural raw wood, lumber, paper, wood veneer, wood pellets, or any other wood product of the forest, craft, or manufacturing. The vehicle authorized by the permit shall be a tractor-semitrailer combination with six axles, each axle equipped with brakes, and limited to a maximum gross vehicular weight of 94,000 pounds, without any tolerance. The maximum weight of each axle, beginning with the steering axle commencing rearwards, respectively shall be 15,000 pounds, 17,000 pounds, 17,000 pounds, 15,000 pounds, 15,000 pounds, and 15,000 pounds. The tractor shall have one steer axle and two drive axles in tandem, and the trailer shall have three trailer axles in tridem. The distance between the last drive axle of the tractor and the first trailer axle shall be a minimum of 29 feet and six inches. The Commissioner of the Division of Highways may issue permits for four-axle tractors with one steering axle and three axles in tridem in combination with dual axle pup trailers: *Provided*, That the maximum weight of each axle for pup-combination vehicles beginning with the steering axle commencing rearward respectively does not exceed 14,500 pounds, 16,613 pounds, 16,614 pounds, 16,613 pounds, 14,830 pounds, and 14,830 pounds. Permits under this subdivision will not be issued for any vehicle traveling on interstate routes.

(c) The application for any permit other than a special annual permit shall specifically

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describe the vehicle or vehicles and load to be operated or moved along or across the highway and the particular highway or crossing of the highway for which the permit to operate is requested, and whether the permit is requested for a single trip or for a continuous operation.

(d) The Public Service Commission is authorized to issue or withhold a permit at its discretion; or, if the permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicles described may be operated on or across the highways indicated, or otherwise to limit or prescribe conditions of operation of the vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surface, or structures, and may require the undertaking, bond, or other security considered necessary to compensate for any injury to any roadway structure and to specify the type, number, and the location for escort vehicles for any vehicle: *Provided*, That in establishing limitations on permits issued under this section, the Public Service Commission shall consult with the Commissioner of the Division of Highways, and may not issue, limit, or condition a permit in a manner inconsistent with the authority of the Commissioner of the Division of Highways.

The Public Service Commission may charge a fee for the issuance of a permit for a mobile home and a reasonable fee for the issuance of a permit for any other vehicle under the provisions of this section to pay the administrative costs thereof.

(e) Every permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of the Commissioner of the Division of Highways or the Public Service Commission, and no person shall violate any of the terms or conditions of the special permit.

(f) The Commissioner of the Division of Highways may issue a special permit to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter over routes designated by the Commissioner of the Division of Highways at night, and during holidays, holiday weekends, Saturdays, and Sundays: *Provided*, That the special permit outlined in this subsection shall apply to all interstate highways, United States highways with four or more travel lanes, and divided highways within the state with four or more travel lanes: *Provided, however*, That the Commissioner of the Division of Highways shall promptly issue a requested permit if the application is properly completed and the requested route, dates, and times meet state and federal laws, regulations, and safety requirements and do not violate any bond covenants.

WV Legislature

§17C-17-11a. Authority of commissioner of the department of highways to increase weight limitations upon highways designated by him

If, in the opinion of the commissioner of the department of highways, the design, construction and safety of any highway, or portion thereof, are such that the gross weight limitations prescribed in section nine of this article can be increased without undue damage to any such highway, the commissioner may, by order, increase the gross weight limitations of vehicles which may be operated upon any such highway, or portion thereof, designated by him in such order and may establish therein the gross weight limitations which shall thereafter be applicable to the highway or portion thereof so designated by him Provided, That the maximum gross weight, including the load established by the commissioner for any such designated highway or portion thereof, shall not exceed eighty thousand pounds, except as otherwise provided in this article: Provided, however, That no such order of the commissioner shall establish any weight limitation in excess of or in conflict with any weight limitation prescribed by or pursuant to acts of Congress with respect to the national system of interstate and defense highways.

WV Legislature

§17C-17-11b. Authority of state road commissioner to increase length limitations upon highways designated by him

If, in the opinion of the commissioner of the department of highways, the design, construction and safety of any highway, or portion thereof, are such that the length limitations prescribed in section four (c) of this article can be increased without undue risk of damage to other vehicles lawfully using such highway or portion thereof, to bridges or other road structures, and to municipal and utility company facilities, wires, traffic devices or other structures, the commissioner may, by order, increase the length limitations of vehicles which may be operated upon any such highway, or portion thereof, designated by him in such order and may establish therein the maximum length limitations which shall thereafter be applicable to the highway or portion thereof so designated by him Provided, That the maximum length of any combination of vehicles including any load thereon shall not exceed sixty feet, except as otherwise provided in this article with respect to the size of vehicles: Provided, however, That no such order of the commissioner shall establish any height or length limitation in excess of or in conflict with any height or length limitation prescribed by or pursuant to acts of Congress with respect to the national system of interstate defense highways.

WV Legislature

§17C-17-11c. Designating an industrial road; setting weight limits.

(a) The commissioner of the Division of Highways shall determine if the design, construction and safety specifications of a portion of state route 61 and County route 72, located in Kanawha County, which is eighty-five hundredths of a mile in length, and its extension to state route 3 at Orgas in Boone County, meet the specifications required by the commissioner to designate the road an industrial road.

(b) After the determination as required by subsection (a) is made and all modifications and repairs necessary to meet the specifications of the Division of Highways are completed, the commissioner may designate that portion of state route 61 and County route 72, located in Kanawha County, which is eighty-five hundredths of a mile in length, and its extension to state route 3 at Orgas in Boone County, an industrial road.

(c) Notwithstanding the provisions of any other section of this article, the commissioner may set the gross weight limitations applicable to that portion of state route 61 and County route 72 designated an industrial road not to exceed eighty thousand pounds.

WV Legislature

§17C-17-11d. Establishing maximum road highway weights.

Effective July 1, 2004, the maximum gross vehicle weight on existing state-maintained roads and public highways designated for gross weight vehicle load of sixty-five thousand pounds, seventy-three thousand five hundred pounds and eighty thousand pounds shall have a tolerance of ten percent. All requirements for vehicle design and axle weights otherwise established under this code remain applicable. In no case may the commissioner authorize weight limits on any state-maintained road or public highway that would jeopardize or otherwise limit federal highway fund appropriations to this state. The commissioner of highways shall, by December 31, 2004, review and revise, as the commissioner deems appropriate, weight limits for all state-maintained roads and public highways and provide to the Joint Committee on Government and Finance a report denoting all weight limits as they have been designated on state-maintained roads and public highways.

WV Legislature

§17C-17-12. When state road commission or local authorities may restrict right to use highways.

(a) Local authorities with respect to highways under their jurisdiction may by ordinance or resolution prohibit the operation of vehicles upon any such highway or impose restrictions as to the weight of vehicles to be operated upon any such highway, for a total period of not to exceed ninety days in any one calendar year, whenever any said highway by reason of deterioration, rain, snow, or other climatic conditions will be seriously damaged or destroyed unless the use of vehicles thereon is prohibited or the permissible weights thereof reduced.

(b) The local authority enacting any such ordinance or resolution shall erect or cause to be erected and maintained signs designating the provisions of the ordinance or resolution at each end of that portion of any highway affected thereby, and the ordinance or resolution shall not be effective unless and until such signs are erected and maintained.

(c) Local authorities with respect to highways under their jurisdiction may also, by ordinance or resolution, prohibit the operation of trucks or other commercial vehicles, or may impose limitations as to the weight thereof, on designated highways, which prohibitions and limitations shall be designated by appropriate signs placed on such highways.

(d) The state road commission shall likewise have authority as hereinabove granted to local authorities to determine by resolution and to impose restrictions as to the weight of vehicles operated upon any highway under the jurisdiction of said commission and such restrictions shall be effective when signs giving notice thereof are erected upon the highway or portion of any highway affected by such resolution.

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§17C-17-13. Liability for damage to highway or structure.

(a) The owner, lessee or borrower of any vehicle, object, or contrivance driven or moved upon any highway or highway structure shall be liable for all damage which said highway or structure may sustain as a result of any illegal operation, driving, or moving of such vehicle, object, or contrivance, or as a result of operating, driving, or moving any vehicle, object, or contrivance weighing in excess of the maximum weight in this chapter but authorized by a special permit issued as provided in this article.

(b) Such damage may be recovered in civil action brought by the authorities in control of such highway or highway structure.

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§17C-17-14. Penalties for violation of weight laws; impounding vehicles.

Any owner, lessee or borrower of a vehicle or combination of vehicles who operates or permits to be operated on any highway such vehicle or combination of vehicles with any axle load in excess of that permitted by sections eight and eight-a of this article, or with a total gross weight with load imposed upon the highway by any one group of two or more consecutive axles in excess of that permitted by section nine or eleven-a of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine scheduled in proportion to the amount of pounds in excess of the registered weight, or in excess of allowable weights for single axle, or in excess of allowable weights for groups of two or more consecutive axles, in accordance with the schedule in words and figures as follows:

Pounds in excess of registered weight, or in excess of allowable weights for single axle, or in excess of allowable weights for groups of two or more consecutive axles.

Amount

of Fine

1 to 4,000 $ 20.00

4,00 1to 5,000 $ 25.00

5,001 to 6,000 $ 60.00

6,001 to 7,000 $ 70.00

7,001 to 8,000 $ 80.00

8,001 to 9,000 $ 90.00

9,001 to 10,000 $ 100.00

10,001 to 11,000 $ 165.00

11,001 to 12,000 $ 180.00

12,001 to 13,000 $ 195.00

13,001 to 14,000 $ 210.00

14,001 to 15,000 $ 225.00

15,001 to 16,000 $ 320.00

16,001 to 17,000 $ 340.00

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17,001 to 18,000 $ 360.00

18,001 to 19,000 $ 380.00

19,001 to 20,000 $ 400.00

20,001 to 21,000 $ 525.00

21,001 to 22,000 $ 550.00

22,001 to 23,000 $ 575.00

23,001 to 24,000 $ 600.00

24,001 to 25,000 $ 625.00

25,001 to 26,000 $ 780.00

26,001 to 27,000 $ 810.00

27,001 to 28,000 $ 840.00

28,001 to 29,000 $ 870.00

29,001 to 30,000 $ 900.00

30,001 to 40,000 $1,200.00

40,001 to 50,000 $1,400.00

50,001 and over $1,600.00

In the event any owner, lessee or borrower of a vehicle is charged with violating this section, the vehicle which is charged to be overloaded shall be impounded by the arresting officer and shall not be released to such owner, lessee or borrower unless and until such owner, lessee or borrower either shall have been found guilty and paid any fine assessed against such owner, lessee or borrower, or shall have furnished cash or surety bond in at least double the amount of the fine which may be assessed against such owner, lessee or borrower for such violation of this section and conditioned upon the payment of any such fine and costs assessed for such violation, or shall have been acquitted of such charge. Such owner, lessee or borrower shall be liable for any reasonable storage costs incurred in storing such vehicles: Provided, That if the owner of such vehicle is a resident of or has a principal place of business located in this state, and said vehicle has been duly licensed in the state, then said vehicle shall not be impounded but the arresting officer shall deliver to the driver a written notice stating such violation; the place, date and time; the license number of said vehicle; the title number and name and address of the owner; the driver's name, address, and the number of his operator's or chauffeur's card or permit; and the court, place, date

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and time for hearing, which shall be within five days of such violation (Saturdays, Sundays, and holidays, excluded). A copy of such notice shall within forty-eight hours be mailed to the owner of said vehicle. Upon the failure by such owner or his or its agent to appear at the designated place and time, or upon failure to pay the fine and costs assessed for such violation, unless such owner shall have been acquitted of such charge, the court shall order a bond or the impounding of said vehicle as provided in this section.

