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**WEST VIRGINIA LEGISLATURE**  
**EIGHTIETH LEGISLATURE**  
**REGULAR SESSION, 2011**

THE WEST VIRGINIA  
SECRETARY OF STATE

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**ENROLLED**

**Senate Bill No. 328**

(BY SENATORS BEACH, KLEMPA AND PLYMALE)

[PASSED MARCH 11, 2011; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB 328

WEST VIRGINIA  
LEGISLATURE

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OFFICE OF THE CLERK  
WEST VIRGINIA  
SENATE OF STATE

## ENROLLED

# Senate Bill No. 328

(BY SENATORS BEACH, KLEMPA AND PLYMALE)

[Passed March 11, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §17E-1-3, §17E-1-6, §17E-1-9, §17E-1-10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-17 and §17E-1-20 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §17E-1-14a, all relating to the issuance, disqualification, suspension and revocation of driver's licenses and privilege to operate a commercial motor vehicle; adding definitions; creating the offense of operating a commercial motor vehicle while texting; providing penalties and exceptions; establishing disqualification penalties for 2<sup>nd</sup>, 3<sup>rd</sup> or subsequent offenses; providing civil penalties for motor carriers who require or allow a driver to operate a commercial motor vehicle while texting; providing that a driver is disqualified from operating a commercial motor vehicle upon conviction for operating a commercial motor vehicle when texting; clarifying that out-of-service orders may pertain to a driver, commercial motor vehicle or a motor carrier operation; providing that the licensed driver accompanying a driver holding an instruction permit must be alert and unimpaired; adding additional certifications to the application and the face of a commercial driver's license; providing for additional requirements related to maintenance and verification of medical certification status; including the United Mexican

States as an entity that the commissioner is required to provide driving record information; and prohibiting the division from issuing or renewing a commercial driver's license to a person who does not possess a valid medical certification status.

*Be it enacted by the Legislature of West Virginia:*

That §17E-1-3, §17E-1-6, §17E-1-9, §17E-1-10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-17 and §17E-1-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §17E-1-14a, all to read as follows:

**ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.**

**§17E-1-3. Definitions.**

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

3 (1) "Alcohol" means:

4 (A) Any substance containing any form of alcohol, includ-  
5 ing, but not limited to, ethanol, methanol, propenyl and  
6 isopropanol;

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

12 (C) Distilled spirits or that substance known as ethyl  
13 alcohol, ethanol or spirits of wine in any form including all  
14 dilutions and mixtures thereof from whatever source or by  
15 whatever process produced; or

16 (D) Wine of not less than one half of one percent of alcohol  
17 by volume.

18 (2) "Alcohol concentration" means:

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

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

23 (C) The number of grams of alcohol per sixty-seven  
24 milliliters of urine; or

25 (D) The number of grams of alcohol per eighty-six millili-  
26 ters of serum.

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

31 (4) “Commercial driver’s license” means a license or an  
32 instruction permit issued in accordance with the require-  
33 ments of this article to an individual which authorizes the  
34 individual to drive a class of commercial motor vehicle.

35 (5) “Commercial driver’s license information system” is the  
36 information system established pursuant to the Federal  
37 Commercial Motor Vehicle Safety Act to serve as a clearing-  
38 house for locating information related to the licensing and  
39 identification of commercial motor vehicle drivers.

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

42 (7) “Commercial motor vehicle” means a motor vehicle  
43 designed or used to transport passengers or property:

44 (A) If the vehicle has a gross combination vehicle weight  
45 rating of twenty-six thousand one pounds or more inclusive  
46 of a towed unit(s) with a gross vehicle weight rating of more  
47 than ten thousand pounds;

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

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

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

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

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

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

75 (11) "Division" means the Division of Motor Vehicles.

76 (12) "Disqualification" means any of the following three  
77 actions:

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

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

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

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

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

100 (15) “Driver’s license” means a license issued by a state to  
101 an individual which authorizes the individual to drive a  
102 motor vehicle of a specific class.

103 (16) “Electronic device” includes, but is not limited to, a  
104 cellular telephone, personal digital assistant, pager or any  
105 other device used to input, write, send, receive, or read text.

106 (17) “Employee” means an operator of a commercial motor  
107 vehicle, including full time, regularly employed drivers,  
108 casual, intermittent or occasional drivers, leased drivers and  
109 independent, owner-operator contractors when operating a  
110 commercial motor vehicle, who are either directly employed  
111 by or under lease to drive a commercial motor vehicle for an  
112 employer.

