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LEGISLATIVE SERVICES DIVISION
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999

ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 222

(By Senators ROSE, KESSLER AND ANDERSON)

PASSED MARCH 13, 1999

In Effect NINETY DAYS FROM Passage

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STATE OF WEST VIRGINIA
SENATE

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 222

(SENATORS ROSS, KESSLER AND ANDERSON, *original sponsors*)

[Passed March 13, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact sections three, seven, twelve, thirteen, fourteen and fifteen, article one, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to commercial driver's licenses; revising definitions of serious traffic violation and conviction; adding definitions of out-of-service order and violation thereof; providing for disqualification periods upon convictions of certain offenses and upon refusal to take test for determining intoxication; making violation of out-of-service order a disqualifying offense; clarifying when licenses expire; clarifying certain alcohol-related offenses; and providing for procedure upon certain arrests.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-3. Definitions.

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

3 "Alcohol" means:

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

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

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

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

18 "Alcohol concentration" means:

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

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

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

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

29 “Commercial driver license information system” is the
30 information system established pursuant to the federal
31 commercial motor vehicle safety act to serve as a clearing-
32 house for locating information related to the licensing and
33 identification of commercial motor vehicle drivers.

34 “Commercial driver instruction permit” means a permit
35 issued pursuant to subsection (d), section nine of this
36 article.

37 “Commercial motor vehicle” means a motor vehicle
38 designed or used to transport passengers or property:

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

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

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

46 “Commissioner” means the commissioner of motor
47 vehicles of this state.

48 “Controlled substance” means any substance so classi-
49 fied under the provisions of chapter sixty-a of this code
50 (uniform controlled substances act) and includes all
51 substances listed on Schedules I through V, article two of
52 said chapter sixty-a, as they may be revised from time to
53 time.

54 “Conviction” means the final judgment in a judicial or
55 administrative proceeding or a verdict or finding of guilty,
56 a plea of guilty, a plea of nolo contendere or a forfeiture of
57 bond or collateral upon a charge of a disqualifying offense,
58 as a result of proceedings upon any violation of the
59 requirement of this article.

60 “Division” means the division of motor vehicles.

61 “Disqualification” means a prohibition against driving
62 a commercial motor vehicle.

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

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

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

77 "Employee" means a person who is employed by an
78 employer to drive a commercial motor vehicle, including
79 independent contractors. An employee who is self-em-
80 ployed as a commercial motor vehicle driver must comply
81 with both the requirements of this article pertaining to
82 employees and employers.

83 "Employer" means any person, including the United
84 States, a state, or a political subdivision of a state, who
85 owns or leases a commercial motor vehicle, or assigns a
86 person to drive a commercial motor vehicle.

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

97 "Farmer" includes owner, tenant, lessee, occupant or
98 person in control of the premises used substantially for
99 agricultural or horticultural pursuits, who is at least

100 eighteen years of age with two years licensed driving
101 experience.

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

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

113 “Gross vehicle weight rating (GVWR)” means the value
114 specified by the manufacturer as the loaded weight of a
115 single vehicle. In the absence of a value specified by the
116 manufacturer the GVWR will be determined by the total
117 weight of the vehicle and any load thereon.

118 “Hazardous materials” has the meaning as that found in
119 the Hazardous Materials Transportation Act (49 U.S.C.
120 5101 et seq. (1998)).

121 “Motor vehicle” means every vehicle which is
122 self-propelled, and every vehicle which is propelled by
123 electric power obtained from overhead trolley wires but
124 not operated upon rails.

125 “Out-of-service order” means a temporary prohibition
126 against driving a commercial motor vehicle as a result of
127 a determination by a federal agency or the public service
128 commission, pursuant to chapter twenty-four-a of this
129 code, that: (a) The continued use of a commercial motor
130 vehicle may result in death, serious injury or severe
131 personal injury; or (b) the continued actions by the driver
132 of a commercial motor vehicle poses an imminent hazard
133 to public safety.

134 “Violation of an out-of-service order” means: (a) The
135 operation of a commercial motor vehicle during the period
136 the driver was placed out of service; or (b) the operation of
137 a commercial motor vehicle by a driver after the vehicle

138 was placed out of service and before the required repairs
139 are made.

140 "Serious traffic violation" means:

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

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

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

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

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

155 "Tank vehicle" means any commercial motor vehicle
156 that is designed to transport any liquid or gaseous materi-
157 als within a tank that is either permanently or temporarily
158 attached to the vehicle or the chassis. Such vehicles
159 include, but are not limited to, cargo tanks and portable
160 tanks, as defined in 49 C.F.R. Part 171 (1998). However,
161 this definition does not include portable tanks having a
162 rated capacity under one thousand gallons.

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

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

1 (a) On or after the first day of April, one thousand nine
2 hundred ninety-two, except when driving under a com-
3 mercial driver's instruction permit accompanied by the
4 holder of a commercial driver's license valid for the vehicle

5 being driven, no person may drive a commercial motor
6 vehicle unless the person holds a commercial driver's
7 license and applicable endorsements valid for the vehicle
8 they are driving.

