ENROLLED

House Bill No. 2802

(By Delegate Boggs)

Passed April 9, 2005

In Effect Ninety Days from Passage
AN ACT to amend and reenact §8-11-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §17E-1-2, §17E-1-3; §17E-1-5, §17E-1-6, §17E-1-7, §17E-1-8, §17E-1-9, §17E-1-10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-14, §17E-1-15, §17E-1-16, §17E-1-17, §17E-1-23 and §17E-1-24 of said code, all relating to updating provisions pertaining to commercial driver’s licenses to conform with federal law.

Be it enacted by the Legislature of West Virginia:

That §8-11-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17E-1-2, §17E-1-3, §17E-1-5, §17E-1-6, §17E-1-7, §17E-1-8, §17E-1-9, §17E-1-10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-14, §17E-1-15, §17E-1-16, §17E-1-17, §17E-1-23 and §17E-1-24 of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.
§8-11-5. Prejudgment alternative disposition of certain traffic offenses.

(a) Municipal courts are hereby authorized to establish a prejudgment alternative disposition procedure for traffic offenses over which the court has jurisdiction.

(b) Under a prejudgment disposition procedure authorized by subsection (a) of this section, if a person is found guilty of a traffic offense, the municipal court may, with the person's consent, withhold for a reasonable time not to exceed ninety days the entry of a judgment of conviction so that the person may attend a driver safety education course designated by the municipal court. If the person attends said course, the municipal court, if satisfied with the person's participation in the course, shall, without entering a judgment of conviction, dismiss the proceeding against the person.

(c) It shall be a condition of any prejudgment alternative disposition authorized by the provisions of this section that the person pay any fine assessed by the court and pay all fees and costs required to be paid by any provision of this code where a person is convicted of a criminal traffic offense. No municipal court shall utilize any prejudgment alternative disposition procedure unless it collects such fees and costs as are required by any provision of this code and transmits the moneys collected as required by law. No municipal court shall utilize any prejudgment alternative disposition procedure unless it conforms with the requirements of this section.

(d) The procedure authorized by the provisions of this section shall not be available to any person who:

(1) Holds a commercial driver's license issued by this state in accordance with chapter seventeen-e of this code, or who holds a commercial driver's license issued by any other state or jurisdiction;
CHAPTER 17E. UNIFORM COMMERCIAL DRIVER’S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER’S LICENSE.

§17E-1-2. Statement of intent and purpose.

(a) The purpose of this article is to implement 49 U.S.C et seq., The Federal Motor Carrier Safety Improvement Act of 1999, 49 U.S.C. §5103a, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept or Obstruct Terrorism Act of 2001 and to reduce or prevent commercial motor vehicle accidents, fatalities and injuries by:

1. Permitting commercial drivers to hold only one license;
2. Disqualifying commercial drivers who have committed certain serious traffic offenses;
3. Permitting only commercial drivers who do not present a security threat to operate commercial vehicles carrying a hazardous material; and
4. Strengthening licensing and testing standards.

(b) This article is a remedial law and shall be liberally construed to promote the public health, safety and welfare. Where this chapter is silent, the general driver licensing provisions and the provisions of Title 49 of the Code of Federal Regulations apply.
§17E-1-3. Definitions.

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

(1) “Alcohol” means:

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

(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 for malt;

(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.

(2) “Alcohol concentration” means:

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

(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.

(D) The number of grams of alcohol per eighty-six milliliters of serum.
(3) “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.

(4) “Commercial driver's 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.

(5) “Commercial driver's 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.

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

(7) “Commercial motor vehicle” means a motor vehicle designed or used to transport passengers or property:

(A) If the vehicle has a gross combination vehicle weight rating of 26,001 pounds or more inclusive of a towed unit(s) with a gross vehicle weight rating of more than 10,000 pounds;

(B) If the vehicle has a gross vehicle weight rating of more than 26,001 pounds or more;

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

(D) If the vehicle is of any size transporting hazardous materials as defined in this section.

