WEST VIRGINIA LEGISLATURE
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ENROLLED
COMMITTEE SUBSTITUTE
FOR
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FOR
Senate Bill No. 396
(SENATORS UNGER, KESSLER
AND CHAFIN, original sponsors)

[Passed March 13, 2010; in effect ninety days from passage.]
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AN ACT to amend and reenact §17B-2-1a, §17B-2-4 and §17B-2-5a of the Code of West Virginia, 1931, as amended; and to amend and reenact §17E-1-3, §17E-1-4, §17E-1-6, §17E-1-7, §17E-1-12, §17E-1-13 and §17E-1-25 of said code, all relating to the issuance, suspension and revocation of driver's licenses; conducting background checks for employees involved in the issuance of driver's licenses; surrendering driver's licenses; suspending commercial driver's licenses; adding definitions; clarifying requirements for school bus drivers; clarifying certain endorsements or restrictions; requiring the completion of skills test before obtaining a commercial driver's license to operate vehicles equipped with air brakes; updating the criteria for issuance, renewal, disqualification, surrender, reinstatement and maintenance of a commercial driver's license; updating and increasing fines and penalties for certain offenses; and criminal penalties.
Be it enacted by the Legislature of West Virginia:

That §17B-2-1a, §17B-2-4 and §17B-2-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17E-1-3, §17E-1-4, §17E-1-6, §17E-1-7, §17E-1-12, §17E-1-13 and §17E-1-25 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-2-1a. Surrender of license from other state or jurisdiction prior to receipt of license from this state; examination; fees required.

1. (a) The Division of Motor Vehicles may 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 subject to a reciprocal agreement governing the licensing of drivers operating commercial motor vehicles or party to a reciprocal driver's license exchange agreement with this state unless or until the applicant surrenders 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 by any other state or jurisdiction 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 is 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, en-
dorsements 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 apply to this section.

§17B-2-4. Persons prohibited from driving school buses or
transporting persons or property for compensa-
tion.

No person may drive any school bus transporting school
children or any motor vehicle when in use for the trans-
portation of persons or property for compensation nor in
either event until the person has been licensed as a Class
A, B, C or D driver for either purpose and the license so
indicates and until he or she is in compliance with the
provisions of chapter seventeen-e of this code and rules
promulgated by the State Board of Education, if applica-
able.

§17B-2-5a. Training, certification and monitoring of license
examiners.

(a) The commissioner shall train, certify and monitor
those employees of the Division of Motor Vehicles desig-
nated by the commissioner as license examiners regarding
the administration of licensing application and testing
procedures for the purpose of ensuring compliance with
statutory and regulatory requirements.

(b) In order to determine an applicant’s suitability for
employment, the commissioner shall require every appli-
cant or employee who is or may be in a position involved
in the examination, processing or issuance of a driver’s
license or identification card, or who would have access to
affect any document or record related to an applicant or
holder of a driver's license or identification to furnish a
full set of fingerprints to facilitate a criminal background
check of the applicant. The commissioner shall submit the
fingerprints to the state Criminal Identification Bureau
along with the applicant's identifying information. Prior
to hiring a prospective applicant the commissioner shall
request that the State Police submit the fingerprints and
identifying information to the Federal Bureau of Investi-
gation for a national criminal history record check and
that the commissioner may not hire the prospective
applicant until the results of the national background
check are available for evaluation.

CHAPTER 17E. UNIFORM COMMERCIAL
DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-3. Definitions.

Notwithstanding any other provision of this code, the
following definitions apply to this article:

(1) "Alcohol" means:

(A) Any substance containing any form of alcohol,
including, but not limited to, ethanol, methanol, propenyl
and isopropanol;

(B) Beer, ale, port or stout and other similar fermented
beverages (including sake or similar products) of any name
or description containing one half of one percent or more
of alcohol by volume, brewed or produced from malt,
wholly or in part, or from any substitute for malt;

(C) Distilled spirits or that substance known as ethyl
alcohol, ethanol or spirits of wine in any form (including
all dilutions and mixtures thereof from whatever source or
by whatever process produced); or
(D) Wine of not less than one half of one percent of alcohol by volume.

