

HB 4023

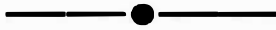
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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2008



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 4023

(By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]



Passed March 8, 2008

In Effect Ninety Days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4023

(BY MR. SPEAKER, MR. THOMPSON, AND DELEGATE ARMSTEAD)
[BY REQUEST OF THE EXECUTIVE]

[Passed March 8, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended; to amend and reenact §17B-3-6 of said code; and to amend and reenact §18-8-11 of said code, all relating to the denial or suspension of the driver's license of any student between the ages of fifteen and eighteen who withdraws from school or fails to make substantial progress towards graduating; providing for appeal; defining certain terms; and providing for exceptions.

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; that §17B-3-6 of said code be amended and reenacted; and that §18-8-11 of said code be amended and reenacted, all to read as follows:

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION, AND RENEWAL.

§17B-2-3a. Graduated driver's license.

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

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

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

17 (1) *Eligibility.* -- The division shall not issue a level one
18 instruction permit unless the applicant:

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

24 (B) Presents a certified copy of a birth certificate issued by a
25 state or other governmental entity responsible for vital records
26 unexpired, or a valid passport issued by the United States

27 government evidencing that the applicant meets the minimum age
28 requirement and is of verifiable identity;

29 (C) Passes the vision and written knowledge examination and
30 completes the driving under the influence awareness program, as
31 prescribed in section seven of this article;

32 (D) Presents a Driver's Eligibility Certificate or otherwise
33 shows compliance with the provisions of section eleven, article
34 eight, chapter eighteen of this code; and

35 (E) Pays a fee of five dollars, which shall permit the applicant
36 at the written knowledge test.

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

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

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

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

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

72 (E) Maintains current school enrollment and is making
73 satisfactory academic progress or otherwise shows compliance with
74 the provisions of section eleven, article eight, chapter eighteen of
75 this code.

76 (F) A holder of a level one instruction permit who is under the
77 age of eighteen years may not use a wireless communication
78 device while operating a motor vehicle, unless the use of the
79 wireless communication device is for contacting a 9-1-1 system.
80 A law-enforcement officer may enforce the provisions of this
81 paragraph only as a secondary action when a law-enforcement
82 officer with probable cause detains a driver for a suspected
83 violation of another provision of this code. A person violating the
84 provisions of this paragraph is guilty of a misdemeanor and, upon
85 conviction thereof, shall for the first offense be fined twenty-five
86 dollars; for a second offense be fined fifty dollars; and for a third
87 or subsequent offense be fined seventy-five dollars.

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

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

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

95 (B) Has held the level one instruction permit conviction-free
96 for the one hundred eighty days immediately preceding the date of
97 application for a level two intermediate license;

98 (C) Has completed either a driver's education course approved
99 by the State Department of Education or thirty hours of
100 behind-the-wheel driving experience certified by a parent or legal
101 guardian or other responsible adult over the age of twenty-one as
102 indicated on the form prescribed by the division: *Provided*, That
103 nothing in this paragraph shall be construed to require any school
104 or any county board of education to provide any particular number
105 of driver's education courses or to provide driver's education
106 training to any student;

107 (D) Presents a Driver's Eligibility Certificate or otherwise
108 shows compliance with the provisions of section eleven, article
109 eight, chapter eighteen of this code;

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

112 (F) Pays a fee of five dollars.

113 (2) *Terms and conditions of a level two intermediate driver's*
114 *license.* – A level two intermediate driver's license issued under the
115 provisions of this section shall expire thirty days after the applicant

116 attains the age of eighteen, or until the licensee qualifies for a level
117 three full Class E license, whichever comes first. In addition to all
118 other provisions of this code for which a driver's license may be
119 restricted, suspended, revoked or canceled, the holder of a level two
120 intermediate driver's license may only operate a motor vehicle
121 under the following conditions:

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

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

127 (i) Lawful employment;

128 (ii) A school-sanctioned activity;

129 (iii) A religious event; or

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

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

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

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

142 (F) Maintains current school enrollment and is making
143 satisfactory academic progress or otherwise shows compliance with
144 the provisions of section eleven, article eight, chapter eighteen of
145 this code;

146 (G) A holder of a level two intermediate driver's license who
147 is under the age of eighteen years may not use a wireless
148 communication device while operating a motor vehicle, unless the
149 use of the wireless communication device is for contacting a 9-1-1
150 system. A law-enforcement officer may enforce the provisions of
151 this paragraph only as a secondary action when a law-enforcement
152 officer with probable cause detains a driver for a suspected
153 violation of another provision of this code. A person violating the
154 provisions of this paragraph is guilty of a misdemeanor and, upon
155 conviction thereof, shall for the first offense be fined twenty-five
156 dollars; for a second offense be fined fifty dollars; and for a third
157 or subsequent offense be fined seventy-five dollars.

