SENATE BILL NO. 219

(BY SENATOR FOSTER, ET AL)

PASSED MARCH 11, 2006

IN EFFECT 90 DAYS FROM PASSAGE
ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 219

(SENATORS FOSTER, OLIVERIO, MINARD
AND HUNTER, original sponsors)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §17B-1-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17B-2-3a of said code, all relating to graduated driver's licenses generally; changing the expiration for level one permits and level two licenses; prohibiting the use of a handheld wireless communication device while driving by a minor holding a level one instruction permit or a level two license; and providing penalties for such violations.

Be it enacted by the Legislature of West Virginia:
That §17B-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17B-2-3a of said code be amended and reenacted, all to read as follows:

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17B-1-1. Definitions.

1 The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this article:

(a) Vehicle. – Every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks;

(b) Motor vehicle. – 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;

(c) Motorcycle. – Every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor as defined herein, a moped as defined in section five-a, article one, chapter seventeen-c of this code, a snowmobile as defined in section one-mm, article one, chapter seventeen-a of this code and an all-terrain vehicle as defined in section one-ii, article one, chapter seventeen-a of this code;

(d) Farm tractor. – Every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry;

(e) School bus. – Every motor vehicle owned by a public governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school;
(f) **Person.** – Every natural person, firm, copartnership, association or corporation;

(g) **Operator.** – Every person, other than a chauffeur, who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle;

(h) **Chauffeur.** – Every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives a school bus transporting school children or any motor vehicle when in use for the transportation of persons or property for compensation;

(i) **Driver.** – Means any person who drives, operates or is in physical control of a motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a driver license;

(j) **Driver License.** – Means any permit or license issued by this state to a person which authorizes the person to drive a motor vehicle of a specific class or classes subject to any restriction or endorsement contained thereon;

(k) **Owner.** – A person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter;

(l) **Nonresident.** – Every person who is not a resident of this state;

(m) **Street or highway.** – The entire width between the boundary lines of every way publicly maintained when any
(n) Commissioner. – The Commissioner of Motor Vehicles of this state;

(o) Division. – The Division of Motor Vehicles of this state acting directly or through its duly authorized officers or agents;

(p) Suspension. – Suspension means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn but only during the period of such suspension;

(q) Revocation. – Revocation means that the driver's license and privilege to drive a motor vehicle on the public highways are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted upon by the division after the expiration of at least one year after the date of revocation, except as otherwise provided in section two, article five-a, chapter seventeen-c of this code;

(r) Cancellation. – Cancellation means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to such license, but the cancellation of a license is without prejudice and application for a new license may be made at any time after such cancellation.

(s) “9-1-1 system” means an emergency telephone system or enhanced emergency telephone system as defined in section two, article six, chapter twenty-four of this code.

(t) “Wireless communication device” means a handheld device used to access a wireless telephone service or a text messaging device.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-3a. Graduated driver's licenses.
(a) Any person under the age of eighteen may not operate a motor vehicle unless he or she has obtained a graduated driver's license in accordance with the three level graduated driver's license system described in the following provisions.

(b) Any person under the age of twenty-one, regardless of class or level of licensure, who operates a motor vehicle with any measurable alcohol in his or her system is subject to the provisions of section two, article five, and section two, article five-a both of chapter seventeen-c of this code. Any person under the age of eighteen, regardless of class or licensure level, is subject to the mandatory school attendance provisions of section eleven, article eight, chapter eighteen of this code.

(c) Level one instruction permit. — An applicant who is fifteen years or older meeting all other requirements prescribed in this code may be issued a level one instruction permit.

(1) Eligibility. — The division shall not issue a level one instruction permit unless the applicant:

(A) Presents a completed application, as prescribed by the provisions of section six of this article, and which is accompanied by a writing, duly acknowledged, consenting to the issuance of the graduated driver's license and executed by a parent or guardian entitled to custody of the applicant;

(B) Presents a certified birth certificate issued by a state or other governmental entity responsible for vital records, evidencing that the applicant meets the minimum age requirement;

(C) Passes the vision and written knowledge examination, and completes the driving under the influence awareness program, as prescribed in section seven of this article;
(D) Presents a current school enrollment form or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code; and

(E) Pays a fee of five dollars.

(2) Terms and conditions of instruction permit. — A level one instruction permit issued under the provisions of this section is valid until thirty days after the date the applicant attains the age of eighteen and is not renewable. However, any permit holder who allows his or her permit to expire prior to successfully passing the road skills portion of the driver examination, and who has not committed any offense which requires the suspension, revocation or cancellation of the instruction permit, may reapply for a new instruction permit under the provisions of section six of this article. The division shall immediately revoke the permit upon receipt of a second conviction for a moving violation of traffic regulations and laws of the road or violation of the terms and conditions of a level one instruction permit, which convictions have become final unless a greater penalty is required by this section or any other provision of this code. Any person whose instruction permit has been revoked is disqualified from retesting for a period of ninety days. However, after the expiration of ninety days, the person may retest if otherwise eligible. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked or canceled, the holder of a level one instruction permit may only operate a motor vehicle under the following conditions:

(A) Under the direct supervision of a licensed driver, twenty-one years of age or older, or a driver's education or driving school instructor who is acting in an official capacity as an instructor, who is fully alert and unimpaired, and the only other occupant of the front seat. The vehicle may be operated with no more than two additional passengers, unless the passengers are family members;
(B) Between the hours of five a.m. and eleven p.m.;
(C) All occupants must use safety belts in accordance with the provisions of section forty-nine, article fifteen, chapter seventeen-c of this code;
(D) Without any measurable blood alcohol content, in accordance with the provisions of subsection (h), section two, article five, chapter seventeen-c of this code; and
(E) Maintains current school enrollment or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code.
(F) A holder of a level one instruction permit or a level two intermediate driver's license who is under the age of eighteen years may not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. A law-enforcement officer may enforce the provisions of this paragraph only as a secondary action when a law-enforcement officer with probable cause detains a driver for a suspected violation of another provision of this code.

d) Level two intermediate driver's license. – An applicant sixteen years of age or older, meeting all other requirements of the code, may be issued a level two intermediate driver's license.