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§17C-17A-1. Legislative findings and creation of program.

(a) The Legislature finds and declares that:

(1) No other economic undertaking in the history of West Virginia has had a greater impact upon the citizens of this state, providing such an economic force and affecting the social construct and day-to-day life and environment of the people and communities of this state, than the activities associated with the extraction, transportation and consumption of coal or its byproducts. In areas of this state where the coal industry exists, the economic benefits of coal production are an indispensable part of the local community's vitality.

(2) The historic progression of the coal industry has resulted in an increasing use of the public highways of this state for the transportation of coal to river ports, power generators or rail loading facilities. Roads where coal is transported are mainly two-lane rural roads and highways of varying grades and conditions. The daily presence of large commercial motor vehicles on these roads and highways causes significant impact to local communities and the local transportation infrastructure. Local residents are exposed on a daily basis to the dangers associated with sharing the road with a large number of these vehicles.

(3) The increased capacity and ability of coal-hauling vehicles, tied with increased economic pressures to reduce industry transportation costs, have created economic incentives for transporting coal at higher than legal limits and for drivers to drive long hours and operate these vehicles at higher rates of speed. Consequently, average vehicle weights have increased and many coal transport vehicles regularly exceed the lawful limit by more than one hundred percent. The excessive weights of these vehicles have also resulted in the rapid deterioration of state roads and bridges, creating significant costs to the state of millions of dollars in lost road and bridge use and life.

(4) Advances in truck stability, braking and safety technology have made modern coal transporters much safer conveyances than those used by the industry when the state's current weight laws were enacted. Further advances in technology have made tracking and recording individual vehicles, their operators and loads significantly more efficient.

(5) Enforcement of truck safety and driver safety laws has been divided between various jurisdictions such as local and state law enforcement, the Division of Highways and the Public Service Commission. As a result, local and state enforcement of those comprehensive laws has not been uniform, with the result that many of these laws have not been enforced.

(6) The resulting need for a remedy for hauling these additional amounts of coal is most severe in a limited and discrete geographic area of the state where the limited access to rail and river transportation options and economic conditions require a regulatory program that allows a greater weight allowance for coal-hauling vehicles to address the unique economic circumstances of that region.

(7) That this limited highway system must include additional safety protections for the public

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sharing the roads with a large coal-hauling vehicle fleet and specialized training for operators of these vehicles, requiring the program be designed to assure that state weight and safety requirements be effectively administered and enforced.

(b) A special regulatory program with administrative enforcement authority over all vehicles hauling coal in West Virginia is created. This program is designed to address the economic needs of the state coal industry within the confines of the ability of the transportation infrastructure to accommodate these needs and in careful consideration for road safety and maintenance requirements of these vehicles by providing for coal truck weight reporting requirements on coal resource transportation roads and allowing a limited statewide increase in weights for commercial vehicles and an additional, limited increase for vehicles hauling coal where the greater increase is required.

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§17C-17A-2. Definitions.

For purposes of this article:

(a) A "coal resource transportation road" means a road designated by the Department of Transportation as safe and sufficient to allow vehicles hauling coal to carry a greater gross and axle weight of up to one hundred and twenty thousand pounds, with a five percent variance.

(b) "Coal" or "coal by-products" means the mineral in raw or clean state and includes synthetic fuel manufactured or produced for which credit is allowable under 26 U.S.C. §29 of the Internal Revenue Code (1996).

(c) "Commission" means the Public Service Commission of West Virginia.

(d) "Division" means the Division of Highways within the Department of Transportation.

(e) "Mining operation" means any activity related to extraction of coal regulated under the provisions of this code.

(f) "Operator" means the person driving a commercial motor vehicle transporting coal on any public highway of this state.

(g) "Person" means any individual, partnership, firm, society, association, trust, corporation, other business entity or any agency, unit or instrumentality of federal, state or local government.

(h) "Shipper" means the person who loads coal or causes coal to be loaded into any commercial motor vehicle that will operate on any public highway in this state.

(i) "Receiver" means the person who accepts for unloading coal from any vehicle that has operated on any public highway in this state.

(j) "Vehicle owner" means the person who as owner of a commercial motor vehicle employs, contracts or otherwise directs a driver to operate that vehicle on a public highway of this state for the purpose of transporting coal.

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§17C-17A-3. Authority of the Division of Highways and Public Service Commission generally.

(a) The Division of Highways shall establish all legal vehicle weight limits for all public highways including roads within the coal resource transportation road system. Public highways shall be designated as coal resource transportation roads by the Commissioner of the Division of Highways pursuant to this article. Only state-maintained roads and public highways found in the following areas: Boone, Fayette, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh, Wayne and Wyoming counties; in Braxton county, Braxton county route 19/29 from Mine 5 haulroad to intersection of county route 36/1, county route 36/1 to intersection of county route 36 and county route 36 to the Webster County line (Webster County route 9); in Ohio County, county route 1 from the intersection of county route 7 to intersection of Riley Delaplaine Road; in Greenbrier County, routes west of Sam Black Church and southwest to the Summers County line; in Clay County, routes 4 and 16; in Nicholas County, routes 1/11, 16, 19, 19/2, 19/40, 20, 39, 41, 55 and 82; in Webster County, routes 9, 9/1, 9/2, 20, 32 and 82; and all state-maintained roads and public highways found in Washington, Malden, Louden and Cabin Creek districts, Kanawha County, are eligible to qualify as part of the coal resource transportation road system. The division shall post signs on roads informing the public of the designation and shall also list a toll-free telephone line for public reporting of poor driving or law violations by special permit operators. The division shall provide periodic reports to the commercial motor vehicle weight and safety enforcement advisory committee as established in section two, article one-a, chapter twenty-four-a of this code relating to the study of coal resource transportation roads. The periodic reports shall include the following at a minimum: (1) Citations issued for violations of this chapter; (2) disposition of the violations; (3) road conditions and maintenance; and (4) the amount of undue road damage attributable to coal resource transportation road system permit use.

(b) The Public Service Commission shall administer the coal resource transportation road permitting program and otherwise enforce the provisions of this article. The commission shall establish requirements for vehicle operators holding coal resource transportation road permits pursuant to section five of this article consistent with federal statutory and regulatory requirements.

(1) The commission may, during normal business hours, conduct inspections of all trucking-related records of shippers, vehicle operators, vehicle owners and receivers engaged in the transportation of coal. Copies of records shall be provided to commission employees upon request. This provision may not be construed to authorize the commission to reveal trade secrets or other confidential financial information of those persons inspected; however the commission may use any weight measurement records as evidence of a violation of this article.

(2) The commission shall establish and maintain a toll-free telephone line for public reporting of poor driving or law violations by special permit operators. In addition, the commission shall require all vehicles operating under a permit issued pursuant to the

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provisions of this article to clearly display on the vehicle the toll-free telephone number.

(3) The commission shall implement a study of commercial vehicle safety-related issues, including using higher education institutions and other research organizations. The commission shall provide periodic reports to the commercial motor vehicle weight and safety enforcement advisory committee as established in section two, article one-a, chapter twenty-four-a of this code relating to the study of motor vehicle weight and safety enforcement.

(4) The commission shall establish procedures to use electronic real time reporting of coal vehicle weights on coal resource transportation roads by shippers and receivers. The commission may require daily certified reports from shippers or receivers if electronic reporting methods are not used. The commission may authorize alternative measures of reporting that require same-day reporting of weight measurements by shippers and receivers.

(5) The commission shall impose and collect from shippers of coal on the coal resource transportation road system through the use of the special permit, issued pursuant to section five of this article, for the privilege of loading coal in excess of eighty-eight thousand pounds for transport on a coal resource transportation road. The fee shall be assessed in the amount of 5¢ per ton of coal hauled over the road. Revenue from the fees shall be deposited in the coal resource transportation fund created in said section.

(c) Notwithstanding the provisions of section three, article one, chapter twenty-nine-a of this code, the commission and the division shall each propose legislative rules for promulgation in accordance with the provisions of article three of said chapter to carry out their duties and responsibilities pursuant to the provisions of this article.

(d) Notwithstanding any provisions of this code to the contrary, the division may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which would provide a process for approval by the commissioner of the division of a special crossing permit and renewals thereof. Special crossing permits authorized by this subsection would authorize the holder of the permit to operate or move a vehicle or combination of vehicles which exceed the maximum weight allowance specified in this chapter or are otherwise not in conformity with the provisions of this chapter on limited sections of public highways under specific circumstances specified in the permit: Provided, That no special crossing permit may allow the operation or movement of any vehicle or combination of vehicles on a public highway for more than one-half of a mile: Provided, however, That no special crossing permit may allow the operation or movement of any vehicle or combination of vehicles on a public highway if the Commissioner of the Division of Highways determines there is an existing alternate off-road route available. Each special crossing permit shall contain the specific section or mileage of the public highway where operation is authorized. Special crossing permits may not exceed a three-year period and may be renewed upon approval by the Commissioner of the Division of Highways as specified in legislative rule. The Commissioner of the Division may provide for fees for the processing of applications for special crossing permits. As a condition of approval of a

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special crossing permit, an applicant shall agree to pay for all actual expenditures incurred by the Department of Transportation for the upgrading or repair of the public highway, including traffic control devices, for which the applicant seeks the special crossing permit. In addition, all holders of special crossing permits shall pay for the restoration of the public highway to its original condition after the permit has expired. The initial rule filed by the Division pursuant to this subsection shall be filed as an emergency rule.