(8) “Commissioner” means the Commissioner of Motor Vehicles of this state.
"Controlled substance" means any substance 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, inclusive, article two of said chapter sixty-a, as they are revised. The term "controlled substance" also has the meaning such term has under 21 U.S.C. §802.6 and includes all substances listed on Schedules I through V of 21 C.F.R. §1308 as they may be amended by the United States Department of Justice.

"Conviction" means an unvacated adjudication of guilt; a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal or proceeding; an unvacated forfeiture of bail or collateral deposited to secure the persons appearance in court; a plea of guilty or nolo contendere accepted by the court or the payment of a fine or court cost, or violation of a condition of release without bail regardless of whether or not the penalty is rebated, suspended, or probated.

"Division" means the Division of Motor Vehicles.

"Disqualification" means any of the following three actions:

(A) The suspension, revocation, or cancellation of a driver’s license by the state or jurisdiction of issuance.

(B) Any withdrawal of a person’s privilege to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control other than parking or vehicle weight except as to violations committed by a special permittee on the coal resource transportation system or vehicle defect violations.

(C) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. Part §391 (2004).
(13) “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 the purposes of sections twelve, thirteen and fourteen of this article, “drive” includes operation or physical control of a motor vehicle anywhere in this state.

(14) “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's license.

(15) “Driver's license” means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle of a specific class.

(16) “Employee” means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent, or occasional drivers; leased drivers and independent, owner-operator contractors (while in the course of operating a commercial motor vehicle) who are either directly employed by or under lease to drive a commercial motor vehicle for an employer.

(17) “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.

(18) “Endorsement” means an authorization to a person to operate certain types of commercial motor vehicles.

(19) “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 the farms or orchards to be used on the farms or orchards.

(20) “Farmer” includes an 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.

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

(22) “Felony” means an offense under state or federal law that is punishable by death or imprisonment for a term exceeding one year.

(23) “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.

(24) “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.

(25) “Hazardous materials” means any material that has been designated as hazardous under 49 U.S.C. §5103 and is
required to be placarded under subpart F of 49 C.F.R. Part §172 or any quantity of a material listed in 42 C.F.R. Part §73.

(26) “Imminent Hazard” means existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury or a substantial endangerment to health, property or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury or endangerment.

(27) “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.

(28) “Non-Commercial motor vehicle” means a motor vehicle or combination of motor vehicles not defined by the term “commercial motor vehicle”.

(29) “Out-of-service order” means a temporary prohibition against driving a commercial motor vehicle as a result of a determination by a law-enforcement officer, an authorized enforcement officer of a federal, state, Canadian, Mexican, county or local jurisdiction including any special agent of the Federal Motor Carrier Safety Administration pursuant to 49 C.F.R. §§386.72, 392.5, 395.13, 396.9 or compatible laws or the North American uniform out-of-service criteria that an imminent hazard exists.

(30) “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 was placed out of service and before the required repairs are made.
“School bus” means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home-to-school, from school-to-home, or to and from school sponsored events. School bus does not include a bus used as a common carrier.

“Serious traffic violation” means conviction for any of the following offenses when operating a commercial motor vehicle:

(A) Excessive speeding involving any single offense for any speed of fifteen miles per hour or more above the posted limits;

(B) Reckless driving as defined in section three, article five, chapter seventeen-c of this code, careless, or negligent driving, including, but not limited to, the offenses of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property;

(C) Erratic or improper traffic lane changes including, but not limited to, passing a school bus when prohibited, improper lane changes and other passing violations;

(D) Following the vehicle ahead too closely;

(E) Driving a commercial motor vehicle without obtaining a commercial driver’s license;

(F) Driving a commercial motor vehicle without a commercial driver’s license in the driver’s possession. However, any person who provides proof to the law-enforcement agency that issued the citation, by the date the person must appear in court, or pay any fine for such violation, that the person held a valid commercial driver’s license on the date the citation was issued, shall not be guilty of this offense;
(G) Driving a commercial motor vehicle without the proper class of commercial driver’s license and/or, endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported; or

(H) 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.