1. Eligibility. – The division shall not issue a level two intermediate driver's license unless the applicant:

(A) Presents a completed application as prescribed in section six of this article;

(B) Has held the level one instruction permit conviction-free for the one hundred eighty days immediately preceding the date of application for a level two intermediate license;
(C) Has completed either a driver's education course approved by the State Department of Education or thirty hours of behind the wheel driving experience certified by a parent or legal guardian or other responsible adult over the age of twenty-one as indicated on the form prescribed by the division: Provided, That nothing in this paragraph shall be construed to require any school or any county board of education to provide any particular number of driver's education courses or to provide driver's education training to any student;

(D) Presents a current school enrollment form or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(E) Passes the road skills examination as prescribed by section seven of this article; and

(F) Pays a fee of five dollars.

(2) Terms and conditions of a level two intermediate driver's license. - A level two intermediate driver's license issued under the provisions of this section shall expire thirty days after the applicant attains the age of eighteen, or until the licensee qualifies for a level three full Class E license, whichever comes first. In addition to all other provisions of this code for which a driver’s license may be restricted, suspended, revoked or canceled, the holder of a level two intermediate driver's license may only operate a motor vehicle under the following conditions:

(A) Unsupervised between the hours of five a.m. and eleven p.m.;

(B) Only under the direct supervision of a licensed driver, age twenty-one years or older, between the hours of eleven p.m. and five a.m. except when the licensee is going to or returning from:

(i) Lawful employment;

(ii) A school sanctioned activity;
(iii) A religious event; or

(iv) An emergency situation that requires the licensee to operate a motor vehicle to prevent bodily injury or death of another;

(C) All occupants shall use safety belts in accordance with the provisions of section forty-nine, article fifteen, chapter seventeen-c of this code;

(D) Operates the vehicle with no more than three passengers under the age of nineteen, unless the passengers are family members, in addition to the driver;

(E) Without any measurable blood alcohol content in accordance with the provisions of subsection (h), section two, article five, chapter seventeen-c of this code;

(F) Maintains current school enrollment or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(G) A holder of a level one instruction permit or a level two intermediate driver's license who is under the age of eighteen years may not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. A law-enforcement officer may enforce the provisions of this paragraph only as a secondary action when a law-enforcement officer with probable cause detains a driver for a suspected violation of another provision of this code.

(H) Upon the first conviction for a moving traffic violation or a violation of paragraph (A), (B), (C), (D) or (G), subdivision (1), subsection (d) of this section of the terms and conditions of a level two intermediate driver's license, the licensee shall enroll in an approved driver improvement program unless a greater penalty is required by this section or by any other provision of this code.
At the discretion of the commissioner, completion of an approved driver improvement program may be used to negate the effect of a minor traffic violation as defined by the commissioner against the one year conviction free driving criteria for early eligibility for a level three driver's license; and

(I) Upon the second conviction for a moving traffic violation or a violation of the terms and conditions of the level two intermediate driver's license, the licensee's privilege to operate a motor vehicle shall be revoked or suspended for the applicable statutory period or until the licensee's eighteenth birthday, whichever is longer unless a greater penalty is required by this section or any other provision of this code. Any person whose driver's license has been revoked as a level two intermediate driver, upon reaching the age of eighteen years and if otherwise eligible may reapply for an instruction permit, then a driver's license in accordance with the provisions of sections five, six and seven of this article.

(e) Level three, full Class E license. — The level three license is valid until the day designated by the commissioner of the month in which the licensee attains the age of twenty-one. Unless otherwise provided in this section or any other section of this code, the holder of a level three full Class E license is subject to the same terms and conditions as the holder of a regular Class E driver's license.

A level two intermediate licensee whose privilege to operate a motor vehicle has not been suspended, revoked or otherwise canceled and who meets all other requirements of the code, may be issued a level three full Class E license without further examination or road skills testing, if the licensee:

(1) Has reached the age of seventeen years; and

(A) Presents a completed application as prescribed by the provisions of section six of this article;

(B) Has held the level two intermediate license conviction-free for the twelve-month period immediately preceding the date of the application;

(C) Has completed any driver improvement program required under paragraph (G), subdivision (2), subsection (d) of this section; and

(D) Pays a fee of two dollars and fifty cents for each year the license is valid. An additional fee of fifty cents shall be collected to be deposited in the combined voter registration and driver's licensing fund established in section twelve, article two, chapter three of this code; or

(2) Reaches the age of eighteen years; and

(A) Presents a completed application as prescribed by the provisions of section six of this article; and

(B) Pays a fee of two dollars and fifty cents for each year the license is valid. An additional fee of fifty cents shall be collected to be deposited in the combined voter registration and driver's licensing fund established in section twelve, article two, chapter three of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signatures]

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signatures]

Clerk of the Senate

Clerk of the House of Delegates

[Signatures]

President of the Senate

Speaker House of Delegates

The within is approved this the 31st Day of ______, 2006.

[Signatures]

Governor
PRESENTED TO THE
GOVERNOR

MAR 31 2006

Time 10:30AM