(2) "Alcohol concentration" means:

(A) The number of grams of alcohol per one hundred milliliters of blood;

(B) The number of grams of alcohol per two hundred ten liters of breath; or

(C) The number of grams of alcohol per sixty-seven milliliters of urine.

(D) The number of grams of alcohol per eighty-six milliliters of serum.

(3) "At fault traffic accident" means for the purposes of waiving the road test, a determination, by the official filing the accident report, of fault as evidenced by an indication of contributing circumstances in the accident report.

(4) "Commercial driver's license" means a license issued in accordance with the requirements of this article to an individual which authorizes the individual to drive a class of commercial motor vehicle.

(5) "Commercial driver's license information system" is the information system established pursuant to the Federal Commercial Motor Vehicle Safety Act to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(6) "Commercial driver instruction permit" means a permit issued pursuant to subsection (d), section nine of this article.

(7) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:
(A) If the vehicle has a gross combination vehicle weight rating of twenty-six thousand one pounds or more inclusive of a towed unit(s) with a gross vehicle weight rating of more than ten thousand pounds;

(B) If the vehicle has a gross vehicle weight rating of more than twenty-six thousand one pounds or more;

(C) If the vehicle is designed to transport sixteen or more passengers, including the driver; or

(D) If the vehicle is of any size transporting hazardous materials as defined in this section.

(8) "Commissioner" means the Commissioner of Motor Vehicles of this state.

(9) "Controlled substance" means any substance classified under the provisions of chapter sixty-a of this code (Uniform Controlled Substances Act) and includes all substances listed on Schedules I through V, inclusive, article two of said chapter sixty-a, as they are revised. The term "controlled substance" also has the meaning such term has under 21 U.S.C. §802.6 and includes all substances listed on Schedules I through V of 21 C.F.R. §1308 as they may be amended by the United States Department of Justice.

(10) "Conviction" means an unvacated adjudication of guilt; a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal or proceeding; an unvacated forfeiture of bail or collateral deposited to secure the persons appearance in court; a plea of guilty or nolo contendere accepted by the court or the payment of a fine or court cost, or violation of a condition of release without bail regardless of whether or not the penalty is rebated, suspended, or probated.

(11) "Division" means the Division of Motor Vehicles.
(12) "Disqualification" means any of the following three actions:

(A) The suspension, revocation, or cancellation of a driver's license by the state or jurisdiction of issuance.

(B) Any withdrawal of a person's privilege to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control other than parking or vehicle weight except as to violations committed by a special permittee on the coal resource transportation system or vehicle defect violations.

(C) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. Part §391 (2004).

(13) "Drive" means to drive, operate or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For the purposes of sections twelve, thirteen and fourteen of this article, "drive" includes operation or physical control of a motor vehicle anywhere in this state.

(14) "Driver" means any person who drives, operates or is in physical control of a commercial motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a commercial driver's license.

(15) "Driver's license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle of a specific class.

(16) "Employee" means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors.

(113) (while in the course of operating a commercial motor
vehicle) who are either directly employed by or under lease
to drive a commercial motor vehicle for an employer.

(116) (17) "Employer" means any person, including the United
States, a state or a political subdivision of a state, who
owns or leases a commercial motor vehicle or assigns a
person to drive a commercial motor vehicle.

(120) (18) "Endorsement" means an authorization to a person
to operate certain types of commercial motor vehicles.

(122) (19) "Farm vehicle" includes a motor vehicle or combi-
nation vehicle registered to the farm owner or entity
operating the farm and used exclusively in the transporta-
tion of agricultural or horticultural products, livestock,
poultry and dairy products from the farm or orchard on
which they are raised or produced to markets, processing
plants, packing houses, canneries, railway shipping points
and cold storage plants and in the transportation of
agricultural or horticultural supplies and machinery to the
farms or orchards.