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

164 At the discretion of the commissioner, completion of an
165 approved driver improvement program may be used to negate the
166 effect of a minor traffic violation as defined by the commissioner
167 against the one year conviction-free driving criteria for early
168 eligibility for a level three driver's license; and

169 (I) Upon the second conviction for a moving traffic violation
170 or a violation of the terms and conditions of the level two
171 intermediate driver's license, the licensee's privilege to operate a
172 motor vehicle shall be revoked or suspended for the applicable
173 statutory period or until the licensee's eighteenth birthday,

174 whichever is longer unless a greater penalty is required by this
175 section or any other provision of this code. Any person whose
176 driver's license has been revoked as a level two intermediate driver,
177 upon reaching the age of eighteen years and if otherwise eligible
178 may reapply for an instruction permit, then a driver's license in
179 accordance with the provisions of sections five, six and seven of
180 this article.

181 (e) *Level three, full Class E license.* – The level three license
182 is valid until thirty days after the date the licensee attains his or her
183 twenty-first birthday. Unless otherwise provided in this section or
184 any other section of this code, the holder of a level three full Class
185 E license is subject to the same terms and conditions as the holder
186 of a regular Class E driver's license.

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

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

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

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

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

201 (D) Pays a fee of two dollars and fifty cents for each year the
202 license is valid. An additional fee of fifty cents shall be collected

203 to be deposited in the Combined Voter Registration and Driver's
204 Licensing Fund established in section twelve, article two, chapter
205 three of this code;

206 (E) Presents a Driver's Eligibility Certificate or otherwise
207 shows compliance with the provisions of section eleven, article
208 eight, chapter eighteen of this code; or

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

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

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

ARTICLE 3. CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSES.

§17B-3-6. Authority of division to suspend or revoke license; hearing.

1 (a) The division is hereby authorized to suspend the driver's
2 license of any person without preliminary hearing upon a showing
3 by its records or other sufficient evidence that the licensee:

4 (1) Has committed an offense for which mandatory revocation
5 of a driver's license is required upon conviction;

6 (2) Has by reckless or unlawful operation of a motor vehicle,
7 caused or contributed to an accident resulting in the death or
8 personal injury of another or property damage;

9 (3) Has been convicted with such frequency of serious offenses
10 against traffic regulations governing the movement of vehicles as

11 to indicate a disrespect for traffic laws and a disregard for the safety
12 of other persons on the highways;

13 (4) Is an habitually reckless or negligent driver of a motor
14 vehicle;

15 (5) Is incompetent to drive a motor vehicle;

16 (6) Has committed an offense in another state which if
17 committed in this state would be a ground for suspension or
18 revocation;

19 (7) Has failed to pay or has defaulted on a plan for the
20 payment of all costs, fines, forfeitures or penalties imposed by a
21 magistrate court or municipal court within ninety days, as required
22 by section two-a, article three, chapter fifty or section two-a, article
23 ten, chapter eight of this code;

24 (8) Has failed to appear or otherwise respond before a
25 magistrate court or municipal court when charged with a motor
26 vehicle violation as defined in section three-a of this article;

27 (9) Is under the age of eighteen and has withdrawn either
28 voluntarily or involuntarily due to misconduct from a secondary
29 school or has failed to maintain satisfactory academic progress, as
30 provided in section eleven, article eight, chapter eighteen of this
31 code; or

32 (10) Has failed to pay overdue child support or comply with
33 subpoenas or warrants relating to paternity or child support
34 proceedings, if a circuit court has ordered the suspension of the
35 license as provided in article five-a, chapter forty-eight-a of this
36 code and the child support enforcement division has forwarded to
37 the division a copy of the court order suspending the license, or has
38 forwarded its certification that the licensee has failed to comply

39 with a new or modified order that stayed the suspension and
40 provided for the payment of current support and any arrearage due.

41 (b) The driver's license of any person having his or her license
42 suspended shall be reinstated if:

43 (1) The license was suspended under the provisions of
44 subdivision (7), subsection (a) of this section and the payment of
45 costs, fines, forfeitures or penalties imposed by the applicable court
46 has been made;

47 (2) The license was suspended under the provisions of
48 subdivision (8), subsection (a) of this section, and the person
49 having his or her license suspended has appeared in court and has
50 prevailed against the motor vehicle violations charged; or

51 (3) The license was suspended under the provisions of
52 subdivision (10), subsection (a) of this section, and the division has
53 received a court order restoring the license or a certification by the
54 child support enforcement division that the licensee is complying
55 with the original support order or a new or modified order that
56 provides for the payment of current support and any arrearage due.