(I) Vehicle defects are excluded as serious traffic violations, except as to violations committed by a special permittee on the coal resource transportation road system; or

(J) Any other serious violations determined by the United States Secretary of Transportation.

(32) “State” means a state of the United States and the District of Columbia.

(33) “State of Domicile” means the state where a person has his or her true, fixed and permanent home and principle residence and to which he or she has the intention of returning whenever absent in accordance with chapter seventeen-a, article three, section one-a.

(34) “Suspension, revocation or cancellation” of a driver’s license, or a commercial driver’s license means the privilege to operate any type of motor vehicle on the roads and highways of this state is withdrawn.

(35) “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. These 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
236 portable tanks having a rated capacity under one thousand
gallons.

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

242 (36) “Transportation Security Administration” means the
United States Department of Homeland Security Transportation
Security Administration.

245 (37) “United States” means the fifty states and the District
of Columbia.

247 (38) “Vehicle Group” means a class or type of vehicle with
certain operating characteristics.

§17E-1-5. Notification required by driver.

(a) Notification of convictions.

(1) Any driver of a commercial motor vehicle holding a
driver's license issued by this state, who is convicted of
violating any state law or local ordinance relating to motor
vehicle traffic control, in any other state or federal, provincial,
territorial or municipal laws of Canada, other than parking
violations, shall notify the West Virginia Division of Motor
Vehicles in the manner specified by the Commissioner and in
accordance with C.F.R. §383.31(2004) within thirty days of the
date of conviction.

(2) Any driver of a commercial motor vehicle holding a
driver's license issued by this state, who is convicted of
violating any state law or local ordinance relating to motor
vehicle traffic control in this state or any other state or federal,
provincial, territorial or municipal laws of Canada, other than
parking violations, must notify his or her employer in writing and in accordance with 49 C. F. R. §383.31 (2004) of the conviction within thirty days of the date of conviction.

(b) Each driver whose driver's license is:

(1) Suspended, revoked, canceled or expired, by any state;

(2) Who loses the privilege to drive a commercial motor vehicle in any state for any period; or

(3) Who is disqualified from driving a commercial motor vehicle for any period, shall notify his or her employer of that fact before the end of the business day following the day the driver received notice of the action against his or her driving privileges.

(c) Each person who applies to be a commercial motor vehicle driver shall provide the employer, at the time of the application, with the following information for the ten years preceding the date of application:

(1) A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle;

(2) The dates between which the applicant drove for each employer; and

(3) The reason for leaving that employer.

The applicant shall certify that all information furnished is true and complete. An employer may require an applicant to provide additional information.

§17E-1-6. Employer responsibilities.
(a) Each employer must require the applicant to provide the information specified in section five of this article.

(b) No employer may knowingly allow, permit or authorize a driver to drive a commercial motor vehicle during any period:

(1) In which the driver has a driver's license suspended, revoked or canceled by a state; has lost the privilege to drive a commercial motor vehicle in a state, or has been disqualified from driving a commercial motor vehicle; or

(2) In which the driver has more than one driver's license at one time.

(3) During any period in which the driver, or the commercial motor vehicle he or she is driving or the motor carrier operation, is subject to an out-of-service order; or

(4) In violation of federal, state or local law or regulation pertaining to railroad highway grade crossings; or

(5) During any period the driver is in violation of any provision of 49 C.F.R., Part §382 related to controlled substances and alcohol use and testing.

§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.

(e) 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 section thirteen of this article for commercial driver's license holders.

§17E-1-8. Exemptions to the commercial driver’s license requirements.

(a) Bona fide farmers or farm vehicle drivers, as defined, operating a vehicle otherwise covered by the commercial driver's license requirements may be exempted from the provisions of this article only if the vehicle used is:

(1) Driven by a farmer or farm vehicle driver;

(2) Used only to transport either agricultural products, farm machinery, farm supplies, to or from a farm;
(3) Not used in the operation of a common or contract motor carrier; and

(4) Used within one hundred fifty miles of the qualifying farm. Farmers who wish to be exempted from the commercial driver's license requirements must apply to the Division of Motor Vehicles for a certificate of exemption.