(132) (20) "Farmer" includes an owner, tenant, lessee, occup-
ant or person in control of the premises used substi-
tially for agricultural or horticultural pursuits who is at
least eighteen years of age with two years' licensed driving
experience.

(137) (21) "Farmer vehicle driver" means the person employed
and designated by the "farmer" to drive a "farm vehicle"
as long as driving is not his or her sole or principal func-
tion on the farm who is at least eighteen years of age with
two years' licensed driving experience.

(142) (22) "Felony" means an offense under state or federal
law that is punishable by death or imprisonment for a
term exceeding one year.
(23) "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(24) "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single vehicle. In the absence of a value specified by the manufacturer the GVWR will be determined by the total weight of the vehicle and any load thereon.

(25) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. §5103 and is required to be placarded under subpart F of 49 C.F.R. Part §172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. Part §73.

(26) "Imminent Hazard" means existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury or a substantial endangerment to health, property or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury or endangerment.

(27) "Issuance of a license" means the completion of a transaction signifying that the applicant has met all the requirements incumbent in qualifying for, including, but not limited to: the initial issuance of a driver's license, the renewal of a driver's license, the issuance of a duplicate license as a replacement to a lost or stolen driver's license, the transfer of any level of driving privileges including the privilege of operating a commercial motor vehicle from another state or jurisdiction, the changing of driver's license class, restrictions or endorsements or the change of any other information pertaining to an applicant either
appearing on the face of a driver’s license or within the driver record of the licensee maintained by the division.

(28) “Motor vehicle” means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

(29) “Noncommercial motor vehicle” means a motor vehicle or combination of motor vehicles not defined by the term “commercial motor vehicle”.

(30) “Out-of-service order” means a temporary prohibition against driving a commercial motor vehicle as a result of a determination by a law-enforcement officer, an authorized enforcement officer of a federal, state, Canadian, Mexican, county or local jurisdiction including any special agent of the Federal Motor Carrier Safety Administration pursuant to 49 C.F.R. §§386.72, 392.5, 395.13, 396.9 or compatible laws or the North American uniform out-of-service criteria that an imminent hazard exists.

(31) “Violation of an out-of-service order” means:

(A) The operation of a commercial motor vehicle during the period the driver was placed out-of-service; or

(B) The operation of a commercial motor vehicle by a driver after the vehicle was placed out of service and before the required repairs are made.

(32) “School bus” means a commercial motor vehicle used to transport preprimary, primary or secondary school students from home-to-school, from school-to-home, or to and from school sponsored events. School bus does not include a bus used as a common carrier.

(33) “Serious traffic violation” means conviction for any of the following offenses when operating a commercial motor vehicle:
(A) Excessive speeding involving any single offense for any speed of fifteen miles per hour or more above the posted limits;

(B) Reckless driving as defined in section three, article five, chapter seventeen-c of this code and careless or negligent driving, including, but not limited to, the offenses of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property;

(C) Erratic or improper traffic lane changes including, but not limited to, passing a school bus when prohibited, improper lane changes and other passing violations;

(D) Following the vehicle ahead too closely;

(E) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(F) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession. However, any person who provides proof to the law-enforcement agency that issued the citation, by the date the person must appear in court or pay any fine for such violation, that the person held a valid commercial driver's license on the date the citation was issued, shall not be guilty of this offense;

(G) Driving a commercial motor vehicle without the proper class of commercial driver's license and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported;

(H) A violation of state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal traffic accident; or

(I) Any other serious violations determined by the United States Secretary of Transportation.
(J) Vehicle defects are excluded as serious traffic violations, except as to violations committed by a special permittee on the coal resource transportation road system.

(34) "State" means a state of the United States and the District of Columbia or a province or territory of Canada or a state of the United Mexican States.

(35) "State of Domicile" means the state where a person has his or her true, fixed and permanent home and principle residence and to which he or she has the intention of returning whenever absent in accordance with chapter seventeen-a, article three, section one-a.