113 (18) “Employer” means a person, including the United  
114 States, a state or a political subdivision of a state, who owns  
115 or leases a commercial motor vehicle or assigns a person to  
116 drive a commercial motor vehicle.

117 (19) “Endorsement” means an authorization to a person to  
118 operate certain types of commercial motor vehicles.

119 (20) “Farm vehicle” includes a motor vehicle or combina-  
120 tion vehicle registered to a farm owner or entity operating

121 the farm and used exclusively in the transportation of  
122 agricultural or horticultural products, livestock, poultry and  
123 dairy products from the farm or orchard on which they are  
124 raised or produced to markets, processing plants, packing  
125 houses, canneries, railway shipping points and cold storage  
126 plants and in the transportation of agricultural or horticultural  
127 supplies and machinery to the farms or orchards to be  
128 used on the farms or orchards.

129 (21) "Farmer" includes an owner, tenant, lessee, occupant  
130 or person in control of the premises used substantially for  
131 agricultural or horticultural pursuits who is at least eighteen  
132 years of age with two years licensed driving experience.

133 (22) "Farmer vehicle driver" means the person employed  
134 and designated by the "farmer" to drive a "farm vehicle" as  
135 long as driving is not his or her sole or principal function on  
136 the farm and who is at least eighteen years of age with two  
137 years licensed driving experience.

138 (23) "Felony" means an offense under state or federal law  
139 that is punishable by death or imprisonment for a term  
140 exceeding one year.

141 (24) "Gross combination weight rating (GCWR)" means the  
142 value specified by the manufacturer as the loaded weight of  
143 a combination, articulated vehicle. In the absence of a value  
144 specified by the manufacturer, GCWR will be determined by  
145 adding the gross vehicle weight rating (GVWR) of the power  
146 unit and the total weight of the towed unit and load, if any.

147 (25) "Gross vehicle weight rating (GVWR)" means the  
148 value specified by the manufacturer as the loaded weight of  
149 a single vehicle. In the absence of a value specified by the  
150 manufacturer, the GVWR will be determined by the total  
151 weight of the vehicle and load, if any.

152 (26) "Hazardous materials" means any material that has  
153 been designated as hazardous under 49 U.S.C. §5103 and is  
154 required to be placarded under subpart F of 49 C.F.R., Part  
155 §172 or any quantity of a material listed as a select agent or  
156 toxin in 42 C.F.R., Part §73.

157 (27) “Imminent hazard” means existence of a condition  
158 that presents a substantial likelihood that death, serious  
159 illness, severe personal injury or a substantial endangerment  
160 to health, property or the environment may occur before the  
161 reasonably foreseeable completion date of a formal proceed-  
162 ing begun to lessen the risk of that death, illness, injury or  
163 endangerment.

164 (28) “Issuance of a license” means the completion of a  
165 transaction signifying that the applicant has met all the  
166 requirements to qualify for, including, but not limited to: The  
167 initial issuance of a driver’s license, the renewal of a driver’s  
168 license, the issuance of a duplicate license as a replacement  
169 to a lost or stolen driver’s license, the transfer of any level of  
170 driving privileges including the privilege of operating a  
171 commercial motor vehicle from another state or jurisdiction,  
172 the changing of driver’s license class, restrictions or endorse-  
173 ments or the change of any other information pertaining to  
174 an applicant either appearing on the face of a driver’s license  
175 or within the driver record of the licensee maintained by the  
176 division.

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

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

184 (31) “Out-of-service order” means a a declaration by an  
185 authorized enforcement officer of a federal, state, Canadian,  
186 Mexican, county or local jurisdiction including any special  
187 agent of the Federal Motor Carrier Safety Administration  
188 that a driver, a commercial motor vehicle, or a motor carrier  
189 operation is out of service pursuant to 49 C.F.R. §§386.72,  
190 392.5, 395.13, 396.9 or compatible laws or the North Ameri-  
191 can uniform out-of-service criteria that an imminent hazard  
192 exists.

193 (32) "Violation of an out-of-service order" means:

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

196 (B) The operation of a commercial motor vehicle by a  
197 driver after the vehicle was placed out-of-service and before  
198 the required repairs are made; or

199 (C) The operation of any commercial vehicle by a motor  
200 carrier operation after the carrier has been placed out of  
201 service.

202 (33) "School bus" means a commercial motor vehicle used  
203 to transport preprimary, primary or secondary school  
204 students from home-to-school, from school-to-home or to  
205 and from school sponsored events. School bus does not  
206 include a bus used as a common carrier.