(b) Military personnel, including the National Guard and Reserve, are exempt from the provisions of this article, only:

(1) When in uniform; and

(2) Operating equipment owned by the United States Department of Defense, except during declared emergencies or disaster situations; and

(3) On duty; and

(4) In possession of a valid classified military driver's license for the class of vehicle being driven.

(c) Fire fighting and rescue equipment. Operators of vehicles authorized to hold an “authorized emergency vehicle permit” for use of red signal lights only are exempt from the provisions of this article while the “authorized emergency vehicle permit” is in force. Vehicles in this class include, but are not limited to, firefighters and rescue equipment:

(1) Owned and operated by state, county and municipal fire departments;

(2) Owned and operated by state, county and municipal civil defense organizations;

(3) Owned and operated by a manufacturer engaged in a type of business that requires firefighter equipment to protect the safety of their plants and its employees; or
(4) Owned and operated by volunteer fire departments.

(d) Operators of off-road construction and mining equipment. Operators of equipment which, by its design, appearance and function, is not intended for use on a public road, including, without limitation, motorscrapers, backhoes, motorgraders, compactors, excavators, tractors, trenches and bulldozers, are exempt from the provisions of this article: Provided. That the exemption recognized by this subsection shall not be construed to permit the operation of such equipment on any public road except such operation as may be required for a crossing of such road: Provided, however, That no such equipment may be operated on a public road for a distance exceeding five hundred feet from the place where such equipment entered upon the public road.

(e) The Federal Motor Carrier Safety Improvement Act of 1999 exempts vehicles used exclusively for personal use such as recreation vehicles and rental trucks used only to transport the driver's personal or household property.


(a) No person may be issued a commercial driver's license unless that person is a resident of this state and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulations enumerated in 49 C.F.R. part §383, sub-parts G and H, (2004) and has satisfied all other requirements of the Federal Motor Carrier Safety Improvement Act of 1999 in addition to other requirements imposed by state law or federal regulations.

(b) Third party testing. The Commissioner may authorize a person, including an agency of this or another state, an employer, private individual or institution, department, agency
or instrumentality of local government, to administer the skills

test specified by this section. Provided, That:

(1) The test is the same which would otherwise be adminis-
tered by the state; and

(2) The party has entered into an agreement with the state

which complies with the requirements of 49 C.F.R., part
§383.75.

(c) Indemnification of driver examiners. No person who

has been officially trained and certified by the state as a driver

examiner, who administers a driving test, and no other person,

firm or corporation by whom or with which that person is

employed or is in any way associated, may be criminally liable

for the administration of the tests, or civilly liable in damages

to the person tested or other persons or property unless for gross

negligence or willful or wanton injury.

(d) The Commissioner may waive the skills test specified

in this section for a commercial driver license applicant who

meets the requirements of 49 C.F.R. part §383.77 and those

requirements specified by the Commissioner.

(e) A commercial driver's license or commercial driver's

instruction permit may not be issued to a person while the

person is subject to a disqualification from driving a commer-
cial motor vehicle, or while the person's driver's license is

suspended, revoked or canceled in any state; nor may a com-
mercial driver's license be issued by any other state unless the

person first surrenders all such licenses to the division.

(f) Commercial driver's instruction permit may be issued as

follows:

(1) A commercial driver's instruction permit may be issued

to an individual who holds a valid Class E or Class D driver’s
license who has passed the vision and written tests required for
issuance of a commercial driver’s license.

(2) The commercial instruction permit may not be issued
for a period to exceed six months. Only one renewal or
reissuance may be granted within a two-year period. The
holder of a commercial driver's instruction permit may drive a
commercial motor vehicle on a highway only when accompa-
nied by the holder of a commercial driver’s license valid for
the type of vehicle driven who is twenty-one years of age or
older and who occupies a seat beside the individual for the
purpose of giving instruction or testing.

