WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4331

(By Delegate Boggs and Schadler)

Passed March 8, 2008

In Effect Ninety Days from Passage
AN ACT amend and reenact §17B-2-la, §17B-2-3a, §17B-2-5, §17B-2-6, §17B-2-7 and §17B-2-8 of the Code of West Virginia, 1931, as amended, all relating to the issuance of driver's licenses; disposition of surrendered licenses; issuance of an identification card to applicants who possess a valid driver's license; providing a reduced criminal penalty for violating the terms and conditions of a level one or level two graduated driver's license; defining exceptions for the use of the address of principle residence; removing an obsolete provision related to the issuance of a driver's license without a photo; providing for the use of a passport in lieu of a birth certificate; requiring an applicant to pay a fee for the third and subsequent attempt at the written examination prior to obtaining an instruction permit; and extending the validity of instruction permits from sixty days to ninety days.

Be it enacted by the Legislature of West Virginia:
ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-1a. Surrender of license from other state or jurisdiction prior to receipt of license from this state; examination; fees required.

(a) The Division of Motor Vehicles shall not issue a driver's license to a person who holds a valid license to operate a motor vehicle issued by another state or jurisdiction unless or until the applicant shall surrender to the division the foreign license, or the person has signed and submitted to the division an affidavit to the effect that the person has surrendered all valid licenses issued to him or her by other states or jurisdictions. Any surrendered license issued by any other state or jurisdiction shall be destroyed or at the discretion of the division retained by the division and the division shall notify the original state of licensure that the person who surrendered the license has been licensed in this state. It shall be unlawful for a person to possess more than one valid driver's license at any time.

(b) Every driver shall, within thirty days after taking up residence in this state, apply to the division for a driver's license as prescribed in this article. For the purposes of this chapter the presumption that a natural person is a resident of this state is based on the provisions of section one-a, article three, chapter seventeen-a of this code. The division may assign the driver's license class, type, endorsements or restrictions based on the applicant's prior licensing status, age and the type of licensing system used by the state of prior licensing.
(c) All other applicable provisions of this article relating to issuance, fees, expiration and renewal of licenses, and driver examination of applicants shall also apply to this section.

§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 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 copy of a birth certificate issued by a state or other governmental entity responsible for vital records or a valid and unexpired 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 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 which shall permit the applicant two attempts 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 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 911 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 911 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 (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; 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

(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.

(f) A person violating the provisions of the terms and conditions of a level one or level two intermediate driver’s license, 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.

§17B-2-5. Qualifications, issuance and fee for instruction permits.

(a) Any person who is at least fifteen years of age may apply to the division for an instruction permit. However, any person who has not attained the age of eighteen shall comply with the provisions of section three-a of this article. The division may, in its discretion, after the applicant has
successfully passed all parts of the examination other than the road skills test, issue to the applicant an instruction permit which entitles the applicant while having the permit in his or her immediate possession to drive a motor vehicle upon the public highways when accompanied by a licensed driver of at least twenty-one years of age, a driver’s education or driving school instructor that is acting in an official capacity as an instructor, who is alert and unimpaired or a certified division license examiner acting in an official capacity as an examiner, who is occupying a seat beside the driver.

(1) Any instruction permit issued to a person under the age of eighteen years shall be issued in accordance with the provisions of section three-a of this article.

(2) Any permit issued to a person who has reached the age of eighteen years is valid for a period of ninety days. The fee for the instruction permit is five dollars.

(b) Any person sixteen years of age or older may apply to the division for a motorcycle instruction permit. Any person under the age of eighteen must have first completed the requirements for a level two intermediate driver’s license or a Class E driver’s license before being eligible for a motorcycle instruction permit.

The division may, in its discretion, after the applicant has successfully passed all parts of the motorcycle examination other than the driving test, and presented documentation of compliance with the provisions of section eleven, article eight, chapter eighteen of this code, if applicable, issue to the applicant an instruction permit which entitles the applicant while having the permit in his or her immediate possession to drive a motorcycle upon the public streets or highways for a period of ninety days, during the daylight hours between sunrise and sunset only. No holder of a motorcycle
A motorcycle instruction permit is not renewable, but a qualified applicant may apply for a new permit. The fee for a motorcycle instruction permit is five dollars, which shall be paid into a special fund in the state treasury known as the motor vehicle fees fund.

§17B-2-6. Application for license or instruction permit; fee to accompany application.

(a) Every application for an instruction permit or for a driver's license shall be made upon a form furnished by the division. Every application shall be accompanied by the proper fee and payment of the fee shall entitle an applicant under the age of eighteen to not more than two attempts at the written test or not more than three attempts to pass the road skills test. An applicant age eighteen years or older is entitled to not more than two attempts at the written test or not more than three attempts to pass the road skills test within a period of ninety days from the date of issuance of the instruction permit. An applicant who fails either the written test or the road skills test may not be tested twice within a period of one week.

