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
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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.

(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 and satisfactory academic progress 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 copy of a birth certificate issued by a state or other governmental entity responsible for vital records unexpired, or a valid passport issued by the United States
government evidencing that the applicant meets the minimum age requirement and is of verifiable identity;

(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 Driver's Eligibility Certificate 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, which shall permit the applicant at the written knowledge test.

(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 and is making satisfactory academic progress 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 Driver's Eligibility Certificate 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 and is making satisfactory academic progress 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; 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 (I), 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 thirty days after the date the licensee attains his or her twenty-first birthday. 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
2. (A) Presents a completed application as prescribed by the provisions of section six of this article;
3. (B) Has held the level two intermediate license conviction free for the twelve-month period immediately preceding the date of the application;
4. (C) Has completed any driver improvement program required under paragraph (G), subdivision (2), subsection (d) of this section; and
5. (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;

(E) Presents a Driver’s Eligibility Certificate or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen 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.

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

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

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

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

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

(3) Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as
(4) Is an habitually reckless or negligent driver of a motor vehicle;

(5) Is incompetent to drive a motor vehicle;

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

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

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

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

(10) Has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings, if a circuit court has ordered the suspension of the license as provided in article five-a, chapter forty-eight-a of this code and the child support enforcement division has forwarded to the division a copy of the court order suspending the license, or has forwarded its certification that the licensee has failed to comply
(b) The driver’s license of any person having his or her license suspended shall be reinstated if:

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

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

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

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

(d) Upon suspending the driver’s license of any person as hereinbefore in this section authorized, the division shall immediately notify the licensee in writing, sent by certified mail, return receipt requested, to the address given by the licensee in applying for license, and upon his request shall afford him an opportunity for a hearing as early as practical within not to exceed twenty days after receipt of such request in the county wherein the licensee resides unless the division and the licensee agree that such hearing may be held in some other county. Upon such hearing the
commissioner or his duly authorized agent may administer oaths
and may issue subpoenas for the attendance of witnesses and the
production of relevant books and papers and may require a
reexamination of the licensee. Upon such hearing the division shall
either rescind its order of suspension or, good cause appearing
therefor, may extend the suspension of such license or revoke such
license. The provisions of this subsection (d) providing for notice
and hearing are not applicable to a suspension under subdivision
(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.

(a) In accordance with the provisions of sections three-a and
five, article two, chapter seventeen-b of this code, the Division of
Motor Vehicles shall deny a license or instruction permit for the
operation of a motor vehicle to any person under the age of
eighteen who does not at the time of application present a diploma
or other certificate of graduation issued to the person from a
secondary high school of this state or any other state or
documentation that the person: (1) Is enrolled and making
satisfactory progress in a course leading to a general educational
development certificate (GED) from a state-approved institution or
organization or has obtained the certificate; (2) is enrolled and is
making satisfactory academic progress in a secondary school of this
state or any other state; (3) is excused from the requirement due to
circumstances beyond his or her control; or (4) is enrolled in an
institution of higher education as a full-time student in this state or
any other state.
(b) The attendance director or chief administrator shall upon request provide a Driver’s Eligibility Certificate on a form approved by the Department of Education to any student at least fifteen but less than eighteen years of age who is properly enrolled and is making satisfactory academic progress in a school under the jurisdiction of the official for presentation to the Division of Motor Vehicles on application for or reinstatement of an instruction permit or license to operate a motor vehicle.

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

(d) Whenever a student at least fifteen but less than eighteen years of age is enrolled in a secondary school and fails to maintain satisfactory academic progress, the attendance director or chief administrator shall follow the procedures set out in subsection (c)
of this section to notify the Division of Motor Vehicles. Within
five days of receipt of the notice, the Division of Motor Vehicles
shall send notice to the student that the student’s instruction permit
or license will be suspended under the provisions of section six,
article three, chapter seventeen-b of this code on the thirtieth day
following the date the notice was sent unless documentation of
compliance with the provisions of this section is received by the
Division of Motor Vehicles before that time. The notice shall also
advise the student that he or she is entitled to a hearing before the
county superintendent of schools or his or her designee or before
the appropriate private school official concerning whether the
student’s failure to make satisfactory academic progress was due to
a circumstance or circumstances beyond the control of the student.
Once suspension is ordered, the division may not reinstate an
instruction permit or license until such time as the student shows
satisfactory academic progress or until such time as the student
attains eighteen years of age.

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

(f) For the purposes of this section:

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

(2) “Satisfactory academic progress” means the attaining and
maintaining of grades sufficient to allow for graduation and course-
work in an amount sufficient to allow graduation in five years or by
age nineteen, whichever is earlier.
(3) "Circumstances outside the control of the student" shall include, but not be limited to, medical reasons, familial responsibilities and the necessity of supporting oneself or another.

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

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

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