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§17C-17A-4. Special permit issuance; and promulgation of rules.

(a) The commission may issue permits to authorize the hauling of coal of a greater gross and axle weight than otherwise authorized by state law on roads designated by the commissioner of highways as coal resource transportation roads.

(b) Notwithstanding the provisions of section three, article one, chapter twenty-nine-a of this code, the commission shall promulgate emergency and legislative rules to effectuate purposes of this section, which shall provide, at a minimum, the following:

(1) Twenty-four hours' mandatory specialized training requirements for commercial vehicles operators with less than two years of commercial driving experience;

(2) Requirements for random drug and alcohol testing; and

(3) Requirements for daily records consistent with the provisions of any applicable federal statutory or regulatory requirements.

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§17C-17A-5. Operation of coal trucks under special permits; weight limitations; payment of permit fees.

(a) Any vehicle, when transporting coal over certain public highways, designated as coal resource transportation roads by the commissioner of the department of highways, may be operated at the weights as set forth in this section in excess of the maximum gross weight prescribed in section nine, article seventeen of this chapter and any other maximum weight limitations on any public highway by paying the corresponding special permit fee and otherwise complying with the provisions of this article.

(b) Special permits shall be issued subject to the following requirements:

(1) A single unit truck having one steering axle and two axles in tandem shall be limited to a maximum gross weight of eighty thousand pounds with a tolerance of five percent and pay a special permit fee annually of $100;

(2) A single unit truck having one steering axle and three axles in tridem arrangement shall be limited to a maximum gross weight of ninety thousand pounds with a tolerance of five percent and pay a special permit fee annually of one hundred $60;

(3) A tractor-semitrailer combination with five axles shall be limited to a maximum gross weight of one hundred ten thousand pounds with a tolerance of five percent and pay a special permit fee annually of $300;

(4) A tractor-semitrailer combination with six or more axles shall be limited to a maximum gross weight of one hundred twenty thousand pounds with a tolerance of five percent and pay a special permit fee annually of $500.

(c) The axle loads set forth in subsection (b) of this section may in no event exceed the maximum axle load allowable based upon the minimum axle spacings as determined by the Division of Highways in accordance with generally accepted industry standards and bridge loading analysis.

(d) In order to qualify for issuance of a special permit, the applicant shall provide information that demonstrates that the vehicle, as configured, has a total combined axle rating capacity equal to or greater than the maximum amount of weight for which a special permit is sought. The information may include, but not be limited to, the manufacturer's rated capacity. In the event that manufacturer's rated capacity is not available, any other information reasonably determined by the secretary of the Department of Transportation to give evidence of adequate combined axle rating capacity may be submitted.

(e) Special permits authorized by this section shall be issued by the commission on forms prescribed and furnished by it. The special permit indicium shall be permanently affixed immediately below the window glass on the top of the door on the driver's side of the vehicle. Lost, destroyed, stolen or otherwise unusable special permits indicia shall be

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replaced in accordance with legislative rules to be promulgated by the commission. The special permit indicium shall be issued to a particular vehicle and shall remain with the vehicle upon transfer of possession or ownership of the vehicle.

(f) Special permits issued pursuant to the provisions of this article are valid for a period of one year from the date of purchase: Provided, That no renewal permits shall be issued to any permittee who, at the time of the renewal, has any administrative or criminal actions pending relating to the operation of commercial motor vehicles in this or other states.

(g) For purposes of this section, the dimensional requirements of motor vehicles shall conform to all applicable federal laws and regulations. Nothing in this section may be construed or administered to jeopardize the receipt of federal funds for highway purposes.

(h) Any operator of a vehicle with a special permit issued under the provisions of this article shall submit the vehicle or combination of vehicles to weighing with portable or stationary weighing devices as required by section ten, article seventeen of this chapter. Any driver or owner of a vehicle or combination of vehicles operating under the provisions of this section who fails or refuses to comply with any requirement of section ten, article seventeen of this chapter forfeits all privileges granted by the special permits.

(i) Any vehicle or combination of vehicles transporting coal pursuant to the provisions of this article shall be securely covered to prevent the escape of the load on any trip exceeding a total distance of one mile on any public highway.

(j) As a condition of receipt of a special permit, vehicle owners and operators shall submit permitted vehicles to safety checks and other vehicle inspection requirements as required by legislative rules of the commission. The commission may impose additional vehicle operation and maintenance requirements by rule as the commission deems appropriate to assure the safe operation of vehicles issued a special permit.

(k) The commission shall propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the implementation of the requirements of this section. The rules shall be initially promulgated as emergency rules pursuant to the provisions of said article by no later than October 1, 2003.

(l) The payment of the special permit fee is in addition to any state registration fee, user fee or other decal fee.

(m) All revenues generated pursuant to this section shall be credited to a special account within the road fund which is created and shall be designated as the "coal resource transportation road fund". Moneys of the fund shall be used by the Division of Highways for construction, maintenance and repair of public highways and bridges over which substantial quantities of coal are transported.

(n) For periods of less than one year, the permit fee imposed by subsection (b) of this section

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shall be prorated to the nearest month.

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§17C-17A-6. Reporting requirements for shippers, vehicle owners and receivers of coal transported on public highways.

(a) Every shipper of coal for transport on a coal resource transportation road in this state that loads vehicles shall be required to report to the commission weight and other transport-related data as required in this article. The commission shall by rule establish special recording and reporting methods for timely and accurate disclosure of all shipments of coal made upon any coal resource transportation road of this state. The rules shall provide for administrative penalties to be imposed for failure to timely or accurately report weight or other required data.

(b) Every vehicle owner who transports coal on a coal resource transportation road of this state is subject to the provisions of this article and any rules established by the commission requiring reporting, monitoring or removal from service of any unsafe vehicle or driver.

(c) Every receiver of coal transported on a coal resource transportation road in this state that unloads or causes to be unloaded any shipment of coal shall report to the commission the weight of the shipment and other data related to the shipment as required by rules promulgated by the commission. The rules shall provide for administrative penalties to be imposed for failure to timely or accurately report the weight or other data. Compliance with the reporting requirements shall cause the receiver to be immune from any and all criminal, civil and administrative liability, damages, costs, fines and penalties based on, arising out of or resulting from the receiver's receipt or acceptance of the shipment.

(d) The commission shall by rule establish special recording and reporting methods for timely and accurate disclosure of all shipments of coal made by commercial motor vehicles upon a coal resource transportation road of this state.

(e) Any receiver receiving any vehicle transporting coal in excess of eighty-eight thousand pounds on any noncoal transportation highways shall file a report with the Public Service Commission, identifying the vehicle and its driver within twenty-four hours of being received. The reports shall be subject to freedom of information requests in accordance with chapter twenty-nine-b of this code. Nothing contained in this subsection shall be construed to restrict application of any other provision of this chapter or any rules promulgated pursuant to this chapter.

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§17C-17A-7. Permit application procedure.

The commission shall propose in accordance with provisions of article three, chapter twenty-nine-a of this code by emergency and legislative rules, filed no later than October 1, 2003, a permit application procedure for the issuance of permits pursuant to the authority contained within this article: Provided, That the commission shall take final action upon all completed permit applications within thirty days of receipt if the application is uncontested, or within ninety days if the application is contested.

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§17C-17A-8. Powers and duties of the commission.

In addition to all other powers, duties, responsibilities and authority granted and assigned to the commission in this code and elsewhere prescribed by law, notwithstanding any provision of the code to the contrary:

(1) The commission shall promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the provisions of this article including modifying any existing rules and establishing permit application fees up to an amount sufficient to defray the costs of permit review;

(2) The commission or any authorized representative, employee or agent may, at reasonable times, enter onto any coal shipping or receiving facility in the state for the purpose of making an inspection or investigation;

(3) The commission may also perform or require a person, by order, to perform any and all acts necessary to carry out the provisions of this article or the rules promulgated under this article;

(4) The commission, its authorized representative, employee or agent shall make periodic inspections at coal shipping or receiving facilities to effectively implement and enforce the requirements of this article or its rules and may conduct at weigh stations or any other adequate site or facility inspections of coal in transit.

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§17C-17A-9. Administrative sanctions.

(a) This section imposes administrative sanctions for violations occurring on the coal resource transportation road system. It is the intent of the Legislature to impose administrative sanctions in addition and separate from any criminal or civil penalties upon any person violating or assisting in the violation of the provisions of this article.

(b) For a particular violation, the commission may take administrative notice of criminal convictions, or a plea of nolo contendere, for a violation for purposes of imposing the administrative sanctions in this section in lieu of the procedure provided in subsection (f) of this section. After providing notice and an opportunity to show cause why penalties should not be imposed for the violation of provisions of this article, the commission shall impose sanctions upon an operator, shipper, receiver or truck owner when a violation is found to have occurred. Lack of intent is not a defense to a violation except as it applies to receivers.