(36) "Suspension, revocation or cancellation" of a driver's license, or a commercial driver's license means the privilege to operate any type of motor vehicle on the roads and highways of this state is withdrawn.

(37) "Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. These vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in 49 C. F. R. Part 171 (1998). However, this definition does not include portable tanks having a rated capacity under one thousand gallons.

(38) "Transportation Security Administration" means the United States Department of Homeland Security Transportation Security Administration.

(39) "United States" means the fifty states and the District of Columbia.

(40) "Vehicle Group" means a class or type of vehicle with certain operating characteristics.
§17E-1-4. Limitation on number of driver's licenses.

1 No person who drives a commercial motor vehicle may have more than one driver's license at one time. The division shall require the surrender of any previously issued driver's license before issuing a renewed or duplicate driver's license with updated information.

§17E-1-6. Employer responsibilities.

1 (a) Each employer shall require the applicant to provide the information specified in section five of this article.

3 (b) No employer may knowingly allow, permit, require or authorize a driver to drive a commercial motor vehicle during any period in which the driver:

6 (1) Has a driver's license suspended, revoked or canceled by a state; has lost the privilege to drive a commercial motor vehicle in a state, or has been disqualified from driving a commercial motor vehicle;

10 (2) Has more than one driver's license at one time;

11 (3) Or the commercial motor vehicle he or she is driving or the motor carrier operation is subject to an out-of-service order;

14 (4) Is in violation of federal, state or local law or regulation pertaining to railroad highway grade crossings; or

16 (5) Is in violation of any provision of 49 C.F.R., Part §382 related to controlled substances and alcohol use and testing.

19 (c) The division shall impose a civil penalty, in addition to any penalty required under the provisions of section twenty-five of this article, on any employer who knowingly allows, permits, requires or authorizes a driver to drive a commercial motor vehicle in violation of subdivision three or four of subsection (b) of this section.
(1) If the conviction is for a violation of subdivision three of subsection (b) of this section, the penalty is $2,750.

(2) If the conviction is for a violation of subdivision four of subsection (b) of this section, the penalty shall be no more than $25,000.

§17E-1-7. Commercial driver's license required; disqualification for driving without valid license.

(a) On or after the first day of April, one thousand nine hundred ninety-two, except when driving under a commercial driver's instruction permit accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle unless the person holds a commercial driver's license and applicable endorsements valid for the vehicle they are driving.

(b) No person may drive a commercial motor vehicle while their driving privilege is suspended, revoked, canceled, expired, subject to a disqualification or in violation of an out-of-service order.

(c) Drivers of a commercial motor vehicle shall have a commercial driver's license in their possession at all times while driving.

(d) The Commissioner shall suspend for a period of sixty days the driving privileges of any person who is convicted of operating a commercial motor vehicle:

(1) Without holding a valid commercial driver's license and the applicable endorsements valid for the vehicle he or she is driving in accordance with subsection (a) of this section, or

(2) For any conviction for operating a commercial motor vehicle while his or her privilege to operate a motor vehicle were suspended, revoked, canceled or while
disqualified from operating a commercial motor vehicle in accordance with subsection (b) of this section.

(e) Any person not holding a commercial driver's license who is convicted of an offense that requires disqualification from operating a commercial motor vehicle shall also be disqualified from eligibility for a commercial driver's license for the same time periods as prescribed in federal law or rule or section thirteen of this article for commercial driver's license holders.

(f) The Commissioner shall suspend the driver's license or the privilege to drive in this state of any holder of a commercial driver's license or operator of a commercial motor vehicle upon receiving notice from another state or jurisdiction of failure to pay fines, costs, forfeitures or penalties imposed or failure to appear or failure to respond for any violation of a state or local law relating to motor vehicle traffic control in accordance with 49 C.F.R. §384.225 (2009). A suspension under this section will continue until the person provides proof of compliance from the court and pays the reinstatement fee provided in section nine, article three, chapter seventeen-b of this Code.

