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
ENROLLED
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 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;

5. (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

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

7. “Alcohol concentration” means:

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

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

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

11. “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 clearing-house 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 (d), 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 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.

“Division” means the division 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 commercial 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 self-employed 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 in the Hazardous Materials Transportation Act (49 U.S.C. 5101 et seq. (1998)).

"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 as a result of a determination by a federal agency or the public service commission, pursuant to chapter twenty-four-a of this code, that: (a) The continued use of a commercial motor vehicle may result in death, serious injury or severe personal injury; or (b) the continued actions by the driver of a commercial motor vehicle poses an imminent hazard to public safety.

"Violation of an out-of-service order" means: (a) The operation of a commercial motor vehicle during the period the driver was placed out of service; or (b) the operation of a commercial motor vehicle by a driver after the vehicle
“Serious traffic violation” means:

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

(b) 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;

(c) 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; or

(d) 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 49 C.F.R. Part 171 (1998). 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.

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

(a) On or after the first day of April, one thousand nine hundred ninety-two, except when driving under a commercial driver's instruction permit accompanied by the holder of a commercial driver's license valid for the vehicle
being driven, no person may drive a commercial motor vehicle unless the person holds a commercial driver's license and applicable endorsements valid for the vehicle they are driving.

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

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

(d) The commissioner shall suspend for a period of ninety days the driving privileges of any person who is convicted of operating a commercial motor vehicle without holding a valid commercial driver's license and the applicable endorsements valid for the vehicle he or she is driving or for any conviction for operating a commercial motor vehicle while disqualified from operating a commercial motor vehicle. Any person not holding a commercial driver's license who is convicted of an offense that requires disqualification from operating a commercial motor vehicle shall also be disqualified from eligibility for a commercial driver's license for the same time periods as prescribed in federal law or rule or this chapter for commercial driver's license holders.

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

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

(a) Classifications. –

(1) Class A - Any combination of vehicles with a gross combined vehicle weight rating of twenty-six thousand one pounds or more, provided the gross vehicle weight
rating of the vehicle(s) being towed is in excess of ten thousand pounds.

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

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

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

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

(b) Endorsements and restrictions. – The commissioner upon issuing a commercial driver’s license shall have the authority to impose such endorsements or restrictions as the commissioner may determine to be appropriate to assure the safe operation of a motor vehicle, and to comply with the federal Motor Vehicle Act of 1986 and federal rules implementing such act.

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

(d) Notification of license issuance. – Within ten days after issuing a commercial driver’s license, the commissioner shall notify the commercial driver’s license information system of that fact, providing all information required to ensure identification of the person.

(e) Expiration of license. –

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

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on the last day of the month in which the applicant’s birthday occurs in those years in which the applicant’s age is evenly divisible by five. Except as provided in subdivision (2) of this subsection, no commercial driver’s license may be issued for less than three years nor more than seven years and such commercial driver’s license shall be renewed in the month in which the applicant’s birthday occurs and shall be valid for a period of five years, expiring in the month in which the applicant’s birthday occurs and in a year in which the applicant’s age is evenly divisible by five.

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

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

(4) Any person applying to renew a commercial driver’s license which has been expired for two years or more must follow the procedures for an initial issuance of a commercial driver’s license, including the testing provisions.

(f) License renewal procedures. — When applying for renewal of a commercial driver’s license, the applicant must complete the application form and provide updated information and required certifications. If the applicant wishes to retain a hazardous materials endorsement, the written test for a hazardous materials endorsement must be taken and passed.


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

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

(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 (e) of this section;

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

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

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

(8) Perjury or making a false affidavit or statement under oath to the department of motor vehicles, as defined in 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 for a first violation.

(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 disqualifi-
(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 sixty days if convicted of two serious traffic violations, or one hundred twenty days if convicted of three serious violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(f) In addition, in accordance with the provision of 49 C.F.R. §§391.15 and §§383.15 (1998), a conviction of violating an out-of-service order is a disqualifying offense. For the first offense, the period of disqualification shall be for ninety days. For the second offense within a ten-year period for violations in separate incidents, the period of disqualification shall be for a period of one year. For the third or subsequent offense within a ten-year period for violations in separate incidents, the period of disqualification shall be for a period of three years. If the violation of the out-of-service order occurred while the person was operating a commercial motor vehicle transporting hazardous material required to be placarded under the Hazardous Transportation Act (49 U.S.C. §§5101 et seq.) or while operating a motor vehicle designed to transport sixteen or more passengers including the driver, the period of disqualification for the first offense shall be for one hundred eighty days. For the second or subsequent offense within a ten-year period for violations in separate incidents, the period of disqualification shall be for three years.

(g) A person is disqualified from driving a commercial motor vehicle if he or she has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings, if a circuit court has ordered the suspension of the commercial driver's
license as provided in article five-a, chapter forty-eight-a of this code and the child support enforcement division has forwarded to the division a copy of the court order suspending the license, or has forwarded its certification that the licensee has failed to comply with a new or modified order that stayed the suspension and provided for the payment of current support and any arrearage due. A disqualification under this section shall continue until the division has received a court order restoring the license or a certification by the child support enforcement division that the licensee is complying with the original support order or a new or modified order that provides for the payment of current support and any arrearage due.

(h) After suspending, revoking or canceling a commercial driver's license, the division shall update its records to 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.

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

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

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

(a) A person who drives a commercial motor vehicle
within this state is deemed to have given consent, subject
to provisions of section four, article five, chapter seven-

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

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

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

(e) Upon receipt of the sworn report of a law-enforcement officer submitted under subsection (d) of this section, the commissioner must enter an order disqualifying the driver from driving a commercial motor vehicle for one year.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within... this the...

Day of... 199...

Governor