WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994

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ENROLLED

HOUSE BILL No. H.333

(By Delegate Campbell, Higgins and Love)

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Passed March 11, 1994

In Effect 90 Days from Passage
ENROLLED

H. B. 4333

(By DELEGATES CAMPBELL, HIGGINS AND LOVE)

[Passed March 11, 1994; in effect ninety days from passage.]

AN ACT to amend and reenact sections three and thirteen, article one, chapter seventeen-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to commercial driver's licenses; changing and adding certain definitions; and clarifying that felony convictions for drug-related crimes results in commercial driver's license disqualification for life.

Be it enacted by the Legislature of West Virginia:

That sections three and thirteen, article one, chapter seventeen-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-3. Definitions.

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

2. "Alcohol" means:

3. (a) Any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propanol and isopropanol;

4. (b) Beer, ale, port or stout and other similar fermented beverages (including sake or similar products) of any name or description containing one half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;
(c) Distilled spirits or that substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced); or

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

"Alcohol concentration" means:

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

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

(c) The number of grams of alcohol per sixty-seven milliliters of urine.

"Commercial driver license" means a license issued in accordance with the requirements of this article to an individual which authorizes the individual to drive a class of commercial motor vehicle.

"Commercial driver license information system" is the information system established pursuant to the federal commercial motor vehicle safety act to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

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

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

(a) If the vehicle has a gross vehicle weight rating as determined by federal regulation;

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

(c) If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. part 172, sub-part F.

"Commissioner" means the commissioner of motor
vehicles of this state.

"Controlled substance" means any substance so
classified under the provisions of chapter sixty-a of this
code (uniform controlled substances act) and includes all
substances listed on Schedules I through V, article two
of said chapter sixty-a, as they may be revised from time
to time.

"Conviction" means the final judgment in a judicial or
administrative proceeding or a verdict or finding of
guilty, a plea of guilty, a plea of nolo contendere, an
implied admission of guilt or a forfeiture of bond or
collateral upon a charge of a disqualifying offense, as
a result of proceedings upon any violation of the
requirement of this article.

"Department" means the department of motor
vehicles.

"Disqualification" means a prohibition against driving
a commercial motor vehicle.

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

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

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

"Employee" means a person who is employed by an
employer to drive a commercial motor vehicle, including
independent contractors. An employee who is employed
by himself or herself as a commercial motor vehicle
driver must comply with both the requirements of this
article pertaining to employees and employers.
"Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.

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

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

"Farmer vehicle driver" means the person employed and designated by the "farmer" to drive a "farm vehicle" as long as driving is not his sole or principal function on the farm, who is at least eighteen years of age with two years licensed driving experience.

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

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

"Hazardous materials" has the meaning as that found

"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.

"Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.

"Serious traffic violation" means:

(a) Operating a motor vehicle under the influence of alcohol or a controlled substance in violation of the provisions of section two, article five, chapter seventeen-c of this code;

(b) Failure to stop and render aid and provide required information after involvement in a motor vehicle accident resulting in death, injury or property damage, as provided in section five, article three, chapter seventeen-b and sections one through five, inclusive, article four, chapter seventeen-c of this code;

(c) A felony in the commission of which a motor vehicle is used; as stated in subsection (2), section five, article three, chapter seventeen-b of this code;

(d) Excessive speeding defined as fifteen miles per hour in excess of all posted limits;

(e) Reckless driving as defined in section three, article five, chapter seventeen-c of this code including erratic lane changes and following the vehicle ahead too closely;

(f) A violation of state or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal traffic accident. Vehicle weight and vehicle defects are excluded as serious traffic violations;

(g) Violation of an out-of-service order; or

(h) Any other serious violations as may be determined by the U. S. Secretary of Transportation.

"State" means a state of the United States and the
District of Columbia.

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

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

(a) Disqualification offenses. — On or after the first day of April, one thousand nine hundred ninety-two, any person is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of:

1. Driving a commercial motor vehicle under the influence of alcohol or a controlled substance;
2. Driving a commercial motor vehicle while the alcohol concentration of the person's blood or breath is four hundredths or more;
3. Leaving the scene of an accident involving a commercial motor vehicle driven by the person;
4. Using a commercial motor vehicle in the commission of any felony as defined in this article: Provided, That the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance falls under the provisions of subsection (d) of this section.
5. Refusal to submit to a test to determine the driver's alcohol concentration while driving a commercial motor vehicle.
In addition, the conviction of any of the following offenses as an operator of any vehicle is a disqualification offense:

1. Manslaughter or negligent homicide resulting from the operation of a motor vehicle as defined under the provisions of section five, article three, chapter seventeen-b, and section one, article five, chapter seventeen-c of this code;

2. Driving while license is suspended or revoked, as defined under the provisions of section three, article four, chapter seventeen-b of this code;

3. Perjury or making a false affidavit or statement under oath to the department of motor vehicles, as defined under the provisions of subsection (4), section five, article three, and section two, article four, chapter seventeen-b of this code.

If any of the above violations occurred while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three years.

(b) A person is disqualified for life if convicted of two or more violations of any of the offenses specified in subsection (a) of this section, or any combination of those offenses, arising from two or more separate incidents.

(c) The commissioner may issue rules establishing guidelines, including conditions, under which a disqualification for life under subsection (b) of this section may be reduced to a period of not less than ten years.

(d) A person is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance.

(e) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations, or one hundred twenty days if convicted of three serious
61 violations, committed in a commercial motor vehicle
62 arising from separate incidents occurring within a
63 three-year period.

64 (f) After suspending, revoking or cancelling a com-
65 mercial driver's license, the department shall update its
65 records to reflect that action within ten days.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within bill was approved this the 29th day of March 1994.

[Signature]
Governor
PRESENTED TO THE
GOVERNOR
Date 3/25/44
Time 10:10 a.m.