17E-1-12. Classifications, endorsements and restrictions.

(a) Commercial driver's licenses may be issued with the following classifications:

(1) Class A combination vehicle. – Any combination of vehicles with a gross combined vehicle weight rating of twenty-six thousand one pounds or more, provided the gross vehicle weight rating of the vehicle being towed is in excess of ten thousand pounds.

(2) Class B heavy straight vehicle. – Any single vehicle with a gross vehicle weight rating of twenty-six thousand
one pounds or more and any vehicle towing a vehicle not
in excess of ten thousand pounds.

(3) Class C small vehicle. – Any single vehicle or combi-
nation vehicle that does not fall under either Class A or
Class B but are:

(A) Vehicles designed to transport sixteen or more
passengers, including the driver; and

(B) Vehicles used in the transportation of hazardous
materials which requires the vehicle to be placarded under

(4) Each applicant who desires to operate a vehicle in a
classification different from the class in which the appli-
cant is authorized is required to retake and pass all related
tests except the following:

(A) A driver who has passed the knowledge and skills
test for a combination vehicle in Class A may operate a
heavy straight vehicle in Class B or a small vehicle in Class
C provided he or she possesses the required endorsements;
and

(B) A driver who has passed the knowledge and skills
test for a vehicle in Class B may operate any small vehicle
in Class C provided he or she possesses the required
endorsements.

(b) Endorsements and restrictions. – The Commissioner
upon issuing a commercial driver's license may impose
endorsements and or restrictions determined by the
Commissioner to be appropriate to assure the safe opera-
tion of a specific class, type or category of motor vehicle or
a specifically equipped motor vehicle and to comply with
but not limited to endorsements or restrictions to operate:
(1) Double or triple trailers which requires successful completion of a knowledge test;
(2) Passenger vehicles which requires successful completion of a knowledge and skills test;
(3) Tank vehicles which requires successful completion of a knowledge test;
(4) Vehicles used for the transportation of hazardous materials as defined in section three of this article which requires the completion of a knowledge test and a background security risk check in accordance with 49 C.F.R. §1572.5 (2004);
(5) School buses which requires successful completion of a knowledge and skills test unless the applicant meets the criteria for waiver of the skills test in accordance with 49 C.F.R. §383.123(b) (2004); or
(6) Vehicles equipped with air brakes which requires the completion of a skills test.

(c) Applicant record check. – Before issuing a commercial driver’s license, the Commissioner shall obtain driving record information through the commercial driver’s license information system, the national driver register and from each state in which the person has been licensed.

(d) Notification of license issuance. – Within ten days after issuing a commercial driver’s license, the Commissioner shall notify the commercial driver’s license information system of that fact, providing all information required to ensure identification of the person.

(e) Expiration of license. –

(1) Every commercial driver’s license issued to persons who have attained their twenty-first birthday expires on the applicant’s birthday in those years in which the applicant’s age is evenly divisible by five. Except as
provided in subdivision two of this subsection, no commercial driver's license may be issued for less than three years nor more than seven years and the commercial driver's license shall be renewed by the applicant's birthday and is valid for a period of five years, expiring on the applicant's birthday and in a year in which the applicant's age is evenly divisible by five. No commercial driver's license with a hazardous materials endorsement may be issued for more than five years.

(2) Every commercial driver's license issued to persons who have not attained their twenty-first birthday expires thirty days after the applicant's birthday in the year in which the applicant attains the age of twenty-one years.

(3) Commercial driver's licenses held by any person in the Armed Forces which expire while that person is on active duty remains valid for thirty days from the date on which that person reestablishes residence in West Virginia.

(4) Any person applying to renew a commercial driver's license which has been expired for six months or more shall follow the procedures for an initial issuance of a commercial driver's license, including the testing provisions.

(f) When applying for renewal of a commercial driver's license, the applicant shall complete the application form and provide updated information and required certifications.