57 (c) Any reinstatement of a license under subdivision (1), (2) or
58 (3), subsection (b) of this section shall be subject to a
59 reinstatement fee designated in section nine of this article.

60 (d) Upon suspending the driver's license of any person as
61 hereinbefore in this section authorized, the division shall
62 immediately notify the licensee in writing, sent by certified mail,
63 return receipt requested, to the address given by the licensee in
64 applying for license, and upon his request shall afford him an
65 opportunity for a hearing as early as practical within not to exceed
66 twenty days after receipt of such request in the county wherein the
67 licensee resides unless the division and the licensee agree that such
68 hearing may be held in some other county. Upon such hearing the

69 commissioner or his duly authorized agent may administer oaths
70 and may issue subpoenas for the attendance of witnesses and the
71 production of relevant books and papers and may require a
72 reexamination of the licensee. Upon such hearing the division shall
73 either rescind its order of suspension or, good cause appearing
74 therefor, may extend the suspension of such license or revoke such
75 license. The provisions of this subsection (d) providing for notice
76 and hearing are not applicable to a suspension under subdivision
77 (10), subsection (a) of this section.

CHAPTER 18. EDUCATION.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-11. School attendance and satisfactory academic progress as conditions of licensing for privilege of operation of motor vehicle.

1 (a) In accordance with the provisions of sections three-a and
2 five, article two, chapter seventeen-b of this code, the Division of
3 Motor Vehicles shall deny a license or instruction permit for the
4 operation of a motor vehicle to any person under the age of
5 eighteen who does not at the time of application present a diploma
6 or other certificate of graduation issued to the person from a
7 secondary high school of this state or any other state or
8 documentation that the person: (1) Is enrolled and making
9 satisfactory progress in a course leading to a general educational
10 development certificate (GED) from a state-approved institution or
11 organization or has obtained the certificate; (2) is enrolled and is
12 making satisfactory academic progress in a secondary school of this
13 state or any other state; (3) is excused from the requirement due to
14 circumstances beyond his or her control; or (4) is enrolled in an
15 institution of higher education as a full-time student in this state or
16 any other state.

17 (b) The attendance director or chief administrator shall upon
18 request provide a Driver's Eligibility Certificate on a form
19 approved by the Department of Education to any student at least
20 fifteen but less than eighteen years of age who is properly enrolled
21 and is making satisfactory academic progress in a school under the
22 jurisdiction of the official for presentation to the Division of Motor
23 Vehicles on application for or reinstatement of an instruction permit
24 or license to operate a motor vehicle.

25 (c) Whenever a student at least fifteen but less than eighteen
26 years of age, except as provided in subsection (g) of this section,
27 withdraws from school, the attendance director or chief
28 administrator shall notify the Division of Motor Vehicles of the
29 student's withdrawal no later than five days from the date of the
30 withdrawal. Within five days of receipt of the notice, the Division
31 of Motor Vehicles shall send notice to the student that the student's
32 instruction permit or license to operate a motor vehicle will be
33 suspended under the provisions of section six, article three, chapter
34 seventeen-b of this code on the thirtieth day following the date the
35 notice was sent unless documentation of compliance with the
36 provisions of this section is received by the Division of Motor
37 Vehicles before that time. The notice shall also advise the student
38 that he or she is entitled to a hearing before the county
39 superintendent of schools or his or her designee or before the
40 appropriate private school official concerning whether the student's
41 withdrawal from school was due to a circumstance or
42 circumstances beyond the control of the student. If suspended, the
43 division may not reinstate an instruction permit or license until such
44 time as the student returns to school and shows satisfactory
45 academic progress or until such time as the student attains eighteen
46 years of age.