(3) A commercial driver's instruction permit may only be
issued to a person who is at least eighteen years of age and has
held a graduated Class E, Class E or Class D license for at least
two years.

(4) The applicant for a commercial driver's instruction
permit shall also be otherwise qualified to hold a commercial
driver's license.

§17E-1-10. Application for commercial driver’s license.

(a) The application for a commercial driver's license or
commercial driver's instruction permit must include at least the
following:

(1) The full name and current mailing and residential
address of the person;

(2) A physical description of the person including sex,
height, weight and eye color;

(3) Date of birth;

(4) The applicant's social security number;
(5) The person's signature;

(6) The person's color photograph;

(7) Certifications including those required by 49 C.F.R. Part §383.71(a)(2004);

(8) Any other information required by the Commissioner;

and

(9) A consent to release driving record information.

(b) When a licensee changes his or her name, mailing address or residence, the licensee shall submit an application for a duplicate license and obtain a duplicate driver's license displaying the updated information.

(c) No person who has been a resident of this state for thirty days or more may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

§17E-1-11. Commercial driver’s license.

The commercial driver's license shall be marked “commercial driver's license” or “CDL” and shall be, to the maximum extent practicable, tamper proof. It must include, but not be limited to, the following information:

(a) The name and residential address of the person;

(b) The person's color photograph;

(c) A physical description of the person including sex, height, weight, and eye color;

(d) Date of birth;
(e) The person's signature;

(f) The class or type of commercial motor vehicle or vehicles which the person is authorized to drive, together with any endorsement(s) and or restriction(s);

(g) The name of this state; and

(h) The dates between which the license is valid.

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

(a) Commercial driver's licenses may be issued with the following classifications:

(1) Class A combination vehicle - 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 heavy straight vehicle - 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 Small Vehicle - Any single vehicle or combination vehicle that does not fall under either Class A or Class B but are:

(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 (2004).
Each applicant who desires to operate a vehicle in a classification different from the class in which the applicant is authorized shall be required to retake and pass all related tests except the following:

(A) A driver who has passed the knowledge and skills test for a combination vehicle in Class A may operate a heavy straight vehicle in Class B or a small vehicle in Class C provided he or she possesses the required endorsements; and

(B) A driver who has passed the knowledge and skills test for a vehicle in Class B may operate any small vehicle in Class C provided he or she possesses the required endorsements.

(b) Endorsements and restrictions. -- The commissioner upon issuing a commercial driver's license may impose endorsements and or restrictions determined by the commissioner to be appropriate to assure the safe operation of a motor vehicle and to comply with 49 U.S.C., et seq., and 49 C.F.R. §383.93 (2004) including, but not limited to:

(1) Double/triple trailers which shall require successful completion of a knowledge test;

(2) Passenger vehicles which shall require successful completion of a knowledge and skills test;

(3) Tank vehicles which shall require successful completion of a knowledge test;

(4) Vehicles used for the transportation of hazardous materials as defined in section three of this article which shall require the completion of a knowledge test and a background security risk check in accordance with 49 C.F.R. 1572.5 (2004); or
(5) School buses which shall require successful completion of a knowledge and skills test unless the applicant meets the criteria for waiver of the skills test in accordance with 49 C.F.R. §383.123(b)(2004).

(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 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 on the applicant's birthday 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 thirty days after the applicant's birthday 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 six months or more shall follow the procedures for an initial issuance of a commercial driver's license, including the testing provisions.

(f) When applying for renewal of a commercial driver's license, the applicant shall complete the application form and provide updated information and required certifications.