(g) If the applicant wishes to obtain or retain a hazardous materials endorsement, the applicant shall comply with a background check in accordance with 49 U.S.C. §5103a and 49 C.F.R. Part §1572 (2004) and subject to the following:

(1) The applicant is a citizen of the United States or a lawful permanent resident of the United States;
(2) The applicant completes the application prescribed by the division and submits fingerprints in a form and manner prescribed by the division and the United States Department of Homeland Security-Transportation Security Administration at the time of application or at any other time in accordance with 49 C.F.R. §1572.5 (2004);

(3) The applicant pays all fees prescribed by the Transportation Security Administration or its agent and the division;

(4) The applicant has not been adjudicated as a mental defective or committed to a mental institution as prescribed in 49 C.F.R. §1572.109 (2004);

(5) The applicant has not committed a disqualifying criminal offense as described in 49 C.F.R. §1572.103 (2004);

(6) The applicant has passed the Transportation Security Administration security threat assessment and the Division has received a final notification of threat assessment or notification of no security threat from the Transportation Security Administration: Provided, That any appeal of any decision, determination or ruling of the Federal Bureau of Investigation or the Transportation Security Agency shall be directed to that agency; and

(7) The applicant has successfully passed the written test for the issuance or renewal of a hazardous material endorsement.


(a) A person may not operate a commercial motor vehicle if his or her privilege to operate a commercial motor vehicle is disqualified under the provisions of the Federal Motor Carrier Safety Improvement Act of 1999 (public law

5 106-159 §1748), 49 C.F.R. Part §383, Subpart D (2004) or
6 in accordance with the provisions of this section.

7 (1) For the purposes of determining first and subsequent
8 violations of the offenses listed in this section, each
9 conviction for any offense listed in this section resulting
10 from a separate incident includes convictions for offenses
11 committed in a commercial motor vehicle or a noncom-
12 mercial motor vehicle.

13 (2) Any person disqualified from operating a commercial
14 motor vehicle for life under the provisions of this chapter
15 for offenses described in subsection (b) subdivisions (4)
16 and (6) of this section is eligible for reinstatement of
17 privileges to operate a commercial motor vehicle after ten
18 years and after completion of the safety and treatment
19 program or other appropriate program prescribed by the
20 division. Any person whose lifetime disqualification has
21 been amended under the provisions of this subdivision and
22 who is subsequently convicted of a disqualifying offense
23 described in subsection (b), subdivisions (1) through (8) of
24 this section is not eligible for reinstatement.

25 (3) Any disqualification imposed by this section is in
26 addition to any action to suspend, revoke or cancel the
27 driver's license or driving privileges if suspension, revoca-
28 tion or cancellation is required under another provision of
29 this code.

30 (4) The provisions of this section apply to any person
31 operating a commercial motor vehicle and to any person
32 holding a commercial driver's license.

33 (b) Any person is disqualified from driving a commercial
34 motor vehicle for the following offenses and time periods
35 if convicted of:

36 (1) Driving a motor vehicle under the influence of
37 alcohol or a controlled substance;
(A) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one year.

(B) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of one year.

(C) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F, a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction or for refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial motor vehicle license holder is disqualified from operating a commercial motor vehicle for life.

(2) Driving a commercial motor vehicle while the person's alcohol concentration of the person's blood, breath or urine is four hundredths of one percent or more, by weight;

(A) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one year.
For a first conviction or refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

Refusing to submit to any designated secondary chemical test required by the provisions of this code or the provisions of 49 C.F.R. §383.72 (2004);
of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for life.

(4) Leaving the scene of an accident;

(A) For the first conviction while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified for one year.

(C) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for life.

(5) Using a motor vehicle in the commission of any felony as defined in section three, article one of this
chapter: Provided, That the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance falls under the provisions of subdivision eight of this subsection;

(A) For the first conviction while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for one year.

(C) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F, (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial motor vehicle license holder is disqualified from operating a commercial motor vehicle for life.