207 (34) "Serious traffic violation" means conviction for any of  
208 the following offenses when operating a commercial motor  
209 vehicle:

210 (A) Excessive speeding involving any single offense for any  
211 speed of fifteen miles per hour or more above the posted  
212 limits;

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

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

221 (D) Following the vehicle ahead too closely;

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

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

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

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

238 (I) Any other serious violations determined by the United  
239 States Secretary of Transportation.

240 (J) Vehicle defects are excluded as serious traffic violations  
241 except as to violations committed by a special permittee on  
242 the coal resource transportation road system.

243 (35) "State" means a state of the United States and the  
244 District of Columbia or a province or territory of Canada or  
245 a state or federal agency of the United Mexican States.

246 (36) "State of domicile" means the state where a person has  
247 his or her true, fixed and permanent home and principle  
248 residence and to which he or she has the intention of return-  
249 ing whenever absent in accordance with chapter seventeen-  
250 a, article three, section one-a.

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

255 (38) "Tank vehicle" means any commercial motor vehicle  
256 that is designed to transport any liquid or gaseous materials  
257 within a tank that is either permanently or temporarily

258 attached to the vehicle or the chassis. These vehicles include,  
259 but are not limited to, cargo tanks and portable tanks as  
260 defined in 49 C. F. R. Part 171 (1998). This definition does  
261 not include portable tanks having a rated capacity under one  
262 thousand gallons.

263 (39) "Texting" means manually entering alphanumeric text  
264 into or reading text from an electronic device.

265 (A) This action includes, but is not limited to, short  
266 messaging service, e-mailing, instant messaging and a  
267 command or request to access a World Wide Web page or  
268 engaging in any other form of electronic text retrieval or  
269 entry for present or future communication.

270 (B) Texting does not include:

271 (i) Reading, selecting or entering a telephone number, an  
272 extension number or voicemail retrieval codes and com-  
273 mands into an electronic device for the purpose of initiating  
274 or receiving a phone call or using voice commands to initiate  
275 or receive a telephone call;

276 (ii) Inputting, selecting or reading information on a global  
277 positioning system or navigation system; or

278 (iii) Using a device capable of performing multiple func-  
279 tions including, but not limited to, fleet management sys-  
280 tems, dispatching devices, smart phones, citizen band radios  
281 or music players for a purpose that is not otherwise prohib-  
282 ited by this section

283 (40) "Transportation Security Administration" means the  
284 United States Department of Homeland Security Transpor-  
285 tation Security Administration.

286 (41) "United States" means the fifty states and the District  
287 of Columbia.

288 (42) "Valid or Certified Medical Certification Status"  
289 means that an applicant or driver has a current medical  
290 evaluation or determination by a licensed physician that the

291 applicant or driver meets the minimum federal motor carrier  
292 safety administration physical qualifications within the  
293 prescribed time frames pursuant 49 CFR Part §391. Not-  
294 certified means that an applicant or driver does not have a  
295 current medical evaluation or has not been certified by a  
296 licensed physician as meeting the minimum federal motor  
297 carrier safety administration physical qualifications pursu-  
298 ant 49 CFR Part §391.

299 (43) “Vehicle Group” means a class or type of vehicle with  
300 certain operating characteristics.

**§17E-1-6. Employer responsibilities.**

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

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

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

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

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

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

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

17 (c) No employer may require or allow a driver to operate a  
18 commercial motor vehicle while texting.

19 (d) The division shall impose a civil penalty in addition to  
20 any penalty required under the provisions of section twenty-  
21 five of this article on any employer who knowingly allows,

22 permits, requires or authorizes a driver to drive a commer-  
23 cial motor vehicle in violation of subdivision (3) or (4) of  
24 subsection (b) or subsection (c) of this section.

25 (1) If the conviction is for a violation of subdivision (3), of  
26 subsection (b) of this section, the penalty is \$2,750.

27 (2) If the conviction is for a violation of subdivision (4), of  
28 subsection (b) or (c) of this section, the penalty shall be no  
29 more than \$25,000.

**§17E-1-9. Commercial driver's license qualification standards.**

1 (a) No person may be issued a commercial driver's license  
2 unless that person is a resident of this state and has passed  
3 a knowledge and skills test for driving a commercial motor  
4 vehicle which complies with minimum federal standards  
5 established by federal regulations enumerated in 49 C.F.R.  
6 Part § 383, Subparts G and H (2004) and has satisfied all  
7 other requirements of the Federal Motor Carrier Safety  
8 Improvement Act of 1999 in addition to other requirements  
9 imposed by state law or federal regulations.

