

SB 398

FILED

2009 MAY -7 PM 6: 35

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

**SEVENTY-NINTH LEGISLATURE**

**REGULAR SESSION, 2009**

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**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 398**

(SENATOR FOSTER, *original sponsor*)

[Passed April 11, 2009; 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 imposing certain restrictions on a graduated driver's license to increase public safety; and imposing criminal penalties for violations of this section.

*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; and that §60A-4-406 of said code be amended and reenacted, all to read as follows:

**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  
2 a motor vehicle unless he or she has obtained a graduated  
3 driver's license in accordance with the three-level gradu-  
4 ated driver's license system described in the following  
5 provisions.

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

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

20 (1) *Eligibility.* — The division shall not issue a level one  
21 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, consenting  
25 to the issuance of the graduated driver's license and  
26 executed by a parent or guardian entitled to custody of the  
27 applicant;

28 (B) Presents a certified copy of a birth certificate issued  
29 by a state or other governmental entity responsible for  
30 vital records unexpired, or a valid passport issued by the  
31 United States government evidencing that the applicant  
32 meets the minimum age requirement and is of verifiable  
33 identity;

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

37 (D) Presents a driver's eligibility certificate or otherwise  
38 shows compliance with the provisions of section eleven,  
39 article eight, chapter eighteen of this code; and

40 (E) Pays a fee of \$5, which shall permit the applicant  
41 two attempts at the written knowledge test.

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

69 driving school instructor who is acting in an official  
70 capacity as an instructor, who is fully alert and unim-  
71 paired, and the only other occupant of the front seat. The  
72 vehicle may be operated with no more than two additional  
73 passengers, unless the passengers are family members;

74 (B) Between the hours of five a. m. and ten p. m.;

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

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

81 (E) Maintains current school enrollment and is making  
82 satisfactory academic progress or otherwise shows compli-  
83 ance with the provisions of section eleven, article eight,  
84 chapter eighteen of this code.

85 (F) A holder of a level one instruction permit who is  
86 under the age of eighteen years shall be prohibited from  
87 using a wireless communication device while operating a  
88 motor vehicle, unless the use of the wireless communica-  
89 tion device is for contacting a 9-1-1 system. A person  
90 violating the provisions of this paragraph is guilty of a  
91 misdemeanor and, upon conviction thereof, shall for the  
92 first offense be fined \$25; for a second offense be fined  
93 \$50; and for a third or subsequent offense be fined \$75.

94 (d) *Level two intermediate driver's license.* — An appli-  
95 cant sixteen years of age or older, meeting all other  
96 requirements of the code, may be issued a level two  
97 intermediate driver's license.

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

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

102 (B) Has held the level one instruction permit convic-  
103 tion-free for the one hundred eighty days immediately  
104 preceding the date of application for a level two interme-  
105 diate license;

106 (C) Has completed either a driver's education course  
107 approved by the State Department of Education or fifty  
108 hours of behind-the-wheel driving experience, including  
109 a minimum of ten hours of nighttime driving, certified by  
110 a parent or legal guardian or other responsible adult over  
111 the age of twenty-one as indicated on the form prescribed  
112 by the division: *Provided*, That nothing in this paragraph  
113 shall be construed to require any school or any county  
114 board of education to provide any particular number of  
115 driver's education courses or to provide driver's education  
116 training to any student;

117 (D) Presents a driver's eligibility certificate or otherwise  
118 shows compliance with the provisions of section eleven,  
119 article eight, chapter eighteen of this code;

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

122 (F) Pays a fee of \$5.

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

133 (A) Unsupervised between the hours of five a. m. and ten  
134 p. m.;

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

139 (i) Lawful employment;

140 (ii) A school-sanctioned activity;

141 (iii) A religious event; or

142 (iv) An emergency situation that requires the licensee to  
143 operate a motor vehicle to prevent bodily injury or death  
144 of another;

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

148 (D) For the first six months after issuance of a level two  
149 intermediate driver's license, the licensee may not operate  
150 a motor vehicle carrying any passengers less than twenty  
151 years old, unless these passengers are family members of  
152 the licensee; for the second six months after issuance of a  
153 level two intermediate driver's license, the licensee may  
154 not operate a motor vehicle carrying more than one  
155 passenger less than twenty years old, unless these passen-  
156 gers are family members of the licensee;

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

160 (F) Maintains current school enrollment and is making  
161 satisfactory academic progress or otherwise shows compli-  
162 ance with the provisions of section eleven, article eight,  
163 chapter eighteen of this code;

164 (G) A holder of a level two intermediate driver's license  
165 who is under the age of eighteen years shall be prohibited  
166 from using a wireless communication device while operat-  
167 ing a motor vehicle, unless the use of the wireless commu-  
168 nication device is for contacting a 9-1-1 system. A person  
169 violating the provisions of this paragraph is guilty of a  
170 misdemeanor and, upon conviction thereof, shall for the  
171 first offense be fined \$25; for a second offense be fined  
172 \$50; and for a third or subsequent offense be fined \$75.