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

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

16 (d) The commissioner shall suspend for a period of
17 ninety days the driving privileges of any person who is
18 convicted of operating a commercial motor vehicle without
19 holding a valid commercial driver's license and the
20 applicable endorsements valid for the vehicle he or she is
21 driving or for any conviction for operating a commercial
22 motor vehicle while disqualified from operating a com-
23 mercial motor vehicle. Any person not holding a commer-
24 cial driver's license who is convicted of an offense that
25 requires disqualification from operating a commercial
26 motor vehicle shall also be disqualified from eligibility for
27 a commercial driver's license for the same time periods as
28 prescribed in federal law or rule or this chapter for
29 commercial driver's license holders.

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

1 Commercial driver's licenses may be issued, with the
2 following classifications, endorsements and restrictions;
3 the holder of a valid commercial driver's license may drive
4 all vehicles in the class for which that license is issued, and
5 all lesser classes of vehicles and vehicles which require an
6 endorsement, unless the proper endorsement appears on
7 the license:

8 (a) *Classifications.* -

9 (1) Class A - Any combination of vehicles with a gross
10 combined vehicle weight rating of twenty-six thousand
11 one pounds or more, provided the gross vehicle weight

12 rating of the vehicle(s) being towed is in excess of ten
13 thousand pounds.

14 (2) Class B - Any single vehicle with a gross vehicle
15 weight rating of twenty-six thousand one pounds or more,
16 and any such vehicle towing a vehicle not in excess of ten
17 thousand pounds.

18 (3) Class C - Any single vehicle or combination vehicle
19 with a gross vehicle weight rating of less than twenty-six
20 thousand one pounds or any such vehicle towing a vehicle
21 with a gross vehicle weight rating not in excess of ten
22 thousand pounds comprising:

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

25 (B) Vehicles used in the transportation of hazardous
26 materials which requires the vehicle to be placarded under
27 49 C.F.R., Part 172, sub-part F.

28 (b) *Endorsements and restrictions.* - The commissioner
29 upon issuing a commercial driver's license shall have the
30 authority to impose such endorsements or restrictions as
31 the commissioner may determine to be appropriate to
32 assure the safe operation of a motor vehicle, and to comply
33 with the federal Motor Vehicle Act of 1986 and federal
34 rules implementing such act.

35 (c) *Applicant record check.* - Before issuing a commer-
36 cial driver's license, the commissioner must obtain driving
37 record information through the commercial driver's license
38 information system, the national driver register and from
39 each state in which the person has been commercially
40 licensed.

41 (d) *Notification of license issuance.* - Within ten days
42 after issuing a commercial driver's license, the commis-
43 sioner shall notify the commercial driver's license informa-
44 tion system of that fact, providing all information required
45 to ensure identification of the person.

46 (e) *Expiration of license.* -

47 (1) Every commercial driver's license issued to persons
48 who have attained their twenty-first birthday shall expire

49 on the last day of the month in which the applicant's
 50 birthday occurs in those years in which the applicant's age
 51 is evenly divisible by five. Except as provided in subdivi-
 52 sion (2) of this subsection, no commercial driver's license
 53 may be issued for less than three years nor more than
 54 seven years and such commercial driver's license shall be
 55 renewed in the month in which the applicant's birthday
 56 occurs and shall be valid for a period of five years, expir-
 57 ing in the month in which the applicant's birthday occurs
 58 and in a year in which the applicant's age is evenly
 59 divisible by five.

60 (2) Every commercial driver's license issued to persons
 61 who have not attained their twenty-first birthday shall
 62 expire on the last day of the month in the year in which
 63 the applicant attains the age of twenty-one years.

64 (3) Commercial driver's licenses held by any person in
 65 the armed forces which expire while that person is on
 66 active duty shall remain valid for thirty days from the date
 67 on which that person reestablishes residence in West
 68 Virginia.

69 (4) Any person applying to renew a commercial driver's
 70 license which has been expired for two years or more must
 71 follow the procedures for an initial issuance of a commer-
 72 cial driver's license, including the testing provisions.

73 (f) *License renewal procedures.* – When applying for
 74 renewal of a commercial driver's license, the applicant
 75 must complete the application form and provide updated
 76 information and required certifications. If the applicant
 77 wishes to retain a hazardous materials endorsement, the
 78 written test for a hazardous materials endorsement must
 79 be taken and passed.

§17E-1-13. Disqualification and cancellation.

1 (a) *Disqualification offenses.* – Any person is disqualified
 2 from driving a commercial motor vehicle for a period of
 3 one year if convicted of a first violation of:

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

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

9 (3) Leaving the scene of an accident involving a commer-
10 cial motor vehicle driven by the person;

11 (4) Using a commercial motor vehicle in the commission
12 of any felony as defined in this article: *Provided*, That the
13 commission of any felony involving the manufacture,
14 distribution, or dispensing of a controlled substance, or
15 possession with intent to manufacture, distribute or
16 dispense a controlled substance falls under the provisions
17 of subsection (e) of this section;

18 (5) Refusal to submit to a test to determine the driver's
19 alcohol concentration while driving a commercial motor
20 vehicle.