(g) If the applicant wishes to obtain or retain a hazardous materials endorsement, the applicant shall comply with a background check in accordance with 49 U.S.C., § 5103a and 49 C.F.R. Part §1572 (2004) and subject to the following:

1. The applicant is a citizen of the United States or a lawful permanent resident of the United States;

2. The applicant completes the application prescribed by the Division and submits fingerprints in a form and manner prescribed by the Division and the United States Department of Homeland Security-Transportation Security Administration at the time of application or at any other time in accordance with 49 C.F.R. §1572.5(2004);

3. The applicant pays all fees prescribed by the Transportation Security Administration or its agent and the Division;

4. The applicant has not been adjudicated as a mental defective or committed to a mental institution as prescribed in 49 C.F.R. §1572.109(2004);

5. The applicant has not committed a disqualifying criminal offense as described in 49 C.F.R. §1572.103 (2004);
(6) The applicant has passed the Transportation Security Administration security threat assessment and the Division has received a final notification of threat assessment or notification of no security threat from the Transportation Security Administration: Provided, That any appeal of any decision, determination or ruling of the Federal Bureau of Investigation or the Transportation Security Agency shall be directed to that agency; and

(7) The applicant has successfully passed the written test for the issuance or renewal of a hazardous material endorsement.


(a) A person shall not operate a commercial motor vehicle if his or her privilege to operate a commercial motor vehicle is disqualified under the provisions of the Federal Motor Carrier Safety Improvement Act of 1999 (public law 106-159 §1748), 49 C.F.R. Part §383, Subpart D (2004) or in accordance with the provisions of this section.

(1) For the purposes of determining first and subsequent violations of the offenses listed in this section, each conviction for any offense listed in this section resulting from a separate incident shall include convictions for offenses committed in a commercial motor vehicle or a noncommercial motor vehicle.

(2) Any person disqualified from operating a commercial motor vehicle for life under the provisions of this chapter for offenses described in subsection (b), subdivisions (1) through (8) of this section is eligible for reinstatement of privileges to operate a commercial motor vehicle after ten years and after completion of the safety and treatment program or other appropriate program prescribed by the Division. Any person whose lifetime disqualification has been amended under the provisions of this subdivision and who is subsequently con-
victed of a disqualifying offense described in subsection (b), subdivisions (1) through (8) of this section shall not be eligible for reinstatement.

(3) Any disqualification imposed by this section shall be in addition to any action to suspend, revoke or cancel the driver’s license or driving privileges if suspension, revocation or cancellation is required under another provision of this code.

(4) The provisions of this section apply to any person operating a commercial motor vehicle and to any person holding a commercial driver’s license.

(b) Any person is disqualified from driving a commercial motor vehicle for the following offenses and time periods if convicted of:

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

(A) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one year.

(B) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a noncommercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one year.

(C) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F, a driver shall be disqualified from operating a commercial motor vehicle for a period of three years.
(D) For a second conviction or for refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial motor vehicle license holder shall be disqualified from operating a commercial motor vehicle for life.

(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;

(A) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(B) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F, a driver shall be disqualified from operating a commercial motor vehicle for three years.

(C) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for life.
(3) Refusing to submit to any designated secondary chemical required by the provisions of this code or the provisions of 49 C.F.R. §383.72 (2004);

(A) For the first conviction or refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction or refusal to submit to any designated secondary chemical test while operating a noncommercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for one year.

(C) For the first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver shall be disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for life.

(4) Leaving the scene of an accident;
(A) For the first conviction while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a noncommercial motor vehicle, a commercial driver’s license holder shall be disqualified for one year.

(C) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver shall be disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for life.

(5) Using a motor vehicle in the Commission of any felony as defined in section three, article one of this chapter: 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 subdivision(8)of this subsection;

(A) For the first conviction while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.
(B) For the first conviction while operating a noncommercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for one year.

(C) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F, (2004), a driver shall be disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial motor vehicle license holder shall be disqualified from operating a commercial motor vehicle for life.

(6) Operating a commercial motor vehicle when, as a result of prior violations committed operating a commercial motor vehicle, the driver’s privilege to operate a motor vehicle has been suspended, revoked or canceled, or the driver’s privilege to operate a commercial motor vehicle has been disqualified.

