

SB 412 S

FILED

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**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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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.**

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

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

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

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

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

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

32 (C) Passes the vision and written knowledge  
33 examination and completes the driving under the  
34 influence awareness program, as prescribed in section  
35 seven of this article;

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

40 (E) Pays a fee of five dollars.

41 (2) *Terms and conditions of instruction permit.* — A  
42 level one instruction permit issued under the provisions  
43 of this section is valid until thirty days after the date the  
44 applicant attains the age of eighteen and is not  
45 renewable. However, any permit holder who allows his  
46 or her permit to expire prior to successfully passing the  
47 road skills portion of the driver examination, and who  
48 has not committed any offense which requires the  
49 suspension, revocation or cancellation of the instruction  
50 permit, may reapply for a new instruction permit under  
51 the provisions of section six of this article. The division  
52 shall immediately revoke the permit upon receipt of a  
53 second conviction for a moving violation of traffic  
54 regulations and laws of the road or violation of the  
55 terms and conditions of a level one instruction permit,  
56 which convictions have become final unless a greater  
57 penalty is required by this section or any other  
58 provision of this code. Any person whose instruction  
59 permit has been revoked is disqualified from retesting

60 for a period of ninety days. However, after the  
61 expiration of ninety days, the person may retest if  
62 otherwise eligible. In addition to all other provisions of  
63 this code for which a driver's license may be restricted,  
64 suspended, revoked or canceled, the holder of a level  
65 one instruction permit may only operate a motor vehicle  
66 under the following conditions:

67 (A) Under the direct supervision of a licensed driver,  
68 twenty-one years of age or older, or a driver's education  
69 or driving school instructor who is acting in an official  
70 capacity as an instructor, who is fully alert and  
71 unimpaired, and the only other occupant of the front  
72 seat. The vehicle may be operated with no more than  
73 two additional passengers, unless the passengers are  
74 family members;

75 (B) Between the hours of five a. m. and eleven p. m.;

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

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

82 (E) Maintains current school enrollment or otherwise  
83 shows compliance with the provisions of section eleven,  
84 article eight, chapter eighteen of this code.

85 (F) A holder of a level one instruction permit who is  
86 under the age of eighteen years may not use a wireless  
87 communication device while operating a motor vehicle,  
88 unless the use of the wireless communication device is  
89 for contacting a 9-1-1 system. A law-enforcement

90 officer may enforce the provisions of this paragraph  
91 only as a secondary action when a law-enforcement  
92 officer with probable cause detains a driver for a  
93 suspected violation of another provision of this code. A  
94 person violating the provisions of this paragraph is  
95 guilty of a misdemeanor and, upon conviction thereof,  
96 shall for the first offense be fined twenty-five dollars;  
97 for a second offense be fined fifty dollars; and for a  
98 third or subsequent offense be fined seventy-five  
99 dollars.

100 (d) *Level two intermediate driver's license.* — An  
101 applicant sixteen years of age or older, meeting all other  
102 requirements of the code, may be issued a level two  
103 intermediate driver's license.

104 (1) *Eligibility.* — The division shall not issue a level  
105 two intermediate driver's license unless the applicant:

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

108 (B) Has held the level one instruction permit  
109 conviction-free for the one hundred eighty days  
110 immediately preceding the date of application for a  
111 level two intermediate license;

112 (C) Has completed either a driver's education course  
113 approved by the State Department of Education or  
114 thirty hours of behind-the-wheel driving experience  
115 certified by a parent or legal guardian or other  
116 responsible adult over the age of twenty-one as  
117 indicated on the form prescribed by the division:  
118 *Provided,* That nothing in this paragraph shall be  
119 construed to require any school or any county board of  
120 education to provide any particular number of driver's

121 education courses or to provide driver's education  
122 training to any student;

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

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

129 (F) Pays a fee of five dollars.

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

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

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

147 (i) Lawful employment;

148 (ii) A school-sanctioned activity;

149 (iii) A religious event; or

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

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

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

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

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

166 (G) A holder of a level two intermediate driver's  
167 license who is under the age of eighteen years may not  
168 use a wireless communication device while operating a  
169 motor vehicle, unless the use of the wireless  
170 communication device is for contacting a 9-1-1 system.  
171 A law-enforcement officer may enforce the provisions  
172 of this paragraph only as a secondary action when a  
173 law-enforcement officer with probable cause detains a  
174 driver for a suspected violation of another provision of  
175 this code. A person violating the provisions of this  
176 paragraph is guilty of a misdemeanor and, upon  
177 conviction thereof, shall for the first offense be fined  
178 twenty-five dollars; for a second offense be fined fifty



179 dollars; and for a third or subsequent offense be fined  
180 seventy-five dollars.

181 (H) Upon the first conviction for a moving traffic  
182 violation or a violation of paragraph (A), (B), (C), (D) or  
183 (G), subdivision (1), subsection (d) of this section of the  
184 terms and conditions of a level two intermediate driver's  
185 license, the licensee shall enroll in an approved driver  
186 improvement program unless a greater penalty is  
187 required by this section or by any other provision of this  
188 code.

189 At the discretion of the commissioner, completion of  
190 an approved driver improvement program may be used  
191 to negate the effect of a minor traffic violation as  
192 defined by the commissioner against the one year  
193 conviction-free driving criteria for early eligibility for  
194 a level three driver's license; and

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

209 (e) *Level three, full Class E license.* — The level three  
210 license is valid until the day designated by the

211 commissioner of the month in which the licensee attains  
212 the age of twenty-one. Unless otherwise provided in  
213 this section or any other section of this code, the holder  
214 of a level three full Class E license is subject to the same  
215 terms and conditions as the holder of a regular Class E  
216 driver's license.

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

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

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

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

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

232 (D) Pays a fee of two dollars and fifty cents for each  
233 year the license is valid. An additional fee of fifty cents  
234 shall be collected to be deposited in the Combined Voter  
235 Registration and Driver's Licensing Fund established in  
236 section twelve, article two, chapter three of this code; or

237 (2) Reaches the age of eighteen years; and

238 (A) Presents a completed application as prescribed by

239 the provisions of section six of this article; and

240 (B) Pays a fee of two dollars and fifty cents for each  
241 year the license is valid. An additional fee of fifty cents  
242 shall be collected to be deposited in the Combined Voter  
243 Registration and Driver's Licensing Fund established in  
244 section twelve, article two, chapter three of this code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Sandy White*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Russell Edwards*  
.....  
Clerk of the Senate

*Bryce M. Smith*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is appended*..... this  
the *13th* Day of *March*....., 2007.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 0 8 2007

Time

7:53 PM