10 (b) Third party testing. The commissioner may authorize a  
11 person, including an agency of this or another state, an  
12 employer, private individual or institution, department,  
13 agency or instrumentality of local government, to administer  
14 the skills test specified by this section so long as:

15 (1) The test is the same which would otherwise be adminis-  
16 tered by the state; and

17 (2) The party has entered into an agreement with the state  
18 that complies with the requirements of 49 C.F.R., part  
19 §383.75.

20 (c) Indemnification of driver examiners. No person who has  
21 been officially trained and certified by the state as a driver  
22 examiner, who administers a driving test, and no other  
23 person, firm or corporation by whom or with which that  
24 person is employed or is in any way associated, may be  
25 criminally liable for the administration of the tests or civilly

26 liable in damages to the person tested or other persons or  
27 property unless for gross negligence or willful or wanton  
28 injury.

29 (d) The commissioner may waive the skills test specified in  
30 this section for a commercial driver license applicant who  
31 meets the requirements of 49 C.F.R. part § 383.77 and the  
32 requirements specified by the commissioner.

33 (e) A commercial driver's license or commercial driver's  
34 instruction permit may not be issued to a person while the  
35 person is subject to a disqualification from driving a com-  
36 mercial motor vehicle, when the person does not possess a  
37 valid or current medical certification status or while the  
38 person's driver's license is suspended, revoked or canceled in  
39 any state. A commercial driver's license may not be issued by  
40 any other state unless the person first surrenders all such  
41 licenses to the division.

42 (f) Commercial driver's instruction permit may be issued as  
43 follows:

44 (1) To an individual who holds a valid Class E or Class D  
45 driver's license and has passed the vision and written tests  
46 required for issuance of a commercial driver's license.

47 (2) The commercial instruction permit may not be issued  
48 for a period to exceed six months. Only one renewal or  
49 reissuance may be granted within a two-year period. The  
50 holder of a commercial driver's instruction permit may drive  
51 a commercial motor vehicle on a highway only when accom-  
52 panied by the holder of a commercial driver's license valid  
53 for the type of vehicle driven, who is twenty-one years of age  
54 or older, who is alert and unimpaired and who occupies a  
55 seat beside the individual for the purpose of giving instruc-  
56 tion or testing.

57 (3) Only to a person who is at least eighteen years of age  
58 and has held a graduated Class E, Class E or Class D license  
59 for at least two years.

60 (4) The applicant for a commercial driver's instruction  
61 permit shall also be otherwise qualified to hold a commercial  
62 driver's license.

**§17E-1-10. Application for commercial driver's license.**

1 (a) The application for a commercial driver's license or  
2 commercial driver's instruction permit must include at least  
3 the following:

4 (1) The full name and current mailing and residential  
5 address of the person;

6 (2) A physical description of the person including sex,  
7 height, weight and eye color;

8 (3) Date of birth;

9 (4) The applicant's social security number;

10 (5) The person's signature;

11 (6) The person's color photograph;

12 (7) Certifications including those required by 49 C.F.R.  
13 Part § 383.71(a)(2004);

14 (8) Any other information required by the commissioner;

15 (9) A consent to release driving record information; and

16 (10) Certification stating that the applicant is:

17 (A) Engaged in interstate commerce and subject to 49  
18 C.F.R. Part §391 standards;

19 (B) Engaged in interstate commerce but excepted from 49  
20 C.F.R. Part §391 standards;

21 (C) Engaged in intrastate commerce and subject to state  
22 medical standards; or

23 (D) Engaged in intrastate commerce but not subject to state  
24 medical standards.

25 (b) When a licensee changes his or her name, mailing  
26 address or residence, or when a licensee's classifications,  
27 endorsements, or restrictions or medical certification status  
28 changes; the licensee shall submit an application for a  
29 duplicate license and obtain a duplicate driver's license  
30 displaying the updated information.

31 (c) No person who has been a resident of this state for  
32 thirty days or more may drive a commercial motor vehicle  
33 under the authority of a commercial driver's license issued  
34 by another jurisdiction.