47 (d) Whenever a student at least fifteen but less than eighteen
48 years of age is enrolled in a secondary school and fails to maintain
49 satisfactory academic progress, the attendance director or chief
50 administrator shall follow the procedures set out in subsection (c)

51 of this section to notify the Division of Motor Vehicles. Within
52 five days of receipt of the notice, the Division of Motor Vehicles
53 shall send notice to the student that the student's instruction permit
54 or license will be suspended under the provisions of section six,
55 article three, chapter seventeen-b of this code on the thirtieth day
56 following the date the notice was sent unless documentation of
57 compliance with the provisions of this section is received by the
58 Division of Motor Vehicles before that time. The notice shall also
59 advise the student that he or she is entitled to a hearing before the
60 county superintendent of schools or his or her designee or before
61 the appropriate private school official concerning whether the
62 student's failure to make satisfactory academic progress was due to
63 a circumstance or circumstances beyond the control of the student.
64 Once suspension is ordered, the division may not reinstate an
65 instruction permit or license until such time as the student shows
66 satisfactory academic progress or until such time as the student
67 attains eighteen years of age.

68 (e) Upon written request of a student, within ten days of
69 receipt of a notice of suspension as provided by this section, the
70 Division of Motor Vehicles shall afford the student the opportunity
71 for an administrative hearing. The scope of the hearing shall be
72 limited to determining if there is a question of improper identity,
73 incorrect age, or some other clerical error.

74 (f) For the purposes of this section:

75 (1) Withdrawal is defined as more than ten consecutive or
76 fifteen total days unexcused absences during a school year, or
77 suspension pursuant to subsections (a) and (b) of section one-a,
78 article five, chapter eighteen-a of this code.

79 (2) "Satisfactory academic progress" means the attaining and
80 maintaining of grades sufficient to allow for graduation and course-
81 work in an amount sufficient to allow graduation in five years or by
82 age nineteen, whichever is earlier.

83 (3) "Circumstances outside the control of the student" shall
84 include, but not be limited to, medical reasons, familial
85 responsibilities and the necessity of supporting oneself or another.

86 (4) Suspension or expulsion from school or imprisonment in
87 a jail or a West Virginia correctional facility is not a circumstance
88 beyond the control of the student.

89 (g) Whenever the withdrawal from school of the student, the
90 student's failure to enroll in a course leading to or to obtain a GED
91 or high school diploma, or the student's failure to make
92 satisfactory academic progress is due to a circumstance or
93 circumstances beyond the control of the student, or the withdrawal
94 from school is for the purpose of transfer to another school as
95 confirmed in writing by the student's parent or guardian, no notice
96 shall be sent to the Division of Motor Vehicles to suspend the
97 student's motor vehicle operator's license and if the student is
98 applying for a license, the attendance director or chief administrator
99 shall provide the student with documentation to present to the
100 Division of Motor Vehicles to excuse the student from the
101 provisions of this section. The school district superintendent (or the
102 appropriate school official of any private secondary school) with
103 the assistance of the county attendance director and any other staff
104 or school personnel shall be the sole judge of whether any of the
105 grounds for denial or suspension of a license as provided by this
106 section are due to a circumstance or circumstances beyond the
107 control of the student.

108 (h) The State Board shall promulgate rules necessary for
109 uniform implementation of this section among the counties and as
110 may otherwise be necessary for the implementation of this section.
111 The rule may not include attainment by a student of any certain
112 grade point average as a measure of satisfactory progress toward
113 graduation.

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



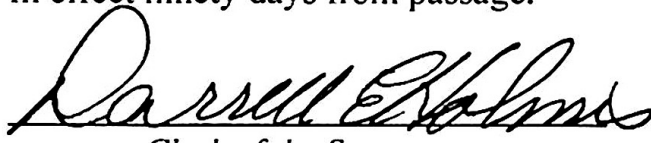
Chairman Senate Committee



Chairman House Committee

Originating in the House.

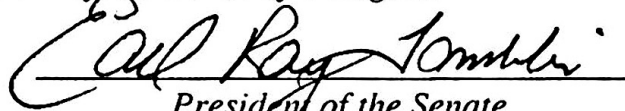
In effect ninety days from passage.



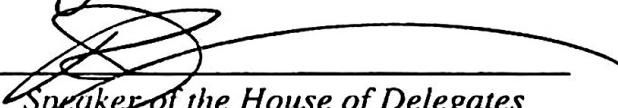
Clerk of the Senate



Clerk of the House of Delegates

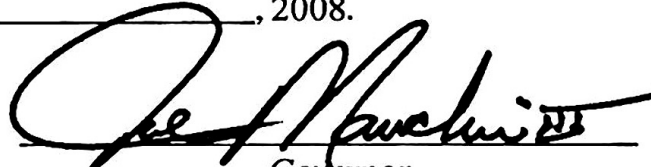


President of the Senate



Speaker of the House of Delegates

The within is approved this the 1st
day of April, 2008.



Governor

PRESENTED TO THE
GOVERNOR

MAR 20 2008

Time 2:10 pm