21 (6) Manslaughter or negligent homicide resulting from
22 the operation of a motor vehicle as defined in section five,
23 article three, chapter seventeen-b, and section one, article
24 five, chapter seventeen-c of this code;

25 (7) Driving while license is suspended or revoked, as
26 defined in section three, article four, chapter seventeen-b
27 of this code;

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

32 If any of the above violations occurred while transport-
33 ing a hazardous material required to be placarded, the
34 person is disqualified for a period of not less than three
35 years for a first violation.

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

40 (c) The commissioner may issue rules establishing
41 guidelines, including conditions, under which a disqualifi-

42 cation for life under subsection (b) of this section may be
43 reduced to a period of not less than ten years.

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

50 (e) A person is disqualified from driving a commercial
51 motor vehicle for a period of sixty days if convicted of two
52 serious traffic violations, or one hundred twenty days if
53 convicted of three serious violations, committed in a
54 commercial motor vehicle arising from separate incidents
55 occurring within a three-year period.

56 (f) In addition, in accordance with the provision of 49
57 C.F.R. §391.15 and §383.15 (1998), a conviction of violat-
58 ing an out-of-service order is a disqualifying offense. For
59 the first offense, the period of disqualification shall be for
60 ninety days. For the second offense within a ten-year
61 period for violations in separate incidents, the period of
62 disqualification shall be for a period of one year. For the
63 third or subsequent offense within a ten-year period for
64 violations in separate incidents, the period of disqualifica-
65 tion shall be for a period of three years. If the violation of
66 the out-of-service order occurred while the person was
67 operating a commercial motor vehicle transporting
68 hazardous material required to be placarded under the
69 Hazardous Transportation Act (49 U.S.C. §5101 et seq.) or
70 while operating a motor vehicle designed to transport
71 sixteen or more passengers including the driver, the period
72 of disqualification for the first offense shall be for one
73 hundred eighty days. For the second or subsequent offense
74 within a ten-year period for violations in separate inci-
75 dents, the period of disqualification shall be for three
76 years.

77 (g) A person is disqualified from driving a commercial
78 motor vehicle if he or she has failed to pay overdue child
79 support or comply with subpoenas or warrants relating to
80 paternity or child support proceedings, if a circuit court
81 has ordered the suspension of the commercial driver's

82 license as provided in article five-a, chapter forty-eight-a
83 of this code and the child support enforcement division has
84 forwarded to the division a copy of the court order sus-
85 pending the license, or has forwarded its certification that
86 the licensee has failed to comply with a new or modified
87 order that stayed the suspension and provided for the
88 payment of current support and any arrearage due. A
89 disqualification under this section shall continue until the
90 division has received a court order restoring the license or
91 a certification by the child support enforcement division
92 that the licensee is complying with the original support
93 order or a new or modified order that provides for the
94 payment of current support and any arrearage due.

95 (h) After suspending, revoking or canceling a commercial
96 driver's license, the division shall update its records to
97 reflect that action within ten days.

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

1 (a) In addition to any other penalties provided by this
2 code, any person who drives, operates or is in physical
3 control of a commercial motor vehicle while having an
4 alcohol concentration in his or her blood, breath or urine
5 of four hundredths of one percent or more, by weight, is
6 guilty of a misdemeanor and, upon conviction thereof,
7 shall be confined in jail for not less than twenty-four hours
8 nor more than six months, and shall be fined not less than
9 one hundred dollars nor more than five hundred dollars.
10 A person convicted of a second or any subsequent offense
11 under the provisions of this subsection shall be confined in
12 jail for a period of not less than six months nor more than
13 one year, and the court may, in its discretion, impose a fine
14 of not less than one thousand dollars nor more than three
15 thousand dollars.

16 (b) A person who violates the provisions of subsection (a)
17 of this section shall be treated in the same manner set
18 forth in section three, article nineteen, chapter seventeen-c
19 of this code, as if he or she had been arrested for driving

20 under the influence of alcohol or of any controlled sub-
21 stance.

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

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

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

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

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

20 (d) If the person refuses testing, or submits to a test
21 which discloses an alcohol concentration of four hun-
22 dredths of one percent or more, by weight, that
23 law-enforcement officer must submit a sworn report to the
24 division of motor vehicles certifying that the test was

25 requested pursuant to subsection (a) of this section and
26 that the person refused to submit to testing, or submitted
27 to a test which disclosed an alcohol concentration of four
28 hundredths of one percent or more, by weight.

29 (e) Upon receipt of the sworn report of a law-enforce-
30 ment officer submitted under subsection (d) of this section,
31 the commissioner must enter an order disqualifying the
32 driver from driving a commercial motor vehicle for one
33 year.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Rank Schoonover
.....
Chairman Senate Committee

Joe F. Smith
.....
Chairman House Committee

Originating in the Senate.
In effect ninety days from passage.

Barrett Hobbs
.....
Clerk of the Senate

Bryant M. Gray
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

.....
.....
Speaker House of Delegates

The within *approved* this the *24*
Day of *April*, 1990
Jeff Abernethy
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 3/25/99

Time 1:45 pm