**§17E-1-11. Commercial driver's license.**

1 The commercial driver's license shall be marked "commer-  
2 cial driver's license" or "CDL" and, to the maximum extent  
3 practicable, tamper proof. It must include, but not be limited  
4 to, the following information:

5 (a) The name and residential address of the person;

6 (b) The person's color photograph;

7 (c) A physical description of the person including sex,  
8 height, weight, and eye color;

9 (d) Date of birth;

10 (e) The person's signature;

11 (f) The class or type of commercial motor vehicle or  
12 vehicles which the person is authorized to drive together  
13 with any endorsement(s) and or restriction(s);

14 (g) The name of this state;

15 (h) The dates between which the license is valid; and

16 (i) Any information required by the Federal Motor Carrier  
17 Safety Administration concerning the driver's valid or  
18 current medical certification status.

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

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

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

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

12 (3) *Class C small vehicle.* — Any single vehicle or combina-  
13 tion vehicle that does not fall under either Class A or Class  
14 B but are:

15 (A) Vehicles designed to transport sixteen or more passen-  
16 gers, including the driver; and

17 (B) Vehicles used in the transportation of hazardous  
18 materials which requires the vehicle to be placarded under  
19 49 C.F.R. Part §172, Subpart F (2004).

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

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

28 (B) A driver who has passed the knowledge and skills test  
29 for a vehicle in Class B may operate any small vehicle in  
30 Class C provided he or she possesses the required endorse-  
31 ments.

32 (b) *Endorsements and restrictions.* — The commissioner  
33 upon issuing a commercial driver's license may impose

34 endorsements and restrictions determined by the commis-  
35 sioner to be appropriate to assure the safe operation of a  
36 specific class, type or category of motor vehicle or a specifi-  
37 cally equipped motor vehicle and to comply with 49 U.S.C.,  
38 et seq., and 49 C.F.R. §383.93 (2004) including, but not  
39 limited to, endorsements or restrictions to operate:

40 (1) Double or triple trailers which requires successful  
41 completion of a knowledge test;

42 (2) Passenger vehicles which requires successful comple-  
43 tion of a knowledge and skills test;

44 (3) Tank vehicles which requires successful completion of  
45 a knowledge test;

46 (4) Vehicles used for the transportation of hazardous  
47 materials as defined in section three of this article which  
48 requires the completion of a knowledge test and a back-  
49 ground security risk check in accordance with 49 C.F.R.  
50 §1572.5(2004);

51 (5) School buses which requires successful completion of a  
52 knowledge and skills test unless the applicant meets the  
53 criteria for waiver of the skills test in accordance with 49  
54 C.F.R. §383.123(b)(2004); or

55 (6) Vehicles equipped with air brakes which requires the  
56 completion of a skills test.

57 (c) *Applicant record check.* — Before issuing a commercial  
58 driver's license, the commissioner shall obtain driving record  
59 and medical certification status information through the  
60 commercial driver's license information system, the national  
61 driver register and from each state in which the person has  
62 been licensed.

63 (d) *Notification of license issuance.* — Within ten days after  
64 issuing a commercial driver's license, the commissioner shall  
65 notify the commercial driver's license information system of  
66 the issuance and provide all information required to ensure  
67 identification of the person.

68 (e) *Expiration of license.* –

69 (1) Every commercial driver's license issued to persons who  
70 have attained their twenty-first birthday expires on the  
71 applicant's birthday in those years in which the applicant's  
72 age is evenly divisible by five. Except as provided in subdivi-  
73 sion (2) of this subsection, no commercial driver's license  
74 may be issued for less than three years nor more than seven  
75 years. The commercial driver's license shall be renewed by  
76 the applicant's birthday and is valid for a period of five  
77 years, expiring on the applicant's birthday and in a year in  
78 which the applicant's age is evenly divisible by five. No  
79 commercial driver's license with a hazardous materials  
80 endorsement may be issued for more than five years.

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

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

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

93 (5) Any commercial driver's license held by a person who  
94 does not possess a valid or current medical certification  
95 status is no longer valid for the operation of a commercial  
96 motor vehicle and is downgraded to the appropriate  
97 licensure level commensurate with the licensee's qualifica-  
98 tions regardless of the expiration date or indicated class on  
99 the face of the license within the time frames prescribed by  
100 49 CFR §383.73(j).