(6) Operating a commercial motor vehicle when, as a result of prior violations committed operating a commercial motor vehicle, the driver's privilege to operate a motor vehicle has been suspended, revoked or canceled, or the driver's privilege to operate a commercial motor vehicle has been disqualified.
(A) For the first conviction while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F, (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(C) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(7) Causing a fatality through the negligent operation of a commercial motor vehicle, including, but not limited to, the crimes of motor vehicle manslaughter, homicide and negligent homicide as defined in section five, article three, chapter seventeen-b, and section one, article five, chapter seventeen-c of this code;

(A) For the first conviction while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F, (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(C) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(8) Using a motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance, or possession with intent to
(a) Manufacture, distribute, or dispense a controlled substance, a driver is disqualified from operating a commercial motor vehicle for life and shall not be eligible for reinstatement.

(c) Any person is disqualified from driving a commercial motor vehicle if convicted of:

(1) Speeding excessively involving any speed of fifteen miles per hour or more above the posted speed limit;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a
commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(2) Reckless driving as defined in section three, article five, chapter seventeen-c of this code, careless, or negligent driving including, but not limited to, the offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.
operating a commercial motor vehicle for a period of one hundred twenty days.

(3) Making improper or erratic traffic lane changes;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(4) Following the vehicle ahead too closely;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a
three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(5) Violating any law relating to traffic control arising in connection with a fatal accident, other than a parking violation;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days.
For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial motor vehicle license holder is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

Driving a commercial motor vehicle without obtaining a commercial driver's license;

For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days.

For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a
(7) Driving a commercial motor vehicle without a commercial driver’s license in the driver’s possession, provided that any person who provides proof of possession of a commercial driver’s license to the enforcement agency that issued the citation, by the court appearance or fine payment deadline shall not be guilty of this offense;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(8) Driving a commercial motor vehicle without the proper class of commercial driver’s license or the proper endorsements for the specific vehicle group being operated, or for the passengers or type of cargo being transported;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.
dent in a three-year period while operating a commercial
motor vehicle, a commercial driver’s license holder
is disqualified from operating a commercial motor vehicle
for a period of one hundred twenty days.

(d) Any person convicted of operating a commercial
motor vehicle in violation of any federal, state or local law
or ordinance pertaining to any of the railroad crossing
violations described in subdivisions one through six of this
subsection is disqualified from operating a commercial
motor vehicle for the period of time specified;

(1) Failing to slow down and check that the tracks are
clear of an approaching train, if not required to stop in
accordance with the provisions of section three, article
twelve, chapter seventeen-c of this code;

(A) For the first conviction, a driver is disqualified from
operating a commercial motor vehicle for a period of sixty
days;

(B) For a second conviction of any combination of
offenses in this subsection within a three-year period, a
driver is disqualified from operating a commercial motor
vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combina-
tion of offenses in this subsection within a three-year
period, a driver is disqualified from operating a commer-
cial motor vehicle for one year.

(2) Failing to stop before reaching the crossing, if the
tracks are not clear, if not required to stop, in accordance
with the provisions of section one, article twelve, chapter
seventeen-c of this code;

(A) For the first conviction, a driver is disqualified from
operating a commercial motor vehicle for a period of sixty
days;
(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(3) Failing to stop before driving onto the crossing, if required to stop in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, the driver is disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(4) Failing to have sufficient space to drive completely through the crossing without stopping in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a
driver is disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(5) Failing to obey a traffic control device or the directions of an enforcement official at the crossing in accordance with the provisions of section one, article twelve, chapter seventeen-c of this code; or

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(6) Failing to negotiate a crossing because of insufficient undercarriage clearance in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code.

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one hundred twenty days; and
(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(e) Any person who is convicted of violating an out-of-service order while operating a commercial motor vehicle is disqualified for the following periods of time if:

(1) Convicted of violating a driver or vehicle out-of-service order while transporting nonhazardous materials;

(A) For the first conviction of violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one hundred eighty days.

(B) For a second conviction in a separate incident within a ten-year period for violating an out of service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for two years.