(A) For the first conviction while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F, (2004), a driver shall be disqualified from operating a commercial motor vehicle for a period of three years.
(C) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for life.

(7) Causing a fatality through the negligent operation of a commercial motor vehicle, including, but not limited to, the crimes of motor vehicle manslaughter, homicide and negligent homicide as defined in section five, article three, chapter seventeen-b, and section one, article five, chapter seventeen-c of this code;

(A) For the first conviction while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F,(2004), a driver shall be disqualified from operating a commercial motor vehicle for a period of three years.

(C) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for life.

(8) Using a 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, a driver shall be disqualified from operating a commercial motor vehicle for life and shall not be eligible for reinstatement.

(c) Any person is disqualified from driving a commercial motor vehicle if convicted of;
(1) Speeding excessively involving any speed of fifteen
miles per hour or more above the posted speed limit;

(A) For a second conviction of any combination of offenses
in this subsection in a separate incident within a three-year
period while operating a commercial motor vehicle, a driver
shall be disqualified from operating a commercial motor
vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses
in this section in a separate incident within a three-year period
while operating a noncommercial motor vehicle, if the convic-
tion results in the suspension, revocation or cancellation of the
commercial driver’s license holder’s privilege to operate any
motor vehicle, a commercial driver’s license holder shall be
disqualified from operating a commercial motor vehicle for a
period of sixty days.

(C) For a third or subsequent conviction of any combination
of the offenses in this subsection in a separate incident in a
three-year period while operating a commercial motor vehicle,
a driver shall be disqualified from operating a commercial
motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combina-
tion of offenses in this subsection in a separate incident within
a three-year period while operating a noncommercial motor
vehicle, if the conviction results in the suspension, revocation
or cancellation of the commercial driver’s license holder’s
privilege to operate any motor vehicle, a commercial driver’s
license holder shall be disqualified from operating a commer-
cial motor vehicle for a period of one hundred twenty days.

(2) Reckless driving as defined in section three, article five,
chapter seventeen-c of this code, careless, or negligent driving
including, but not limited to, the offenses of driving a motor
vehicle in willful or wanton disregard for the safety of persons or property;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(3) Making improper or erratic traffic lane changes;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days.
While operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(4) Following the vehicle ahead too closely;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days.
(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(5) Violating any law relating to traffic control arising in connection with a fatal accident, other than a parking violation;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the
commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial motor vehicle license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(6) Driving a commercial motor vehicle without obtaining a commercial driver’s license;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.
(7) Driving a commercial motor vehicle without a commercial driver’s license in the driver’s possession, provided that any person who provides proof of possession of a commercial driver’s license to the enforcement agency that issued the citation, by the court appearance or fine payment deadline shall not be guilty of this offense;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(8) Driving a commercial motor vehicle without the proper class of commercial driver’s license or the proper endorsements for the specific vehicle group being operated, or for the passengers or type of cargo being transported;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.
(d) 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 subdivisions (1) through (6) of this subsection shall be disqualified from operating a commercial motor vehicle for the period of time specified;

(1) 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;

(A) For the first conviction, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(2) 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;

(A) For the first conviction, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver shall be
disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(3) 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;

(A) For the first conviction, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, the driver shall be disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(4) 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;

(A) For the first conviction, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver shall be
disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(5) 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

(A) For the first conviction, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(6) 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.

(A) For the first conviction, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver shall be
disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(e) Any person who is convicted of violating an out-of-service order while operating a commercial motor vehicle shall be disqualified for the following periods of time if:

1. Convicted of violating a driver or vehicle out-of-service order while transporting nonhazardous materials;
   
   (A) For the first conviction of violating an out-of-service order while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for ninety days.
   
   (B) For a second conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.
   
   (C) For a third or subsequent conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for three years.

2. Convicted of violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F (2004), or while operating a vehicle designed to transport sixteen or more passengers including the driver;
(A) For the first conviction of violating an out of service order while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one-hundred eighty days.

