WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

Senate Bill No. 412

(By Senators Kessler, Oliverio, Foster, Green, Hunter, Jenkins, Minard, Stollings, Wells, White, Barnes, Caruth, Hall and McKenzie)

[Passed February 27, 2007; in effect ninety days from passage.]
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(BY SENATORS KESSLER, OLIVERIO, FOSTER, GREEN, HUNTER, JENKINS, MINARD, STOLLINGS, WELLS, WHITE, BARNES, CARUTH, HALL AND MCKENZIE)

[Passed February 27, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended, relating to providing penalties for violation of prohibited use of a handheld wireless communication device while driving by a minor holding a level one instruction permit or a level two intermediate driver’s license.

Be it enacted by the Legislature of West Virginia:

That §17B-2-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
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, chapter seventeen-c of this code and section two, article five-a of said chapter. 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 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. A person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined twenty-five dollars; for a second offense be fined fifty dollars; and for a third or subsequent offense be fined seventy-five dollars.

(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 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. A person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined twenty-five dollars; for a second offense be fined fifty dollars.
dollars; and for a third or subsequent offense be fined seventy-five dollars.

(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.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the Day of , 2007.

Governor
PRESENTED TO THE
GOVERNOR

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