(c) Administrative sanctions for violations shall be imposed as follows:

(1) Every shipper of coal for transport on the public roads or highways of this state which loads coal in an amount which results in gross vehicle weight to be in excess of the weight limits established in this article shall be subject to an administrative penalty per pound in excess of the lawful weight pursuant to the penalty schedule established in section ten of this article;

(2) It is unlawful for any person to operate a commercial motor vehicle engaged in the transportation of coal with a gross vehicle weight for nonpermitted vehicles in excess of the lawful maximum weight on a coal resource transportation road without a permit required by section five of this article. Any person violating this subsection shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of ninety days for the first offense, six months for the second offense, and one year for the third offense: Provided, That in the case of a permit, expired for less than thirty days, the operator my present a valid permit to the commission within five days of the date of the offense in order to avoid the penalty;

(3) Any owner of a commercial motor vehicle engaged in the transportation of coal operating without an excess weight hauling permit and bearing a gross vehicle weight in excess of the lawful maximum weight for the public highway for nonpermitted vehicles who allows the operation of that vehicle upon a coal resource transportation road of this state shall have any state-issued hauling permit then in force suspended by the commission for a period of ninety days for the first offense, six months for the second offense, and revoked for the third offense: Provided, That in the case of a permit, expired for less than thirty days, the operator my present a valid permit to the commission of motor vehicles within five days of the date of the offense in order to avoid the penalty: Provided, however, That should there be no state-issued hauling permit then in force, the owner shall have his or her vehicle registration suspended by the commission of motor vehicles for a period of ninety days for the first offense, six months for the second offense and revoked for the third offense;

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(4) Any operator who operates a vehicle engaged in the transportation of coal that has been issued a special permit by the division upon the coal resource transportation road system and who operates the vehicle with a gross vehicle weight that is in excess of the lawful maximum weight allowed pursuant to the permit shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of three days for the first offense, thirty days for the second offense and six months for the third offense;

(5) Any owner of a vehicle engaged in the transportation of coal that has been issued a special permit by the commission who allows the operation of that vehicle upon the coal resource transportation road system with a gross vehicle weight that is in excess of the lawful maximum weight allowed pursuant to the permit shall have the special permit suspended by the commission for a period of three days for the first offense, thirty days for the second offense and revoked for the third offense;

(6) Any operator who operates a vehicle engaged in the transportation of coal with a suspended excess weight hauling permit at a weight in excess of the limits imposed by article seventeen of this chapter upon the coal resource transportation road system shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of six months for the first offense, twelve months for the second offense, and two years for the third offense: Provided, That if the operator is also the owner of the vehicle, the owner penalties set forth in subdivision (5) of this subsection also apply;

(7) Any owner of a vehicle engaged in the transportation of coal with a suspended excess weight hauling permit who allows the operation of that vehicle upon the roads or highways of this state during a period of permit suspension at a weight in excess of the limits imposed by article seventeen of this chapter shall have all state-issued hauling permits then in force suspended by the commission or, if applicable, the commissioner of highways for a period of twelve months for the first offense, two years for the second offense and revoked for the third offense;

(8) Any operator who operates a vehicle engaged in the transportation of coal that has been issued a special permit by the commission under the provisions of section five of this article and who is charged with a violation of section one, article six, chapter seventeen-c of this code upon a road or highway of this state designated by the commissioner of Division of Highways as a part of the coal resource transportation road system shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of three days for the first offense, thirty days for the second offense and revoked for the third offense;

(9) Any person who falsifies information relating to the acquisition of a hauling permit shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of sixty days for the first offense, one hundred twenty days for the second offense and six months for the third offense;

(10) Any person regulated pursuant to this article that falsifies information relating to the

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acquisition of a hauling permit shall have its state-issued business license suspended by the commissioner of the state Tax Division for a period of six months for the first offense, one year for the second offense and two years for the third offense;

(11) Any person who fabricates or displays an altered, forged or counterfeited permit shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of sixty days for the first offense, one hundred twenty days for the second offense and revoked for the third offense;

(12) Any person that bribes or attempts to bribe an employee of the State of West Virginia or who gives an employee of the State of West Virginia a gift, gratuity, entertainment, loan, favor or other thing of monetary value for the purpose of avoiding any penalties permitted under this article shall have his or her state-issued hauling permit then in force suspended by the commission for a period of sixty days for the first offense, one hundred twenty days for the second offense and revoked for the third offense;

(13) In the case of multiple violations by a permittee, shipper, operator or receiver, the commission may direct that the imposed suspension be served concurrently or consecutively, taking into account the frequency of violations committed during the inclusive time periods, or in the same course of misconduct if the commission determines that sufficient mitigating or aggravating circumstances are present;

(14) Any person who aids or abets another person's attempt to avoid suspension shall have his or her driver's license suspended by the commissioner of the Division of Motor Vehicles for a period of sixty days for the first offense, one hundred twenty days for the second offense and six months for the third offense; and

(15) Any person that aids or abets a person's attempt to avoid suspension shall have its state-issued business license suspended by the Tax Commissioner for a period of three months for the first offense, six months for the second offense and one year for the third offense.

(d) Without providing a hearing, the commission may immediately suspend a person from obtaining permits or operating under permit authority for failure to pay a fee required under this article until proper payment is received. Upon the completion of all administrative appeals of any violation that results in a license suspension, the commission shall notify the Division of Motor Vehicles which shall act accordingly.

(e) Without providing a hearing, the commission and law-enforcement personnel may immediately confiscate an altered, forged or counterfeited permit, or a permit used in violation of its terms and conditions. Upon issuance of a citation alleging a violation of this subsection, the vehicle and its load shall be impounded by law-enforcement personnel until such time as a hearing on the matter is conducted by the division.

(f) Administrative sanctions may be imposed pursuant to the following procedures:

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(1) No administrative sanction may be imposed until after the person has been notified by certified mail or personal service. The notice shall include: A reference to the section of statute, rule, order, or permit violated; a concise statement of the facts alleged to constitute a violation; a statement of the administrative penalties to be imposed; and a statement of the person's right to a hearing. The person has twenty days from receipt of the notice within which to deliver to the commission a written request for a hearing.

(2) Subsequent to the hearing and upon finding that a violation has occurred, the commission shall issue a final order. If no hearing is requested, the notice shall become a final order upon the expiration of the twenty-day period.

(3) For purposes of the enhanced penalty provisions of this section, the second and subsequent offenses shall be calculated on a per-year basis.

(4) In addition to the imposition of an administrative sanction, the commission or division may, by administrative order and upon an appropriate finding, assess a violator for the reasonable costs, as established by rules of any investigation, inspection or monitoring survey which led to the establishment of the violation.

WV Legislature

§17C-17A-10. Penalties for violation of weight laws; impounding vehicles.

(a) Any owner, lessee or borrower of a commercial motor vehicle or combination of vehicles transporting coal who operates or permits to be operated on any highway the vehicle or combination of vehicles with a total gross weight load imposed upon the highway by any one group of two or more consecutive axles in excess of that permitted by section five of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine based on the number of pounds in excess of the registered weight, or in excess of allowable weights for single axle, or in excess of allowable weights for groups of two or more consecutive axles, in accordance with the following schedule:

Excess Weight Amount of Fine

1 to 4,000 pounds. 1 cent per overweight pound

4,001 to 8,000 pounds. 3 cents per overweight pound

8,001 to 12,000 pounds. 7 cents per overweight pound

12,001 to 16,000 pounds 10 cents per overweight pound

16,001 to 20,000 pounds 15 cents per overweight pound

20,001 to 40,000 pounds 30 cents per overweight pound

40,001 pounds or more 45 cents per overweight pound

(b) Upon a second or subsequent conviction within two years thereafter, the owner, lessee or borrower shall be punished by a fine according to the following schedule:

Excess Weight Amount of Fine

1 to 4,000 pounds 1 cent per overweight pound

4,001 to 8,000 pounds 5 cents per overweight pound

8,001 to 12,000 pounds 10 cents per overweight pound

12,001 to 16,000 pounds 15 cents per overweight pound

16,001 to 20,000 pounds 20 cents per overweight pound

20,001 to 40,000 pounds 40 cents per overweight pound

40,001 pounds or more 80 cents per overweight pound

(c) The fines specified in subsections (a) and (b) of this section are mandatory and may not

WV Legislature

be waived or reduced by any judicial officer.

(d) In the event any owner, lessee or borrower of a vehicle is charged with violating this section, the vehicle charged to have been overloaded shall be impounded by the arresting officer. The vehicle shall not be released to the alleged offender or the owner unless and until he or she either has: (1) Been acquitted of the charge; (2) been found guilty of the charge and paid any fine assessed under subsection (a) or (b) of this section; or (3) furnished cash or surety bond in at least double the amount of the fine which may be assessed the offender under subsection (a) or (b) of this section conditioned upon the payment of any fine and costs assessed for the violation. The offender is liable for any reasonable storage costs incurred in storing impounded vehicles: Provided, That if the owner of the vehicle is a resident of or has a principal place of business located in this state and the vehicle has been duly licensed in the state, then the vehicle may not be impounded by the arresting officer who shall deliver to the operator a written notice of the violation; the place, date and time of violation; the license number of the vehicle; the title number and name and address of the owner; the driver's name, address and the number of his or her commercial driver's license; and the court, place, date and time for hearing, which shall be within ten days of the violation, Saturdays, Sundays and holidays excluded. A copy of the notice shall be mailed to the owner of the vehicle within forty-eight hours. If the owner or his her or its agent fails to appear at the designated place and time or, if convicted, fails to pay the fine and costs assessed for the violation, the court shall order the owner to post a bond or the impounding of the vehicle as provided in this section.

(e) Any shipper or receiver who directs or knowingly permits a commercial motor vehicle to be loaded in excess of registered weight, allowable weights for single axle or allowable weights for groups of two or more consecutive axles is also guilty of a misdemeanor and, upon conviction, shall be punished by a fine equal to that which may be imposed on the owner, lessee or borrower of a commercial motor vehicle under subsection (a) of this section.

(f) The penalties and fees specified in this section are in addition to any other liability that may be legally fixed against the owner, operator or other person charged with a weight violation.

WV Legislature

§17C-17A-11. Effective date.

Criminal and administrative penalties imposed by this article take effect on October 1, 2003.

WV Legislature

§17C-17A-12. Designating special coal resource transportation roads, highways and bridges.

(a) From those counties and districts described in subsection (a), section three of this article, the Commissioner of the Division of Highways shall identify those public roads, highways and bridges used during the previous twelve-month period for transportation of quantities of coal in excess of fifty thousand tons or projected to be used for transporting quantities of coal in excess of fifty thousand tons during the ensuing year. The identification process shall include the following as to each discretely identifiable section of the public highway:

(1) The current condition of the public roads, highways and bridges;

(2) The estimated quantities of coal transported;

(3) Any planned or necessary maintenance or improvement;

(4) The number of truck loads of coal transported in an average day;

(5) Any anticipated increase or decrease in the quantity of coal being transported; and

(6) Other information determined by the Commissioner to be relevant.

(b) Upon completion of the identification process, but in no event later than July 1, 2003, the Commissioner shall designate by order an interim coal resource transportation road system consisting of those public roads, highways, bridges or segments thereof which may be used as special coal haulage roads consistent with the authority contained in this article. The Commissioner shall establish a process for the receipt and evaluation of public comment on the designations contained within the interim coal resource transportation road system, and designate weight limits and other conditions for use of the coal resource transportation road system as public interest so provides. The Commissioner shall publish a directory, including supporting maps and other documents, of the interim coal resource transportation road system.

(c) By no later than January 1, 2004, the Commissioner shall designate by order the coal resource transportation road system and shall publish a directory, including supporting maps and other documents, of that road system.

(d) The Commissioner shall establish a process for periodic evaluation of the designations contained in the coal resource transportation road system in order to add to or delete from the road system certain additional sections of public highways: Provided, That the evaluations and modifications of the road system shall be completed at a minimum on an annual basis.