(B) For a second conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for three years.

(C) For a third or subsequent conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for three years.

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

(g) In accordance with the provisions of 49 U.S.C. §313119(a)(19)(2004), and 49 C.F.R §384.226 (2004), and notwithstanding the provisions of section twenty-five, article eleven, chapter sixty-one of this code, no record of conviction, revocation, suspension or disqualification related to any type of motor vehicle traffic control offense, other than a parking violation, of a commercial driver’s license holder or a person operating a commercial motor vehicle may be masked, expunged, deferred, or be subject to any diversion program.

(h) Notwithstanding any provision in this code to the contrary, the Division shall not issue any temporary driving permit, work-only driving permit or hardship license or permit that authorizes a person to operate a commercial motor vehicle when his or her privilege to operate any motor vehicle has been
revoked, suspended, disqualified or otherwise canceled for any reason.

(i) In accordance with the provisions of 49 C.F.R. §391.15(b), a driver is disqualified from operating a commercial motor vehicle for the duration of any suspension, revocation or cancellation of his or her driver’s license or privilege to operate a motor vehicle by this state or by any other state or jurisdiction until the driver complies with the terms and conditions for reinstatement set by this state or by another state or jurisdiction.

§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 under the influence
of alcohol or of any controlled substance.

(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 measurable 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, shall 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 seventeen-c of this code, to
take a test or tests of that person's blood, breath or urine for the
purpose of determining that person's alcohol concentration, or
the presence of other drugs.

(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 disqualified
from operating a commercial motor vehicle under section
thirteen or fifteen of this article.
(d) If the person refuses testing, or submits to a test which discloses an alcohol concentration of four hundredths of one percent or more, by weight, that law-enforcement officer shall 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 shall enter an order revoking the person’s driver’s license in accordance with section seven, article five, chapter seventeen-c of this code and disqualifying the person from driving a commercial motor vehicle for the period of time prescribed in section thirteen of this article.

§17E-1-16. Notification of traffic convictions.

(a) The commissioner shall notify the licensing authority of the state where the driver is licensed within thirty days of the date of conviction of any holder of a commercial driver license or any person operating a commercial motor vehicle for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle.

(b) The commissioner shall notify the driver licensing authority in the licensing state where the driver is licensed within ten days of the date of disqualification of any holder of a commercial driver license or any person operating a commercial motor vehicle.

(c) Beginning on the thirtieth day of September, two thousand eight, the commissioner shall notify the driver licensing authority in the licensing state where the driver is licensed within ten days of the date of conviction of any holder
of a commercial driver’s license or any person operating a commercial motor vehicle for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle.

§17E-1-17. Driving record information to be furnished.

Subject to the provisions of article two-a, chapter seventeen-a of this code, the commissioner shall furnish full information regarding the driving record of any person:

(a) To the driver license administrator of any other state or province or territory of Canada requesting that information;

(b) To any motor carrier employer or prospective motor carrier employer;

(c) To the United States Secretary of Transportation; and

(d) To the driver.

Provided, That nothing in this section shall be construed to prevent an insurer from obtaining a standard driving record issued in accordance with section two, article two, chapter seventeen-d of this code.

§17E-1-23. Funding for the commercial driver’s license fees.

(a) Each application for a commercial driver's license shall be accompanied by the fees provided in this section and the fees shall be deposited in a special revolving fund for the operation by the division of its functions established by this chapter.

(b) The fee for a commercial driver's license shall be established by the commissioner to cover all necessary costs for program administration. The fees for knowledge and road testing shall also be established by the commissioner to cover all program costs projected to be incurred by the division.

1 In addition to the officers of the West Virginia State Police, any police officer, or any inspector or weight enforcement officer of the Public Service Commission, Motor Carrier Division, and any special agent of the Federal Motor Carrier Safety Administration may enforce the provisions of this article.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

The within is approved this the ___ day of _____. 2005.