173 (H) Upon the first conviction for a moving traffic  
174 violation or a violation of paragraph (A), (B), (C), (D) or  
175 (G), subdivision (1), subsection (d) of this section of the  
176 terms and conditions of a level two intermediate driver's  
177 license, the licensee shall enroll in an approved driver  
178 improvement program unless a greater penalty is required  
179 by this section or by any other provision of this code; and

180 At the discretion of the commissioner, completion of an  
181 approved driver improvement program may be used to  
182 negate the effect of a minor traffic violation as defined by  
183 the commissioner against the one year conviction-free  
184 driving criteria for early eligibility for a level three  
185 driver's license and may also negate the effect of one  
186 minor traffic violation for purposes of avoiding a second  
187 conviction under paragraph (I) of this subdivision; and

188 (I) Upon the second conviction for a moving traffic  
189 violation or a violation of the terms and conditions of the  
190 level two intermediate driver's license, the licensee's  
191 privilege to operate a motor vehicle shall be revoked or  
192 suspended for the applicable statutory period or until the  
193 licensee's eighteenth birthday, whichever is longer unless  
194 a greater penalty is required by this section or any other  
195 provision of this code. Any person whose driver's license  
196 has been revoked as a level two intermediate driver, upon  
197 reaching the age of eighteen years and if otherwise eligible  
198 may reapply for an instruction permit, then a driver's

199 license in accordance with the provisions of sections five,  
200 six and seven of this article.

201 (e) *Level three, full Class E license.* — The level three  
202 license is valid until thirty days after the date the licensee  
203 attains his or her twenty-first birthday. Unless otherwise  
204 provided in this section or any other section of this code,  
205 the holder of a level three full Class E license is subject to  
206 the same terms and conditions as the holder of a regular  
207 Class E driver's license.

208 A level two intermediate licensee whose privilege to  
209 operate a motor vehicle has not been suspended, revoked  
210 or otherwise canceled and who meets all other require-  
211 ments of the code may be issued a level three full Class E  
212 license without further examination or road skills testing  
213 if the licensee:

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

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

217 (B) Has held the level two intermediate license convic-  
218 tion free for the twelve-month period immediately preced-  
219 ing the date of the application;

220 (C) Has completed any driver improvement program  
221 required under paragraph (G), subdivision (2), subsection  
222 (d) of this section; and

223 (D) Pays a fee of \$2.50 for each year the license is valid.  
224 An additional fee of \$.50 shall be collected to be deposited  
225 in the Combined Voter Registration and Driver's Licensing  
226 Fund established in section twelve, article two, chapter  
227 three of this code;

228 (E) Presents a driver's eligibility certificate or otherwise  
229 shows compliance with the provisions of section eleven,  
230 article eight, chapter eighteen of this code; or

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

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

234 (B) Pays a fee of \$2.50 for each year the license is valid.  
235 An additional fee of \$.50 shall be collected to be deposited  
236 in the Combined Voter Registration and Driver's Licensing  
237 Fund established in section twelve, article two, chapter  
238 three of this code.

239 (f) A person violating the provisions of the terms and  
240 conditions of a level one or level two intermediate driver's  
241 license is guilty of a misdemeanor and, upon conviction  
242 thereof, shall for the first offense be fined \$25; for a second  
243 offense be fined \$50; and for a third or subsequent offense  
244 be fined \$75.

Enr. Com. Sub. for Com. Sub. for S. B. No. 398] 10

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

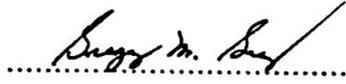
  
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Chairman Senate Committee

  
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Chairman House Committee

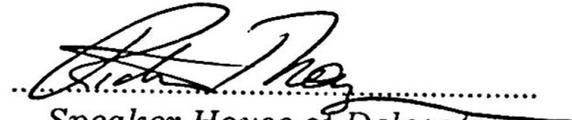
Originated in the Senate.

In effect ninety days from passage.

  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker House of Delegates

The within as appended this the 7<sup>th</sup>  
Day of May, 2009.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAY 1 2009

Time 2:57 pm