WEST VIRGINIA LEGISLATURE
Regular Session, 2002

ENROLLED
Committee Substitute for
SENATE BILL NO. lecel

(By Senator joven, etc.)

PASSED March 9, 2002

In Effect 90 days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 664

(SENATORS ROSS, SHARPE AND FANNING, original sponsors)

[Passed March 9, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections four, twelve and thirteen, article one, chapter seventeen-e of said code, all relating to the requirement that certain vehicles stop or slow down at railroad crossings; and disqualifying violating drivers from operating commercial vehicles for certain periods of time in compliance with federal law.

Be it enacted by the Legislature of West Virginia:

That section three, article twelve, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections four,
twelve and thirteen, article one, chapter seventeen-e of said code be amended and reenacted, all to read as follows:

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 12. SPECIAL STOPS REQUIRED.

§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 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 one hundred dollars or imprisoned for not more than ten days: Provided, That if the electric or mechanical signal device is malfunctioning, this subsection shall not apply.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

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

1 No person who drives a commercial motor vehicle may have more than one driver license at one time.

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

1 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 (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 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 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 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, subpart F (2001).

(b) Endorsements and restrictions. – The commissioner upon issuing a commercial driver's license may impose endorsements or restrictions determined by the commis­ sioner to be appropriate to assure the safe operation of a motor vehicle and to comply with 49 U.S.C., et seq., and federal rules implementing the law.

(c) Applicant record check. – Before issuing a commercial driver's license, the commissioner shall 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 expires on the applicant's birthday in those years in which the applicant's age is evenly divisible by five. Except as provided in subdivision (2) of this subsection, no commercial driver's license may be issued for less than three years nor more than seven years and the commercial driver's license shall be renewed by the applicant's birthday and is 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 expires 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 remains 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 shall 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 shall complete the application form and provide updated information and required certifications. If the applicant wishes to retain a hazardous materials endorsement, the applicant shall comply with a background check in accordance with 49 U.S.C. §5103a and pass the written test for a hazardous materials endorsement.


(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) Refusing to submit to a test to determine the person'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 his or her license is suspended or revoked, as defined in section three, article four, chapter seventeen-b of this code; or

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

If any of the violations in this subsection 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 propose rules for promulgation in accordance with article three, chapter twenty-nine-a of this code 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 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 continues 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) In accordance with the provisions of 49 C.F.R. §383.51, (2001) any person convicted of operating a commercial motor vehicle in violation of any federal, state or local law or ordinance pertaining to any of the railroad crossing violations described in subdivision (1) of this subsection shall be disqualified for the period of time specified in subdivision (2) of this subsection:

(1) Conviction for any of the following railroad crossing violations shall result in disqualification:

(A) Failing to slow down and check that the tracks are clear of an approaching train, if not required to stop in
accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;

(B) Failing to stop before reaching the crossing, if the tracks are not clear, if not required to stop, in accordance with the provisions of section one, article twelve, chapter seventeen-c of this code;

(C) Failing to stop before driving onto the crossing, if required to stop in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;

(D) Failing to have sufficient space to drive completely through the crossing without stopping in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;

(E) Failing to obey a traffic control device or the directions of an enforcement official at the crossing in accordance with the provisions of section one, article twelve, chapter seventeen-c of this code; or

(F) Failing to negotiate a crossing because of insufficient undercarriage clearance in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code.

(2) Duration of disqualification time periods for railroad-highway grade crossing convictions are as follows:

(A) For the first conviction, a driver of a commercial motor vehicle shall be disqualified for sixty days if the driver is convicted of a first violation of a railroad-highway grade crossing violation;

(B) For a second conviction, a driver of a commercial vehicle shall be disqualified for one hundred and twenty days if during any three-year period the driver is convicted of a second railroad-highway grade crossing violation in separate incidents;
(C) For the third or subsequent conviction, a driver of a commercial motor vehicle shall be disqualified for one year if during any three-year period the driver is convicted of a third or subsequent railroad-highway grade crossing violation in separate incidents.

(i) After suspending, revoking or canceling a commercial driver's license, the division shall update its 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

Originated in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved this the 3rd Day of April 2002.

[Signature]
Governor
PRESENTED TO THE

DATE: 3/25/02

TIME: 11:30 A.M.