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

104 (g) If the applicant wishes to obtain or retain a hazardous  
105 materials endorsement, the applicant shall comply with a  
106 background check in accordance with 49 U.S.C. §5103a and  
107 49 C.F.R. Part §1572 (2004) and subject to the following:

108 (1) The applicant is a citizen of the United States or a  
109 lawful permanent resident of the United States;

110 (2) The applicant completes the application prescribed by  
111 the division and submits fingerprints in a form and manner  
112 prescribed by the division and the United States Department  
113 of Homeland Security Transportation Security Administra-  
114 tion at the time of application or at any other time in  
115 accordance with 49 C.F.R. §1572.5(2004);

116 (3) The applicant pays all fees prescribed by the Transpor-  
117 tation Security Administration or its agent and the division;

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

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

123 (6) The applicant has passed the Transportation Security  
124 Administration security threat assessment and the division  
125 has received a final notification of threat assessment or  
126 notification of no security threat from the Transportation  
127 Security Administration. An appeal of a decision, determina-  
128 tion or ruling of the Federal Bureau of Investigation or the  
129 Transportation Security Agency shall be directed to that  
130 agency; and

131 (7) The applicant has successfully passed the written test  
132 for the issuance or renewal of a hazardous material endorse-  
133 ment.

**§17E-1-13. Disqualification.**

1 (a) A person may not operate a commercial motor vehicle  
2 if his or her privilege to operate a commercial motor vehicle

3 is disqualified under the provisions of the Federal Motor  
4 Carrier Safety Improvement Act of 1999, 49 C.F.R. Part §383,  
5 Subpart D (2004) or in accordance with the provisions of this  
6 section.

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

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

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

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

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

35 (1) Driving a motor vehicle under the influence of alcohol  
36 or a controlled substance;

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

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

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

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

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

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

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

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

77 (C) For a second conviction or refusal to submit to any  
78 designated secondary chemical test in a separate incident of  
79 any combination of offenses in this subsection while operat-  
80 ing a commercial motor vehicle, a driver is disqualified from  
81 operating a commercial motor vehicle for life.

82 (3) Refusing to submit to any designated secondary chemi-  
83 cal test required by the provisions of this code or the provi-  
84 sions of 49 C.F.R. §383.72 (2004);

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

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

94 (C) For the first conviction or for refusal to submit to any  
95 designated secondary chemical test while operating a  
96 commercial motor vehicle transporting hazardous materials  
97 required to be placarded under 49 C.F.R. Part §172, Subpart  
98 F (2004), a driver is disqualified from operating a commercial  
99 motor vehicle for a period of three years.

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

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

111 (4) Leaving the scene of an accident;

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

115 (B) For the first conviction while operating a noncommer-  
116 cial motor vehicle, a commercial driver's license holder is  
117 disqualified for one year.

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

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

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

132 (5) Using a motor vehicle in the commission of any felony  
133 as defined in section three, article one of this chapter except  
134 that the commission of any felony involving the manufacture,  
135 distribution or dispensing of a controlled substance or  
136 possession with intent to manufacture, distribute or dispense  
137 a controlled substance falls under the provisions of subdivi-  
138 sion eight of this subsection;

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

142 (B) For the first conviction while operating a noncommer-  
143 cial motor vehicle, a commercial driver's license holder is  
144 disqualified from operating a commercial motor vehicle for  
145 one year.

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

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

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

160 (6) Operating a commercial motor vehicle when, as a result  
161 of prior violations committed operating a commercial motor  
162 vehicle, the driver's privilege to operate a motor vehicle has  
163 been suspended, revoked or canceled or the driver's privilege  
164 to operate a commercial motor vehicle has been disqualified.

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

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

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

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

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

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

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

195 (8) Using a motor vehicle in the commission of any felony  
196 involving the manufacture, distribution or dispensing of a  
197 controlled substance or possession with intent to manufac-  
198 ture, distribute or dispense a controlled substance, a driver  
199 is disqualified from operating a commercial motor vehicle for  
200 life and is not eligible for reinstatement.

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

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

205 (A) For a second conviction of any combination of offenses  
206 in this subsection in a separate incident within a three year

207 period while operating a commercial motor vehicle, a driver  
208 is disqualified from operating a commercial motor vehicle for  
209 a period of sixty days.

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

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

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

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

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

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

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

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

264 (3) Making improper or erratic traffic lane changes;

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

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

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

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

292 (4) Following the vehicle ahead too closely;

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

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

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

311 (D) For a third or subsequent conviction of any combina-  
312 tion of offenses in this subsection in a separate incident  
313 within a three- year period while operating a noncommercial

314 motor vehicle, if the conviction results in the suspension,  
315 revocation or cancellation of the commercial driver's license  
316 holder's privilege to operate any motor vehicle, a commercial  
317 driver's license holder is disqualified from operating a  
318 commercial motor vehicle for a period of one hundred twenty  
319 days.