(C) For a third or subsequent conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for three years.

(2) Convicted of violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F (2004), or while operating a vehicle designed to transport sixteen or more passengers including the driver;

(A) For the first conviction of violating an out of service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one hundred eighty days.
(B) For a second conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for three years.

(C) For a third or subsequent conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for three years.

(f) After disqualifying, suspending, revoking or canceling a commercial driver's license, the division shall update its records to reflect that action within ten days.

(g) In accordance with the provisions of 49 U.S.C. §313119(a)(19)(2004), and 49 C.F.R §384.226 (2004), and notwithstanding the provisions of section twenty-five, article eleven, chapter sixty-one of this code, no record of conviction, revocation, suspension or disqualification related to any type of motor vehicle traffic control offense, other than a parking violation, of a commercial driver's license holder or a person operating a commercial motor vehicle may be masked, expunged, deferred, or be subject to any diversion program.

(h) Notwithstanding any provision in this code to the contrary, the division may not issue any temporary driving permit, work-only driving permit or hardship license or permit that authorizes a person to operate a commercial motor vehicle when his or her privilege to operate any motor vehicle has been revoked, suspended, disqualified or otherwise canceled for any reason.

(i) In accordance with the provisions of 49 C.F.R. §391.15(b), a driver is disqualified from operating a commercial motor vehicle for the duration of any suspension, revocation or cancellation of his or her driver's...
license or privilege to operate a motor vehicle by this state
or by any other state or jurisdiction until the driver
complies with the terms and conditions for reinstatement
set by this state or by another state or jurisdiction.

(j) In accordance with the provisions of 49 C.F.R. 353.52
(2006), the division shall immediately disqualify a driver’s
privilege to operate a commercial motor vehicle upon a
notice from the Assistant Administrator of the Federal
Motor Carrier Safety Administration that the driver poses
an imminent hazard. Any disqualification period imposed
under the provisions of this subsection shall be served
concurrently with any other period of disqualification if
applicable.

(k) In accordance with the provisions of 49 C.F.R.
1572.11(a), the division shall immediately disqualify a
driver’s privilege to operate a commercial motor vehicle if
the driver fails to surrender his or her driver’s license with
a hazardous material endorsement to the division upon
proper notice by the division to the driver that the division
received notice from the Department of Homeland Secu-
ritv Transportation Security Administration of an initial
determination of threat assessment and immediate revoca-
tion that the driver does not meet the standards for
security threat assessment provided in 49 C.F.R. 1572.5.
The disqualification remains in effect until the driver
either surrenders the driver’s license to the division or
provides the division with an affidavit attesting to the fact
that the driver has lost or is otherwise unable to surrender
the license.

§17E-1-25. Penalties.

1 (a) It is a misdemeanor for any person to violate any of
2 the provisions of this chapter unless the violation is by this
3 chapter or other law of this state, declared to be a felony.

4 (b) Unless another penalty is provided in this chapter or
5 by the laws of this state, every person convicted of a
misdemeanor for the violation of any provisions of this chapter shall be fined not less than $100 nor more than $1,000, or confined for not more than six months in jail, or both fined and confined, except that for the second violation of section seven of this article and, upon conviction thereof, the offender shall be fined not less than $500 nor more than $2,000 or confined for not less than six months nor more than nine months in jail, or both fined and confined. For the third or any subsequent conviction for violation of section seven of this article, upon conviction thereof, the offender shall be fined not less than one $1,000 nor more than $2,500, or confined for not less than nine months nor more than one year in the county jail, or both fined and confined.

(c) The division shall impose a civil penalty, in addition to any penalty required under the provisions of this section on any driver who is convicted of violating subsection (e), section thirteen of this article. The penalty shall be $2,500 for the first offense and $5,000 for each subsequent offense.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within bill passed this the 2nd Day of ... 2010.

Governor
PRESENTED TO THE
GOVERNOR

APR 01 2010

Time 11:30 a.m.