

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 398

(SENATOR FOSTER, *original sponsor*)

Effective Date July 10, 2009

AN ACT to amend and reenact '17B-2-3a of the Code of West Virginia, 1931, as amended, relating to imposing certain restrictions on a graduated driver=s license to increase public safety; and imposing criminal penalties for violations of this section.

Be it enacted by the Legislature of West Virginia:

That '17B-2-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that '60A-4-406 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

'17B-2-3a. Graduated driver=s license.

(a) Any person under the age of eighteen may not operate a motor vehicle unless he or she has obtained a graduated driver=s license in accordance with the three-level graduated driver=s license system described in the following provisions.

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

(c) Level one instruction permit. -B An applicant who is fifteen years or older meeting all other requirements prescribed in this code may be issued a level one instruction permit.

(1) *Eligibility.* -B The division shall not issue a level one instruction permit unless the applicant:

(A) Presents a completed application, as prescribed by the provisions of section six of this article, and which is accompanied by a writing, duly acknowledged, consenting to the issuance of the graduated driver=s license and executed by a parent or guardian entitled to custody of the applicant;

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

(C) Passes the vision and written knowledge examination and

completes the driving under the influence awareness program, as prescribed in section seven of this article;

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

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

(2) *Terms and conditions of instruction permit.* -B A level one instruction permit issued under the provisions of this section is valid until thirty days after the date the applicant attains the age of eighteen and is not renewable. However, any permit holder who allows his or her permit to expire prior to successfully passing the road skills portion of the driver examination, and who has not committed any offense which requires the suspension, revocation or cancellation of the instruction permit, may reapply for a new instruction permit under the provisions of section six of this article. The division shall immediately revoke the permit upon receipt of a second conviction for a moving violation of traffic regulations and laws of the road or violation of the terms and conditions of a level one instruction permit, which convictions have become final unless a greater penalty is required by this section or any other provision of this code. Any person whose instruction permit has been revoked is disqualified from retesting for a period of ninety days. However, after the expiration of ninety days, the person may retest if otherwise eligible. In

addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked or canceled, the holder of a level one instruction permit may only operate a motor vehicle under the following conditions:

(A) Under the direct supervision of a licensed driver, twenty-one years of age or older, or a driver's education or driving school instructor who is acting in an official capacity as an instructor, who is fully alert and unimpaired, and the only other occupant of the front seat. The vehicle may be operated with no more than two additional passengers, unless the passengers are family members;

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

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

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

(E) Maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code.

(F) A holder of a level one instruction permit who is under the age of eighteen years shall be prohibited from using a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1

system. A person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined \$25; for a second offense be fined \$50; and for a third or subsequent offense be fined \$75.

(d) Level two intermediate driver's license. -B An applicant sixteen years of age or older, meeting all other requirements of the code, may be issued a level two intermediate driver=s license.

(1) *Eligibility.* -B The division shall not issue a level two intermediate driver=s license unless the applicant:

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

(B) Has held the level one instruction permit conviction-free for the one hundred eighty days immediately preceding the date of application for a level two intermediate license;

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

(D) Presents a driver=s eligibility certificate or otherwise

shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

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

(F) Pays a fee of \$5.

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

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

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

(i) Lawful employment;

(ii) A school-sanctioned activity;

(iii) A religious event; or

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

(C) All occupants shall use safety belts in accordance with

the provisions of section forty-nine, article fifteen, chapter seventeen-c of this code;

(D) For the first six months after issuance of a level two intermediate driver=s license, the licensee may not operate a motor vehicle carrying any passengers less than twenty years old, unless these passengers are family members of the licensee; for the second six months after issuance of a level two intermediate driver=s license, the licensee may not operate a motor vehicle carrying more than one passenger less than twenty years old, unless these passengers are family members of the licensee;

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

(F) Maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

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

fined \$75.

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

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

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

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

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

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

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

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

(B) Has held the level two intermediate license conviction free for the twelve-month period immediately preceding the date of the application;

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

(D) Pays a fee of \$2.50 for each year the license is valid. An additional fee of \$.50 shall be collected to be deposited in the

Combined Voter Registration and Driver=s Licensing Fund established in section twelve, article two, chapter three of this code;

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

(2) Reaches the age of eighteen years; and

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

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

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