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

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

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

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

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

350 (6) Driving a commercial motor vehicle without obtaining  
351 a commercial driver's license;

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

357 (B) For a third or subsequent conviction of any combina-  
358 tion of the offenses in this subsection in a separate incident  
359 in a three-year period while operating a commercial motor  
360 vehicle, a driver is disqualified from operating a commercial  
361 motor vehicle for a period of one hundred twenty days.

362 (7) Driving a commercial motor vehicle without a commer-  
363 cial driver's license in the driver's possession except that any  
364 person who provides proof of possession of a commercial  
365 driver's license to the enforcement agency that issued the  
366 citation by the court appearance or fine payment deadline is  
367 not guilty of this offense;

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

374 (B) For a third or subsequent conviction of any combina-  
375 tion of the offenses in this subsection in a separate incident  
376 in a three- year period while operating a commercial motor  
377 vehicle, a commercial driver's license holder is disqualified  
378 from operating a commercial motor vehicle for a period of  
379 one hundred twenty days.

380 (8) Driving a commercial motor vehicle without the proper  
381 class of commercial driver's license or the proper endorse-  
382 ments for the specific vehicle group being operated or for the  
383 passengers or type of cargo being transported;

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

390 (B) For a third or subsequent conviction of any combina-  
391 tion of the offenses in this subsection in a separate incident  
392 in a three- year period while operating a commercial motor  
393 vehicle, a commercial driver's license holder is disqualified  
394 from operating a commercial motor vehicle for a period of  
395 one hundred twenty days.

396 (9) Driving a commercial motor vehicle while engaged in  
397 texting and convicted pursuant to section fourteen-a of this  
398 article or similar law of this or any other jurisdiction or 49  
399 CFR §392.80;

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

406 (B) For a third or subsequent conviction of any combina-  
407 tion of the offenses in this subsection in a separate incident  
408 in a three- year period while operating a commercial motor  
409 vehicle, a commercial driver's license holder is disqualified  
410 from operating a commercial motor vehicle for a period of  
411 one hundred twenty days.

412 (d) Any person convicted of operating a commercial motor  
413 vehicle in violation of any federal, state or local law or  
414 ordinance pertaining to railroad crossing violations de-  
415 scribed in subdivisions (1) through (6) of this subsection,  
416 is disqualified from operating a commercial motor vehicle for  
417 the period of time specified;

418 (1) Failing to slow down and check that the tracks are clear  
419 of an approaching train, if not required to stop in accordance

420 with the provisions of section three, article twelve, chapter  
421 seventeen-c of this code;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

510 (1) If convicted of violating a driver or vehicle out-of-  
511 service order while transporting nonhazardous materials;

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

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

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

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

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

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

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

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

548 (g) In accordance with the provisions of 49 U.S.C.  
549 §313119(a)(19)(2004), and 49 C.F.R §384.226 (2004), notwith-  
550 standing the provisions of section twenty-five, article eleven,  
551 chapter sixty-one of this code, no record of conviction,  
552 revocation, suspension or disqualification related to any type  
553 of motor vehicle traffic control offense, other than a parking  
554 violation, of a commercial driver's license holder or a person  
555 operating a commercial motor vehicle may be masked,  
556 expunged, deferred or be subject to any diversion program.

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

564 (i) In accordance with the provisions of 49 C.F.R.  
565 §391.15(b), a driver is disqualified from operating a commer-  
566 cial motor vehicle for the duration of any suspension,  
567 revocation or cancellation of his or her driver's license or  
568 privilege to operate a motor vehicle by this state or by any  
569 other state or jurisdiction until the driver complies with the  
570 terms and conditions for reinstatement set by this state or by  
571 another state or jurisdiction.

572 (j) In accordance with the provisions of 49 C.F.R. 353.52  
573 (2006), the division shall immediately disqualify a driver's  
574 privilege to operate a commercial motor vehicle upon a  
575 notice from the Assistant Administrator of the Federal Motor  
576 Carrier Safety Administration that the driver poses an  
577 imminent hazard. Any disqualification period imposed under  
578 the provisions of this subsection shall be served concurrently  
579 with any other period of disqualification if applicable.