(e) Effective July 1, 2005, there is created the coal resource transportation designation committee, the purpose of which is to approve the designation of additional coal resource transportation roads pursuant to the provisions of this section: Provided, That the committee

WV Legislature

may only consider those applications for designation of roads, highways and bridges not located within those whole counties identified in section three of this article.

(f) The committee consists of the following members:

(1) The Commissioner of Highways, or his or her designee;

(2) The Superintendent of the State Police, or his or her designee;

(3) One member who is representative of the coal industry, to be appointed by the Governor;

(4) One citizen member from the largest citizen action group, to be appointed by the Governor; and

(5) One member of the largest organization representing coal miners, to be appointed by the Governor.

(g) The Governor shall appoint members with the advice and consent of the Senate. Appointed members shall serve for terms of three years. No member may be appointed to serve more than two consecutive terms. The committee shall annually nominate from its members a chair, who shall hold office for one year.

(h) The public members of the committee may receive compensation for attendance at official meetings, not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the citizens Legislative Compensation Commission and authorized by law. Committee members may be reimbursed for actual and necessary expenses incurred for each day or portion of a day engaged in the discharge of committee duties in a manner consistent with guidelines of the travel management office of the Department of Administration.

(i) The committee shall accept applications from any person for designation or decertification of public roads, highways and bridges, or segments thereof in any county in the state, which may be used as special coal haulage roads consistent with the authority contained in this article. The committee shall establish a process for the receipt and evaluation of public comment on the designations contained in applications: Provided, That, prior to any designation the committee shall first have held a public hearing in the county wherein the public road, highway or bridge is located: Provided, however, That, where a public road, highway or bridge is located in more than one county, the hearing shall be conducted in the county containing the longest mileage under designation: Provided further, That prior to any public hearing the applicant shall cause notice of such public hearing or hearings by Class I legal advertisement.

(j) Once an application has been approved by the committee and the public road, highway or bridge has become part of the coal resource transportation road system, such route must be used for coal haulage pursuant to the provisions of this article within one year of its designation. In the event any public road, highway or bridge that is part of the coal resource

WV Legislature

transportation road system ceases to be used for coal haulage for a period of time exceeding one year, then such route may be decertified by the committee upon application by any person: Provided, That prior to any decertification the committee shall first have held a public hearing in the county wherein the public road, highway, or bridge is located: Provided, however, That where a public road, highway or bridge is located in more than one county, the hearing shall be conducted in the county containing the longest mileage under decertification: Provided further, That prior to any public hearing the applicant shall cause notice of such public hearing or hearings by Class I legal advertisement.

(k) Prior to rendering a final decision on any application for designation or decertification of a coal resource transportation road, the committee shall first report its findings and recommendations on each pending application to the Joint Committee on Government and Finance. The Joint Committee on Government and Finance may comment on the application which comments shall be considered by the committee. The committee may not make final any designation or decertification before thirty days after reporting its findings and recommendations on an application to the Joint Committee on Government and Finance.

(l) The coal resource transportation designation committee created in this section shall report its activities to the Secretary of Transportation who will provide the necessary staff to assist the committee in the discharge of its functions pursuant to this section.

WV Legislature

§17C-17A-13. Authority of the commissioner of the division of highways relating to road and bridge repair on designated coal resource transportation roads.

(a) In addition to all other powers provided by law to the commissioner of highways, he or she may enter into agreements with coal shippers, motor vehicle operators or owners holding or applying for permits issued pursuant to this article, or with any other persons, for the purpose of replacing, repairing, widening, reconstructing, altering, improving or maintaining public highways used for coal resource transportation. These agreements shall contain necessary criteria to assure any damages associated with the transport of coal upon the respective public highways are ameliorated.

(b) All moneys collected by the commissioner shall be deposited in a special account created within the state road fund, known as the coal resource transportation fund, to be expended for the purposes set forth in subsection (a) of this section.

WV Legislature

§17C-17A-14. Exclusion of off-road vehicles.

Notwithstanding any other provisions of state law to the contrary, the provisions of this article shall not apply to coal hauling vehicles operating off-road or vehicles designed for off-road.

WV Legislature

§17C-17A-15. Exclusion of interstate highways.

Notwithstanding any other provisions of this code to the contrary, the provisions of this article shall not apply to the interstate highways in this state.

WV Legislature

§17C-17A-16. Spotting unlawful; penalties.

It is unlawful for any person to intentionally assist an owner or operator of a commercial motor vehicle engaged in the transportation of coal to avoid a road, safety or other lawful inspection or enforcement activity by any law or weight enforcement officer through electronic communications or other means intended to give the commercial vehicle driver knowledge of the location of the officers. Any person who violates this section is guilty of a misdemeanor and, shall, upon conviction, be fined not less than $1,000 and upon a second or subsequent conviction, fined not less than $2,000.

WV Legislature

§17C-17B-1. Legislative findings and purposes.

(a) The Legislature finds that:

(1) Enforcement officers of the Public Service Commission of West Virginia are, as part of their enforcement of chapters twenty-four and twenty-four-a of this code with respect to common and contract carriers by motor vehicle, other for-hire carriers and private commercial carriers, currently inspecting for safety many of the same vehicles and loads that are inspected for size and weight by employees of the Department of Transportation;

(2) To effectuate the legislative findings and declarations set forth in section one, article one, chapter five-f of this code, the jurisdiction over the administration and enforcement of state statutes and rules relating to vehicular weight and the jurisdiction over the issuance of permits for excess vehicular weight should be transferred to the Public Service Commission;

(3) To preserve continuity and to maximize efficiency, those employees of the Department of Transportation who are employed primarily in the performance of the governmental duties described in this section should be transferred to the Public Service Commission; and

(4) The enforcement of state statutes and rules relating to coal truck weight, including costs of inspections of the vehicles and loads, training of enforcement officers, program oversight, administrative proceedings, personal services, employee benefits and all other costs associated with enforcement matters, falls within the scope of maintenance of state roads and public highways as described in section fifty-two, article six of the Constitution of this state and in section one, article three, chapter seventeen of this code.

(b) The purposes of this article are to transfer:

(1) Jurisdiction over the enforcement of state statutes and rules, including, but not limited to, the provisions of article seventeen-a of this chapter, relating to coal truck weight, from the Department of Transportation to the Public Service Commission of West Virginia;

(2) Jurisdiction over the issuance of permits for excess vehicular weight under section eleven, article seventeen, of this chapter, from the Department of Transportation to the Public Service Commission of West Virginia; and

(3) To the Public Service Commission of West Virginia those employees of the Department of Transportation whose primary governmental duties include the administration and enforcement of statutes and rules relating to vehicular weight.

WV Legislature

§17C-17B-2. Transfer of jurisdiction over vehicle weight enforcement and excess weight permit issuances to Public Service Commission.

(a) Effective July 1, 2003, the jurisdiction over the enforcement of state statutes and rules, including, but not limited to, applicable provisions of article seventeen of this chapter relating to vehicular weight, shall be transferred from the Department of Transportation to the Public Service Commission of West Virginia.

(b) Effective July 1, 2003, the jurisdiction over the issuance of permits for excess vehicular weight shall be transferred from the Department of Transportation to the Public Service Commission of West Virginia.

WV Legislature

§17C-17B-3. Transfer of certain employees from department of transportation to Public Service Commission.

Effective July 1, 2003, employees of the Department of Transportation whose primary governmental duties as of June 30, 2003, included the administration and enforcement of this code and rules promulgated under this code relating to vehicular weight or the issuance of permits for excess vehicular weight shall be transferred from the Department of Transportation to the Public Service Commission of West Virginia.

WV Legislature

§17C-17B-4. Costs of enforcement to be funded from revenues in General Revenue Fund or from fees collected by Public Service Commission.

(a) On and after July 1, 2003, the cost of enforcement of this code and rules promulgated under this code, relating to vehicular weight, including inspections of vehicles and loads, training of enforcement officers, administrative proceedings, personal services, employees benefits and all other costs associated with enforcement matters, shall be funded by revenues in the state road fund, established pursuant to the provisions of section one, article three, chapter seventeen of this code: Provided, That effective on and after July 1, 2007, all of the costs described in this subsection shall be funded by fees collected from the Public Service Commission or other appropriation by the Legislature: Provided, however, That the foregoing proviso may not be construed to require appropriation by the Legislature.

(b) The secretary of transportation and the treasurer shall take all actions necessary to implement the transfer of funding to effectuate the purposes of this article.

(c) For fiscal years beginning on and after July 1, 2004, the commission shall include in its budget to the Legislature the costs of implementation and continuing enforcement of this article for payment and appropriation into the Public Service Commission Fund.

WV Legislature

§17C-17B-5. Exceptions.

(a) Nothing in this article reduces or eliminates the authority of any police officer to enforce the provisions of article seventeen of this chapter.

(b) Nothing in this article reduces or eliminates the jurisdiction of the Department of Transportation to administer and enforce sections eleven-a, eleven-b, eleven-c and twelve, article seventeen of this chapter.

(c) Nothing in this article expands, reduces or eliminates any remedies otherwise available by law.

WV Legislature

§17C-18-1. Violations of chapter; penalties for misdemeanor.

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

(b) Every person convicted of a misdemeanor for a violation of any of the provisions of this chapter for which another penalty is not provided shall for a first conviction thereof be punished by a fine of not more than $100 or by imprisonment for not more than ten days; for a second such conviction within one year thereafter such person shall be punished by a fine of not more than $200 or by imprisonment for not more than twenty days or by both such fine and imprisonment; upon a third or subsequent conviction such person shall be punished by a fine of not more than $500 or by imprisonment for not more than six months or both such fine and imprisonment.

WV Legislature

§17C-19-1. Parties to a crime.

Every person who commits, attempts to commit, conspires to commit, or knowingly aids or abets in the commission of, any act declared herein to be a crime, whether individually or in connection with one or more other persons or as a principal, agent, or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcibly, or willfully induces, causes, coerces, requires, permits, or directs another to violate any provision of this chapter is likewise guilty of such offense.

WV Legislature

§17C-19-2. Offenses by persons owning or controlling vehicles; owner present in vehicle to be arrested rather than driver for certain traffic violations.

It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

If the owner of a motor vehicle is present in the vehicle at a time when another driver is operating the vehicle upon the highways of this state: (1) With defective or improper equipment in violation of the provisions of article fifteen of this chapter; (2) in violation of the weight, height, length or width provisions of article seventeen of this chapter; (3) with improper registration in violation of the provisions of article three, chapter seventeen-a of this code; or (4) with an expired vehicle inspection decal or certificate in violation of the provisions of article sixteen of this chapter, the owner rather than the driver shall be arrested for any violation enumerated herein in lieu of an arrest of the driver. If the owner of the vehicle is not present therein, then the driver shall be arrested for any violation enumerated in this section.