(b) Any applicant who has not been previously licensed must hold an instruction permit for a minimum of thirty days. For the purposes of this section, the term "previously licensed" means an applicant who has obtained at least a level one graduated license or junior driver's license issued under the provisions of this article or has obtained an equal or greater level of licensure if previously licensed in another state.

(c) Every said application shall state the full legal name, date of birth, sex, and residence address of the applicant and
briefly describe the applicant and shall state whether the applicant has theretofore been a licensed driver and, if so, when, and by what state or country and whether any such license has ever been suspended or revoked within the five years next preceding the date of application, or whether an application has ever been refused and, if so, the date of and reason for the suspension, revocation or refusal. whether the applicant desires a notation on the driver's license indicating that the applicant is an organ donor, in accordance with article one-b of this chapter, a diabetic, deaf, or hard of hearing, or has any other handicap or disability and such other pertinent information as the commissioner may require.

§17B-2-7. Examination of applicants.

(a) Upon the presentment of the applicant's certified copy of the birth certificate issued by a state or other governmental entity responsible for vital records or a valid and unexpired passport issued by the United States government, as evidence that the applicant is of lawful age and verifiable identity, the Division of Motor Vehicles shall examine every applicant for a license to operate a motor vehicle in this state, except as otherwise provided in this section. The examination shall include a test of the applicant's eyesight, the applicant's ability to read and understand highway signs regulating, warning, and directing traffic, the applicant's knowledge of the traffic laws of this state, and the applicant's knowledge of the effects of alcohol upon persons and the dangers of driving a motor vehicle under the influence of alcohol. The examination shall also include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle, and any further physical and mental examination as the Division of Motor Vehicles considers necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways.
(b) The commissioner shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code concerning the examination of applicants for licenses and the qualifications required of applicants, and the examination of applicants by the division shall be in accordance with the rules. The rules shall provide for the viewing of educational material or films on the medical, biological, and psychological effects of alcohol upon persons, the dangers of driving a motor vehicle while under the influence of alcohol and the criminal penalties and administrative sanctions for alcohol and drug related motor vehicle violations.

(c) After successful completion of the examination required by this section, section three-a, or section seven-b of this article, and prior to the issuance of a license pursuant to the provisions of section eight of this article, every applicant for a driver’s license, graduated driver’s license, or motorcycle-only license shall attend a mandatory education class on the dangers and social consequences of driving a motor vehicle while under the influence of alcohol. To the extent practicable, the commissioner shall use as lecturers at those classes persons who can relate first-hand experiences as victims or family members of victims of alcohol-related accidents or drivers who have been involved in alcohol-related accidents which caused serious bodily injury or death.

§17B-2-8. Issuance and contents of licenses; fees.

(a) The division shall, upon payment of the required fee, issue to every applicant qualifying therefor a driver’s license, which shall indicate the type or general class or classes of vehicle or vehicles the licensee may operate in accordance with this chapter or chapter seventeen-e of this code, or motorcycle-only license. Each license shall contain a coded
number assigned to the licensee, the full legal name, date of
birth, residence address, a brief description and a color
photograph of the licensee and either a facsimile of the
signature of the licensee or a space upon which the signature
of the licensee shall be written with pen and ink immediately
upon receipt of the license. No license is valid until it has
been so signed by the licensee.

(b) A driver's license which is valid for operation of a
motorcycle shall contain a motorcycle endorsement.

(c) The division shall use such process or processes in the
issuance of licenses that will, insofar as possible, prevent any
alteration, counterfeiting, duplication, reproduction, forging
or modification of, or the superimposition of a photograph
on, the license.

(d) The fee for the issuance of a Class E driver's license
is two dollars and fifty cents per year for each year the
license is issued to be valid. The fee for issuance of a Class
D driver's license is six dollars and twenty-five cents per year
for each year the license is issued to be valid. An additional
fee of fifty cents shall be collected from the applicant at the
time of original issuance or each renewal and the additional
fee shall be deposited in the "combined voter registration and
driver's licensing fund," established pursuant to the
provisions of section twelve, article two, chapter three of this
code. The additional fee for adding a motorcycle
endorsement to a driver's license is one dollar per year for
each year the license is issued.

(e) The fee for issuance of a motorcycle-only license is
two dollars and fifty cents for each year for which the
motorcycle license is to be valid. The fees for the motorcycle
endorsement or motorcycle-only license shall be paid into a
special fund in the State Treasury known as the Motorcycle
Safety Fund as established in section seven, article one-d of this chapter.

(f) The fee for the issuance of either the level one or level two graduated driver's license as prescribed in section three-a of this article is five dollars.

(g) The division may use an address on the face of the license other than the applicant's address of residence if:

1. The applicant has a physical address or location that is not recognized by the post office for the purpose of receiving mail;

2. The applicant is enrolled in a state address confidentiality program or the alcohol test and lock program;

3. The applicant's address is entitled to be suppressed under a state or federal law or suppressed by a court order; or

4. At the discretion of the commissioner, the applicant's address may be suppressed to provide security for classes of applicants such as law-enforcement officials, protected witnesses and members of the state and federal judicial systems.
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 15th day of April, 2008.

Governor