580 (k) In accordance with the provisions of 49 C.F.R.  
581 1572.11(a), the division shall immediately disqualify a  
582 driver's privilege to operate a commercial motor vehicle if  
583 the driver fails to surrender his or her driver's license with  
584 a hazardous material endorsement to the division upon  
585 proper notice by the division to the driver that the division  
586 received notice from the Department of Homeland Security  
587 Transportation Security Administration of an initial deter-  
588 mination of threat assessment and immediate revocation that  
589 the driver does not meet the standards for security threat  
590 assessment provided in 49 C.F.R. 1572.5. The disqualification  
591 remains in effect until the driver either surrenders the  
592 driver's license to the division or provides the division with  
593 an affidavit attesting to the fact that the driver has lost or is  
594 otherwise unable to surrender the license.

595 (l) In accordance with 49 C.F.R §391.41, a driver is disqual-  
596 ified from operating a commercial motor vehicle if the driver  
597 is not physically qualified to operate a commercial motor  
598 vehicle or does not possess a valid medical certification  
599 status.

600 (m) In accordance with the provisions of 49 C.F.R.  
601 §383.73(g), the division shall disqualify a driver's privilege  
602 to operate a commercial motor vehicle if the division deter-  
603 mines that the licensee has falsified any information or  
604 certifications required under the provisions of 49 C.F.R. 383  
605 Subpart J or 49 C.F.R. §383.71a for sixty days in addition to  
606 any other penalty prescribed by this code.

**§17E-1-14a. Commercial Drivers Prohibited From Texting.**

1 (a) No commercial driver may engage in texting while  
2 driving a commercial motor vehicle.

3 (b) No motor carrier may allow or require its drivers to  
4 engage in texting while driving a commercial motor vehicle.

5 (c) For the purposes of this section only, and unless a more  
6 restrictive prohibition is prescribed in this code, driving  
7 means operating a commercial motor vehicle with the motor  
8 running, including while temporarily stationed because of  
9 traffic, a traffic control device or other momentary delays.  
10 Driving does not include operating a commercial motor  
11 vehicle with or without the motor running when the driver  
12 moved the vehicle to the side of or off a highway, as defined  
13 in 49 CFR 390.5, and halted in a location where the vehicle  
14 can safely remain stationary.

**§17E-1-17. Driving record information to be furnished.**

1 Subject to the provisions of article two-a, chapter  
2 seventeen-a of this code, the commissioner shall furnish full  
3 information regarding the driving record of any person:

4 (a) To the driver license administrator of any other state of  
5 the United States and the District of Columbia or a province

6 or territory of Canada or a state or federal agency of the  
7 United Mexican States requesting that information;

8 (b) To any motor carrier employer or prospective motor  
9 carrier employer;

10 (c) To the United States Secretary of Transportation; and

11 (d) To the driver:

12 Nothing in this section prevents an insurer from obtaining  
13 a standard driving record issued in accordance with section  
14 two, article two, chapter seventeen-d of this code.

**§17E-1-20. Reciprocity.**

1 (a) Notwithstanding any law to the contrary, a person may  
2 drive a commercial motor vehicle if the person has a com-  
3 mercial driver's license by any state of the United States and  
4 the District of Columbia or a province or territory of Canada  
5 or a state or federal agency of the United Mexican States in  
6 accordance with the minimum federal standards for the  
7 issuance of commercial motor vehicle driver licenses if the  
8 license is not suspended, revoked or canceled, if the person  
9 is not disqualified from driving a commercial motor vehicle  
10 or not subject to an "out-of-service" order.

11 (b) The commissioner is authorized to suspend, revoke or  
12 cancel the privilege to operate a motor vehicle or disqualify  
13 the privilege to operate a commercial motor vehicle of any  
14 resident of this state or of a nonresident upon receiving  
15 notice of the conviction of such person in another state of an  
16 offense which, if committed in this state, would be grounds  
17 for the suspension, revocation or cancellation of the privilege  
18 to operate a motor vehicle or the disqualification of the  
19 privilege to operate a commercial motor vehicle.

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

*[Signature]*  
.....  
Chairman Senate Committee

*[Signature]*  
.....  
Vice Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*[Signature]*  
.....  
Clerk of the Senate

*[Signature]*  
.....  
Clerk of the House of Delegates

*[Signature]*  
.....  
Acting President of the Senate

*[Signature]*  
.....  
Speaker of the House of Delegates

2011 APR - 1 AM 11: 15  
SECRETARY OF STATE  
WEST VIRGINIA

The within *wapped* this the *3/8*  
*March*  
Day of ....., 2011.

*[Signature]*  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 23 2011

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