WV Legislature

§17C-19-3. When person arrested must be taken immediately before a magistrate or court.

(a) Whenever any person is arrested for any violation of this chapter punishable as a misdemeanor, the arrested person shall be immediately taken before a magistrate or court within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made, in any of the following cases:

(1) When a person arrested demands an immediate appearance before a magistrate or court;

(2) When the person is arrested upon a misdemeanor charge of vehicular homicide as contained in §17C-5-1 of this code;

(3) When the person is arrested upon a charge of driving while under the influence of alcohol, or under the influence of any controlled substance, or under the influence of any other drug, or under the combined influence of alcohol and any controlled substance or any other drug;

(4) When the person is arrested upon a charge of failure to stop in the event of an accident causing death, personal injury or damage to property;

(5) When the person is arrested upon a charge of violating §17C-17-14 relating to weight violations, except as otherwise provided in that section;

(6) When the person arrested is a resident of a state that has not entered into a nonresident violator compact with this state;

(7) In any other event when the person arrested refuses to accept the written notice to appear in court as his or her promise to appear in court or to comply with the terms of the written notice to appear in court as provided in section four of this article; and

(8) When a person is arrested for driving with a suspended or revoked driver's license for miscellaneous reasons: *Provided*, That when a person is arrested for driving with a suspended or revoked driver's license for miscellaneous reasons, the arresting officer may issue a charge by citation if a magistrate or judge is not on duty or reasonably available.

(b) When the person arrested is a resident of a state that has entered into a nonresident violator compact with this state, the arresting officer shall issue the person a written notice as provided for in section four of this article and may not take the person immediately before a magistrate or court, except under the terms of the compact or under the circumstances set forth in subsection (a) of this section.

WV Legislature

§17C-19-4. When person arrested to be given five days' notice to appear in court.

(a) Whenever a person is arrested for any violation of this chapter punishable as a misdemeanor and, such person is not immediately taken before a justice or court as hereinbefore required, the arresting officer shall prepare written notice to appear in court containing the name and address of such person, the license number of his vehicle, if any, the offense charged, and the time and place when and where such person shall appear in court.

(b) The time specified in said notice to appear must be at least five days after such arrest unless the person arrested shall demand an earlier hearing.

(c) The place specified in said notice to appear must be before a justice or court within the township or county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense.

(d) The arrested person in order to secure release, as provided in this section, must accept a copy of the written notice prepared by the arresting officer. The officer shall deliver a copy of the notice to the person promising to appear. Thereupon, said officer shall forthwith release the person arrested from custody.

WV Legislature

§17C-19-5. Procedure prescribed by article not exclusive.

The following provisions of this article shall govern all police officers in making arrests without a warrant for violations of this chapter, but the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade.

WV Legislature

§17C-19-6. Form for and records of books of traffic citations.

(a) Every traffic-enforcement agency in this state shall provide in appropriate form approved by the commissioner, the superintendent of the division of public safety and the commissioner of the Division of Highways, traffic citations containing notices to appear which shall be issued in books with citations in quadruplicate and meeting the requirements of this article.

(b) The chief administrative officer of every such traffic-enforcement agency shall be responsible for the issuance of such books and shall maintain a record of every such book and each citation contained therein issued to individual members of the traffic-enforcement agency and shall require and retain a receipt for every book so issued.

WV Legislature

§17C-19-7. Disposition and records of traffic citations.

(a) Every traffic-enforcement officer upon issuing a traffic citation to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of any city or town shall deposit the original or a copy of such traffic citation with a court having jurisdiction over the alleged offense or with its traffic violations bureau.

(b) Upon the deposit of the original or a copy of such traffic citation with a court having jurisdiction over the alleged offense or with its traffic violations bureau as aforesaid, said original or copy of such traffic citation may be disposed of only by trial in said court or other official action by a judge of said court, including forfeiture of the bail or by the deposit of sufficient bail with or payment of a fine to said traffic violations bureau by the person to whom such traffic citation has been issued by the traffic-enforcement officer.

(c) It shall be unlawful and official misconduct for any traffic-enforcement officer or other officer or public employee to dispose of a traffic citation or copies thereof or of the record of the issuance of the same in a manner other than as required herein.

(d) The chief administrative officer of every traffic- enforcement agency shall require the return to him of a copy of every traffic citation issued by an officer under his supervision to an alleged violator of any traffic law or ordinance and of all copies of every traffic citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator.

(e) Such chief administrative officer shall also maintain or cause to be maintained in connection with every traffic citation issued by an officer under his supervision a record of the disposition of the charge by the court or its traffic violations bureau in which the original or copy of the traffic citation was deposited.

WV Legislature

§17C-19-8. Record of traffic cases.

Every justice or judge of a court shall keep or cause to be kept a record of every traffic complaint, or other legal form of traffic charge deposited with or presented to said court or its traffic violations bureau, and shall keep a record of every official action by said court or its traffic violations bureau in reference thereto, including but not limited to a record of every conviction, forfeiture of bail, judgment of acquittal, and the amount of fine or forfeiture resulting from every said traffic complaint deposited with or presented to said court or traffic violations bureau.

WV Legislature

§17C-19-9. Jurisdiction of crimes by justices.

Justices of the peace shall have concurrent jurisdiction with the circuit, criminal and intermediate courts to enforce the misdemeanor penalties prescribed by this chapter.

WV Legislature

§17C-19-10. Guaranteed arrest bond certificates as cash bail.

Any guaranteed arrest bond certificate of any surety company licensed to do business by the Insurance Commissioner, shall, when presented by the person whose signature appears thereon, be accepted in lieu of cash bail in an amount not to exceed $500, as a bail bond, to guarantee the appearance of such person in any court, or before any justice, mayor, or municipal judge in this state, at such time as may be required by the court, justice, mayor or municipal judge, when such person is arrested for violation of any motor vehicle law of this state or traffic ordinance of any municipality in this state (except for the offenses of reckless driving, driving while intoxicated or for any felony) committed prior to the date of expiration shown on such guaranteed arrest bond certificate: Provided, That any such guaranteed arrest bond certificate so presented as a bail bond in any court in this state shall be subject to the same forfeiture and enforcement provisions as any other bail bond.

The term "guaranteed arrest bond certificate," as used herein, means any printed card or other certificate issued by an automobile club or association to any of its members, which said card or certificate is signed by such member and contains a printed statement that such automobile club or association and a surety company guarantee the appearance of the person whose signature appears on the card or certificate and that they will in the event of failure of said person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed $500.

WV Legislature

§17C-20-1. Authority of West Virginia turnpike commission.

The provisions of this chapter shall apply to toll roads under the jurisdiction of the West Virginia turnpike commission insofar as they are not in conflict with the provisions of chapter one hundred thirty-nine, acts of the Legislature, regular session, one thousand nine hundred forty-seven, as amended. The turnpike commission shall have all rights, privileges, and powers in regard to turnpike projects under its jurisdiction, which are by this chapter granted, reserved or otherwise accorded to the state road commission or commissioner or to any local or public authority or body in regard to other public highways. In addition, the turnpike commission shall have full authority to adopt rules and regulations for the movement of traffic upon any turnpike project under its jurisdiction and to amend the limits imposed by article six (speed restrictions) and article seventeen (size, weight, and load) of this chapter insofar as their application to toll roads under its jurisdiction are concerned by resolution entered upon the turnpike commission's minute book: Provided, That speed limits so established shall be posted conspicuously at intervals along the turnpike. Violations of any amendments by the turnpike commission of said limits as aforesaid or of any rules, regulations, or resolutions of the turnpike commission adopted pursuant to this article shall be punishable in the same manner and to the same extent as elsewhere in this chapter provided for the punishment of violations of limits set forth herein and of rules, regulations, resolutions, and ordinances of the state road commission or commissioner and local or public authorities or bodies in regard to roads, streets, or highways within their respective jurisdictions, unless no punishment is provided elsewhere herein, in which event each such violation shall be a misdemeanor subject to the jurisdiction of justices of the peace and circuit courts upon conviction of which a fine not to exceed $50 shall be levied.

WV Legislature

§17C-21-1. Constitutionality.

If any part or parts of this chapter shall be held to be unconstitutional such unconstitutionality shall not affect the validity of the remaining parts of this chapter. The Legislature hereby declares that it would have passed the remaining parts of this chapter if it had known that such part or parts thereof would be declared unconstitutional.

WV Legislature

§17C-21-2. Repeal of conflicting provisions.

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

WV Legislature

§17C-22-1. Ridesharing arrangement defined.

"Ridesharing arrangement" means the transportation of persons in a motor vehicle where such transportation is incidental to another purpose of the driver and is not for profit, or is by nonprofit community organizations and nonprofit corporations for senior citizens or handicapped persons. The term shall include but not be limited to ridesharing arrangements known as carpools, vanpools and buspools.

WV Legislature

§17C-22-2. Common carrier laws do not apply to ridesharing; requiring liability insurance.

The following laws and regulations of this state shall not apply to any ridesharing arrangement using a motor vehicle with a seating capacity for not more than fifteen persons, including the driver:

(a) Chapter twenty-four-a of this code pertaining to the regulation of common carriers of any kind or description by the Public Service Commission;

(b) Laws and regulations containing insurance requirements that are specifically applicable to common carriers or commercial vehicles: Provided, That with respect to any private or individually owned motor vehicle designed for a normal passenger capacity, including the driver thereof, of no more than six persons, prior to, and continuing during the term of such use, the use of any such motor vehicle for any ridesharing arrangement under the provisions of this article, such motor vehicle shall be insured for liability arising out of the ownership, operation, maintenance or use thereof in the amount of $20,000 because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of $40,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of $10,000 because of injury to or destruction of property of others in any one accident, and in the case of any other motor vehicle to be used for any ridesharing arrangement under the provisions of this article, all such motor vehicles prior to such use, and continuing during the term of such use, shall be insured for liability arising out of the ownership, operation, maintenance or use thereof in the amount of $100,000 because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of $300,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of $25,000 because of injury to or destruction of property of others in any one accident and insured for medical pay coverage of not less than $10,000;

(c) Laws imposing a greater standard of care on common carriers or commercial vehicles than that imposed on other drivers or owners of motor vehicles;

(d) Laws and regulations with equipment requirements and special accident reporting requirements that are specifically applicable to common carriers or commercial vehicles; and

(e) Laws imposing a tax on fuel purchased in another state by a common carrier or road use taxes on commercial buses.

WV Legislature

§17C-22-3. Workers' compensation law does not apply to ridesharing; exceptions thereto.

Chapter twenty-three of this code providing compensation for workers injured during the course of their employment shall not apply to a person injured while participating in a ridesharing arrangement between his or her place of residence and place of employment or termini near such places: Provided, That if the employer owns, leases or contracts for the motor vehicle used in such arrangement, chapter twenty-three shall apply.

WV Legislature

§17C-22-4. Liability of employer.

(a) An employer shall not be liable for injuries to passengers and other persons resulting from the operation or use of a motor vehicle, not owned, leased or contracted for by the employer, in a ridesharing arrangement.

(b) An employer shall not be liable for injuries to passengers and other persons because he provides information, incentives or otherwise encourages his employees to participate in ridesharing arrangements.

WV Legislature

§17C-22-5. County or municipal licenses and taxes.

No county or municipal corporation may impose a tax on, or require a license for, a ridesharing arrangement using a motor vehicle with a seating capacity for not more than fifteen persons, including the driver.

WV Legislature

§17C-22-6. Overtime compensation and minimum wage law.

The mere fact that an employee participates in any kind of ridesharing arrangement shall not result in the application of chapter twenty-one of this code, requiring payment of a minimum wage, overtime pay or otherwise regulating the hours a person may work.

WV Legislature

§17C-22-7. Certain ridesharing vehicles are not commercial vehicles or buses; exemption from registration; driver not chauffeur.

(a) A motor vehicle used in a ridesharing arrangement that has a seating capacity for not more than fifteen persons, including the driver, shall not be a "bus" for purposes of equipment requirements or rules of the road.

(b) A motor vehicle used in a ridesharing arrangement that has a seating capacity for not more than fifteen persons, including the driver, shall not be a "bus" or other motor vehicle operated as a common carrier or contract carrier under the provisions of section one, article ten, chapter seventeen-a of this code relating to registration.

(c) The driver of a passenger car, motor vehicle that has a seating capacity for not more than fifteen persons, including the driver, used in a ridesharing arrangement is not a "chauffeur" nor is he transporting persons for compensation under the driver licensing provisions of this code.

WV Legislature

§17C-23-1. Definitions.

(a) "Funeral director" and "funeral establishment" have the same meaning as set forth in section four, article six, chapter thirty of this code.

(b) "Funeral procession" means two or more vehicles accompanying the body of a deceased person, or traveling to the church, chapel, cemetery or other location at which the funeral service or final disposition is to be held, including a funeral lead vehicle or a funeral escort vehicle.

(c) "Funeral lead vehicle" means any authorized law enforcement or nonlaw-enforcement motor vehicle or a funeral escort vehicle being used to lead and facilitate the movement of a funeral procession. A funeral hearse may serve as a funeral lead vehicle.

(d) "Funeral escort" means a person or entity that provides escort services for funeral processions, including law-enforcement personnel and agencies.

(e) "Funeral escort vehicle" means any motor vehicle that escorts a funeral procession.

WV Legislature

§17C-23-2. Funeral procession right-of-way; funeral escort vehicles; funeral lead vehicles.

(a) Regardless of any traffic control device or right-of-way provisions prescribed by state or local ordinance, pedestrians and operators of all vehicles, except as stated in subsection (c) of this section, shall yield the right-of-way to any vehicle which is part of a funeral procession being led by a funeral escort vehicle or a funeral lead vehicle.

(b) When the funeral lead vehicle lawfully enters an intersection, either by reason of a traffic control device or at the direction of law-enforcement personnel, the remaining vehicles in the funeral procession may follow through the intersection regardless of any traffic control devices or right-of-way provisions prescribed by state or local law.

(c) Funeral processions have the right-of-way at intersections regardless of traffic control devices subject to the following conditions and exceptions:

(1) Operators of vehicles in a funeral procession shall yield the right-of-way to an approaching emergency vehicle giving an audible or visible signal;

(2) Operators of vehicles in a funeral procession shall yield the right-of-way when directed to do so by a police officer; and

(3) Operators of vehicles in a funeral procession must exercise due care when participating in a funeral procession.

WV Legislature

§17C-23-3. Driving in procession.

(a) All vehicles comprising a funeral procession shall follow the preceding vehicle in the funeral procession as closely as is practical and safe.

(b) Any ordinance, law or rule stating that motor vehicles shall be operated to allow sufficient space enabling any other vehicle to enter and occupy such space without danger is not applicable to vehicles in a funeral procession.

WV Legislature

§17C-23-4. Liability.

Liability for any death, personal injury or property damage suffered on or after July 1, 1999, by any person in a funeral procession may not be imposed upon a funeral director or funeral establishment or their employees or agents unless the death, personal injury or property damage is proximately caused by the negligent or intentional act of a funeral director or funeral establishment or their employees or agents.

WV Legislature

§17C-23-5. Equipment.

All nonlaw-enforcement funeral escort vehicles and funeral lead vehicles may be equipped with at least one lighted circulation flashing lamp exhibiting an amber or purple light or lens. Flashing amber or purple lights may be used when such vehicles are used in a funeral procession.

WV Legislature

§17C-24-1. Definitions.

“Mobile carrier’ means an electrically powered device that:

(1) Is operated on sidewalks and crosswalks and is intended primarily for transporting

Property;

(2) Weighs less than 100 pounds, excluding cargo;

(3) Has a maximum speed of 12.5 miles per hour; and

(4) Is equipped with a technology to transport personal property with the active monitoring

of a property owner and primarily designed to remain within 25 feet of the property owner.

“Personal delivery device” means an electrically powered device that:

(1) Is operated on sidewalks, and crosswalks and roadways and is intended primarily for transporting goods and cargo;

(2) Is equipped with technology to allow for operation of the device with or without the

active control or monitoring of a natural person;

(3) A personal delivery device is not considered a vehicle unless expressly defined by law as a vehicle; and

(4) A mobile carrier is not considered a personal delivery device.

WV Legislature

§17C-24-2. Rules for personal delivery devices and mobile carriers.

(a) A personal delivery device or mobile carrier may operate on sidewalks and crosswalks. A personal delivery device or mobile carrier operating on a sidewalk or crosswalk has all the rights and duties applicable to a pedestrian under the same circumstances, except that the personal delivery device or mobile carrier shall not unreasonably interfere with pedestrians or traffic, and shall yield the right-of-way to pedestrians on the sidewalk or crosswalk.

(b) Personal delivery devices and mobile carriers shall:

(1) Obey all official traffic and pedestrian control signals and devices;

(2) For personal delivery devices, include a plate or marker that has a unique identifying device number and identifies the name and contact information of the personal delivery device operator; and

(3) Be equipped with a braking system that, when active or engaged, enables the personal delivery device or mobile carrier to come to a controlled stop.

(c) Mobile carriers shall not:

(1) Operate on a public highway except to the extent necessary to cross a crosswalk;

(2) Operate on a sidewalk or crosswalk unless the mobile carrier owner is actively controlling or monitoring the navigation and remains within 25 feet of the mobile carrier;

(3) Transport hazardous materials as defined in RSA 259:40; or

(4) Transport persons or animals.

(d) Personal delivery devices shall not:

(1) Operate at speeds in excess of 12 mph on sidewalks;

(2) Operate at speeds in excess of 20 mph on roadways;

(3) Operate unless the navigation and operation is being monitored or controlled by an operator; or

(4) Transport hazardous materials that are regulated under the Hazardous Materials Transportation Authorization Act of 1994 (49 United States Code Sections 5101 through 5128) and must be placarded under 49 Code of Federal Regulations Sections 172.500 through 172.560.

(e) A local authority may not regulate the operation of a personal delivery device on a highway or sidewalk in a manner that is inconsistent with this article, including, but not limited to, restricting the hours or zones of operation.

WV Legislature

(f) A person who owns and operates a personal delivery device in this state shall maintain an insurance policy, on behalf of himself or herself and his or her agents, which provides general liability coverage of at least $100,000 for damages arising from the combined operations of personal delivery devices under the entity's or agent's control.

WV Legislature

§17C-25-1. Definitions.

As used in this article, unless the context otherwise requires:

"Aeronautics" means the art and science of flight including, but not limited to, transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants, and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports or other air navigation facilities; and education about aeronautics.

"Aircraft" means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

"Air navigation" or "navigation" means the operation or navigation of aircraft in the air space over this state, or upon any airport within this state.

"Air navigation facility" means any facility other than one owned or controlled by the federal government used in, available for use in, or designed for use in aid of air navigation, including airports, and any structures, mechanisms, lights, beacons, markers, communications system, or other instrumentalities or devices used or useful as an aid or constituting an advantage or convenience to the safe takeoff, navigation, and landing of aircraft or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

"Airport" means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

"Controlled substance" has the meaning ascribed to it in chapter 60A of this code.

"Law-enforcement officer" means: (1) Any member of the State Police; (2) any sheriff and any deputy sheriff of any county of this state; (3) any member of a police department in any political subdivision of this state; and (4) any natural resources police officer of the Division of Natural Resources.

"Operation of aircraft" or "operate aircraft" means the use, navigation, or piloting of aircraft in the airspace over this state or upon the ground within this state.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

"Political subdivision" means any county, city, town, village, or other political subdivision of this state.

WV Legislature

§17C-25-2. Operation of aircraft while under influence of alcohol, controlled substances, or drugs; criminal penalties.

(a) Any person who operates an aircraft in this state while:

(1) Under the influence of alcohol;

(2) Under the influence of any controlled substance;

(3) Under the influence of any other drug;

(4) Under the combined influence of alcohol any controlled substance, or any other drug; or

(5) Has an alcohol concentration in his or her blood of four-hundredths of one percent or more by weight is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a regional jail facility not more than one year or fined not more than $500, or both, in the discretion of the court.

(b) Any person who operates an aircraft in this state while:

(1) Under the influence of alcohol;

(2) Under the influence of any controlled substance;

(3) Under the influence of any other drug;

(4) Under the combined influence of alcohol any controlled substance, or any other drug; or

(5) Has an alcohol concentration in his or her blood of four-hundredths of one percent or more by weight who, when operating an aircraft while under the influence, does any act forbidden by law or fails to perform any duty imposed by law in the operation of the aircraft, which act or failure proximately causes bodily injury to any other person, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of imprisonment of not less than one year nor more than five years, or in the discretion of the court, be confined in a regional jail facility not more than one year and be fined not more than $500.

(c) Any person who knowingly permits his or her aircraft to be operated in this state by any other person who is:

(1) Under the influence of alcohol;

(2) Under the influence of any controlled substance;

(3) Under the influence of any other drug;

(4) Under the combined influence of alcohol and any controlled substance or any other drug;

WV Legislature

or

(5) Has an alcohol concentration in his or her blood of four-hundredths of one percent or more by weight is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a regional jail facility not more than one year or fined not more than $500, or both, in the discretion of the court.

(d) A person violating any provision of subsection (a) or (c) of this section is, for the second offense under this section, guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of imprisonment of not less than one year nor more than three years.

(e) A person violating any provision of subsection (b) of this section is, for the second offense under this section, guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of imprisonment of not less than one year nor more than five years.

(f) For purposes of subsections (d) and (e) of this section relating to second and subsequent offenses, the following types of convictions shall be regarded as convictions under this section:

(1) Any conviction under the provisions of the prior enactment of this section; or

(2) Any conviction under a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), or (c) of this section.

(g) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time periods for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that case, the warrant, or indictment, or information shall set forth the date, location, and particulars of the previous offense or offenses. A person may not be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final.

(h) The fact that any person charged with a violation of subsection (a) or (b) of this section, or any person permitted to operate an aircraft as described under subsection (c) of this section, is or has been legally entitled to use alcohol, a controlled substance, or a drug, shall not constitute a defense against any charge of violating subsection (a), (b), or (c) of this section.

(i) When any person is convicted of violating any provision of this section, the clerk of the court in which the conviction occurred shall, within 72 hours after receipt thereof, transmit a true copy thereof to the federal aviation administration.

WV Legislature

§17C-25-3. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

(a) Any person who operates an aircraft in this state is considered to have given his or her consent by the operation thereof to a preliminary breath analysis and a secondary chemical test of either his or her blood, breath, or urine for the purposes of determining the alcoholic content of his or her blood, breath, or urine. A preliminary breath analysis may be administered in accordance with the provisions of §17C-25-4 of this code whenever a law-enforcement officer has reasonable cause to believe a person committed an offense prohibited by §17C-25-2 of this code. A secondary test of breath, blood, or urine shall be incidental to a lawful arrest and shall be administered at the direction of the arresting law-enforcement officer. The law-enforcement agency by which the law-enforcement officer is employed shall designate which one of the secondary tests shall be administered: *Provided*, That if the designated test is a blood test and the person arrested refuses to submit to the blood test, then the law-enforcement officer making the arrest shall designate in lieu thereof either a breath or urine test to be administered.

(b) If any political subdivision or the Division of Natural Resources does not have available to its law-enforcement officers the testing equipment or facilities necessary to conduct any secondary test which a law-enforcement officer may administer under this article, any member of the State Police, the sheriff of the county in which the arrest is made, or any deputy of the sheriff or any municipal law-enforcement officer of another municipality within the county in which the arrest is made may, upon the request of the arresting law-enforcement officer and in his or her presence, conduct a secondary test. The results of the test may be used in evidence to the same extent and in the same manner as if the test had been conducted by the arresting law-enforcement officer. Only the person actually administering or conducting the test is competent to testify as to the results and the veracity of the test.

WV Legislature

§17C-25-4. Preliminary analysis of breath to determine alcoholic content of blood.

When a law-enforcement officer has reason to believe a person has committed an offense prohibited by §17C-25-2 of this code, the law-enforcement officer may require the person to submit to a preliminary breath analysis for the purpose of determining that person's blood alcohol content. The law-enforcement officer shall administer the breath analysis as soon as possible after he or she has a reasonable belief that the person has been operating an aircraft while under the influence of alcohol, controlled substances, or drugs. Any preliminary breath analysis required under this section shall be administered with a device and in a manner approved by the Bureau of Public Health for that purpose. The results of a preliminary breath analysis shall be used solely for the purpose of guiding the law-enforcement officer in deciding whether an arrest should be made. When a person is arrested following a preliminary breath analysis, the tests shall be administered in accordance with the provisions of this article.

WV Legislature

§17C-25-5. How blood test administered; additional test at option of person tested; use of test results; certain immunity from liability incident to administering test.

Only a doctor of medicine or a doctor of osteopathy, a registered nurse, or trained medical technician at the place of his or her employment, acting at the request and direction of the law-enforcement officer, may withdraw blood for the purpose of determining the alcoholic concentration of the blood. These limitations shall not apply to the taking of a breath test or a urine specimen. In withdrawing blood for the purpose of determining its alcoholic concentration, only a previously unused and sterile needle and sterile vessel may be used, and the withdrawal shall otherwise be in strict accord with accepted medical practices. A nonalcoholic antiseptic shall be used for cleansing the skin prior to venipuncture. The person tested may, at his or her own expense, have a doctor of medicine or a doctor of osteopathy, registered nurse, or trained medical technician of his or her own choosing, at the place of his or her employment, administer a chemical test in addition to the test administered at the direction of the law-enforcement officer. Upon the request of the person who is tested, full information concerning the test taken at the direction of the law-enforcement officer shall be made available to him or her. A person who administers any test upon the request of a law-enforcement officer, a hospital in or with which the person is employed or is otherwise associated or in which the test is administered and any other person, firm, or corporation by whom or with which that person is employed or is in any way associated, is not in any way criminally liable for the administration of the test or civilly liable in damages to the person tested unless for gross negligence or willful or wanton injury.

WV Legislature

§17C-25-6. Interpretation and use of chemical test.

(a)(1) Upon trial for the offense of operating an aircraft in this state while under the influence of alcohol, controlled substances, or drugs, or upon the trial of any civil or criminal action arising out of acts alleged to have been committed by any person operating an aircraft while under the influence of alcohol, controlled substances, or drugs, evidence of the amount of alcohol in the person's blood at the time of the arrest or of the acts alleged, as shown by a chemical analysis of his or her breath, blood, or urine, is admissible if the sample or specimen was taken within two hours from and after the time of arrest or of the acts alleged, and shall give rise to the following presumption or have the following effect: Evidence that there was, at that time, four-hundredths of one percent or more by weight of alcohol in his or her blood, is prima facie evidence that the person was under the influence of alcohol.

(2) Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 100 cubic centimeters of blood.

(b) A chemical analysis of a person's breath, blood, or urine, in order to give rise to the presumption or to have the effect provided for in subsection (a) of this section, shall be performed in accordance with methods and standards approved by the state Bureau for Public Health. A chemical analysis of blood or urine to determine the alcoholic concentration of blood shall be conducted by a qualified laboratory or by the scientific laboratory of the criminal identification bureau of the State Police.

(c) The provisions of this article shall not limit the introduction in any administrative or judicial proceeding of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, controlled substances, or drugs.

WV Legislature

§17C-25-7. Right to demand test.

Any person lawfully arrested for operating an aircraft in this state while under the influence of alcohol, controlled substances, or drugs has the right to demand that a sample or specimen of his or her breath, blood, or urine be taken within two hours from and after the time of arrest and that a chemical test be performed. The analysis disclosed by the chemical test shall be made available to the arrested person immediately upon demand.

WV Legislature

§17C-25-8. Fee for withdrawing blood sample and making urine test; payment of fees.

A reasonable fee shall be allowed to the person withdrawing a blood sample or administering a urine test at the request and direction of a law-enforcement officer in accordance with the provisions of this article. If the person whose blood sample was withdrawn or whose urine was tested was arrested and charged with a violation of §17C-25-2 of this code, the county having venue of the charge shall pay the fee. If the person is subsequently convicted of the charge, the fee shall be taxed as a part of the costs of the criminal proceeding and shall be paid, notwithstanding any other provision of this code to the contrary, into the general fund of the county.

WV Legislature

§17C-25-9. Unauthorized taking or operation of aircraft; penalty.

Any person who commits the following prohibited acts is guilty of a felony and, upon conviction thereof, shall be fined not less than $200 nor more than $5,000, and confined in a state correctional facility for not less than two nor more than 10 years.

(1) A person, other than the duly authorized agent, servant, or employee of the owner thereof, who takes, without the knowledge and consent of the owner, and operates within this state any aircraft owned by another person.

(2) A person who willfully and without the knowledge or consent of the owner or person in lawful charge thereof, and with the intent to deprive the owner or person in lawful charge of the possession or use thereof, either temporarily or permanently, takes possession of, enters and operates, or otherwise takes and uses, any aircraft belonging to another or in his or her lawful possession;

(3) Any person who assists, aids, and abets, or is present for the purpose and with the intent to assist, aid, or abet another person in taking possession of, entering, and operating, or otherwise taking and using the aircraft.

(4) Any person who receives, buys, conceals, or otherwise disposes of any such aircraft knowing the same to have been stolen or taken without the knowledge or consent of the owner or person in lawful charge thereof.

WV Legislature

§17C-25-10. Federal license required for operation of aircraft.

(a) A person shall not operate or cause or authorize to be operated any aircraft within this state unless such aircraft has an appropriate effective certificate, permit, or license issued by the United States, if such certificate, permit, or license is required by the United States.

(b) A person may not engage in aeronautics in this state unless he or she has an appropriate effective certificate, permit, rating, or license issued by the United States authorizing him or her to engage in the particular class of aeronautics in which he or she is engaged, if such certificate, permit, rating, or license is required by the United States.

(c) Where a certificate, permit, rating, or license is required by the United States, it shall be kept in the personal possession of a pilot when he or she is operating within this state and shall be presented for inspection upon the demand of any law enforcement officer, or any official, manager, or person in charge of any airport upon which they shall land, or upon the reasonable request of any other person.

(d) Where a certificate, permit, or license is required by the United States for an aircraft, it shall be carried in the aircraft at all times while the aircraft is operating in the state, shall be conspicuously posted in the aircraft where it may readily be seen by passengers or inspectors, and shall be presented for inspection upon the demand of any law enforcement officer, or any official, manager, or person in charge of any airport upon which the aircraft shall land, or upon the reasonable request of any person.

WV Legislature

§17C-25-11. Enforcement of aeronautics laws.

All law enforcement officers shall enforce and assist in the enforcement of this article and all other laws of this state relating to aeronautics. Law enforcement officers may inspect and examine at reasonable hours any aircraft, the credentials of any person engaged in aeronautics required by the laws of this state or of the United States to have in his or her possession credentials evidencing his or her authority or permission to engage in aeronautics, any premises and the buildings and other structures thereon, where airports, air navigation facilities, or other aeronautical activities are operated or conducted.

WV Legislature