

ARTICLE 353
Commercial Drivers

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CROSS REFERENCES

Uniform Commercial Driver's License Act - see W.Va. Code
Art. 17E-1
Commercial vehicles - see TRAF. Art. 347
Driver's licensing - see TRAF. Art. 351

353.01 DEFINITIONS.

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

- (a) "Alcohol" means:
- (1) Any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propanol and isopropanol;
 - (2) 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 (0.5%) or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefore;
 - (3) 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
 - (4) Wine of not less than one-half of one percent (0.5%) of alcohol by volume.
- (b) "Alcohol concentration" means:
- (1) The number of grams of alcohol per 100 milliliters of blood; or
 - (2) The number of grams of alcohol per 210 liters of breath; or
 - (3) The number of grams of alcohol per sixty-seven milliliters of urine.

- (c) "Commercial driver license" means a license issued in accordance with the requirements of West Virginia Code Article 17E-1 to an individual which authorizes the individual to drive a class of commercial motor vehicle.
- (d) "Commercial driver instruction permit" means a permit issued pursuant to West Virginia Code 17E-1-9(e).
- (e) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:
- (1) If the vehicle has a gross vehicle weight rating as determined by federal regulation;
 - (2) If the vehicle is designed to transport sixteen or more passengers, including the driver; or
 - (3) If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. part 172, sub-part F.
- (f) "Conviction" means the final judgment in a judicial or administrative proceeding or a verdict or finding of guilty, a plea of guilty, a plea of nolo contendere, an implied admission of guilty or a forfeiture of bond or collateral upon a charge of a disqualifying offense, as a result of proceedings upon any violation of the requirement of this article.
- (g) "Disqualification" means a prohibition against driving a commercial motor vehicle.
- (h) "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 purposes of Section 353.06 "drive" includes operation or physical control of a motor vehicle anywhere in this Municipality.
- (i) "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 license.
- (j) "Driver license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle of a specific class.
- (k) "Employee" means a person who is employed by an employer to drive a commercial motor vehicle, including independent contractors. An employee who is employed by himself or herself as a commercial motor vehicle driver must comply with both the requirements of this article pertaining to employees and employers.
- (1) "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.

- (m) "Farm vehicle" includes a motor vehicle or combination vehicle registered to the farm owner or entity operating the farm and used exclusively in the transportation 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 such farms or orchards to be used thereon.
- (n) "Farmer" includes, but is not limited to, owner, tenant, lessee, occupant or person in control of the premises used substantially for agricultural or horticultural pursuits, who is at least eighteen years of age with two years licensed driving experience.
- (o) "Farmer vehicle driver" means the person employed and designated by the farmer to drive a farm vehicle as long as driving is not his sole or principal function on the farm, who is at least eighteen years of age with two years licensed driving experience.
- (p) "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.
- (q) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.
(WVaC 17E-1-3)

353.02 LIMITATION ON NUMBER OF DRIVER'S LICENSES.

No person who drives a commercial motor vehicle shall have more than one driver license at one time except during the ten-day period beginning on the date the person is issued a driver's license.
(WVaC 17E-1-4)

353.03 EMPLOYER RESPONSIBILITIES.

- (a) Each employer shall require the applicant to provide the information specified in West Virginia Code 17E-1-5.
- (b) No employer shall knowingly allow, permit or authorize a driver to drive a commercial motor vehicle during any period:
- (1) In which the driver 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; or
 - (2) In which the driver has more than one driver's license at one time except during the ten-day period beginning on the date the employee is issued a driver's license.
(WVaC 17E-1-6)

353.04 COMMERCIAL DRIVER'S LICENSE REQUIRED.

- (a) 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 shall 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 shall drive a commercial motor vehicle while their driving privilege is suspended, revoked, canceled or expired, while subject to a disqualification, or in violation of an out-of-service order. (c) Drivers of a commercial motor vehicle must have a commercial driver's license in their possession at all times while driving.
(WVaC 17E-1-7)

353.05 EXEMPTIONS.

- (a) Farmers. Bona fide farmers or farm vehicle drivers, as defined, operating a vehicle otherwise covered by the commercial driver's license requirements may be exempted from the provisions of this article only if the vehicle used is:
- (1) Driven by a farmer or farm vehicle driver;
 - (2) Used only to transport either agricultural products, farm machinery, farm supplies, to or from a farm;
 - (3) Not used in the operation of a common or contract motor carrier; and
 - (4) Used within 150 miles of the qualifying farm.
- Farmers who wish to be exempted from the commercial driver's license requirements must apply to the Division of Motor Vehicles for a certificate of exemption.
- (b) Military Personnel. Military personnel, including the national guard and reserve, will be exempt from the provision of this article, only:
- (1) When in uniform; and
 - (2) Operating equipment owned by the United States Department of Defense, except during declared emergencies or disaster situations; and
 - (3) On duty; and
 - (4) In possession of a valid classified military driver's license for the class of vehicle being driven.
- (c) Fire Fighting and Rescue Equipment. Operators of vehicles authorized to hold an authorized emergency vehicle permit for use of red signal lights only are exempt from the provision of this article while the authorized emergency vehicle permit is in force. Vehicles in this class include, but are not limited to, fire fighters and rescue equipment:
- (1) Owned and operated by state, county and municipal fire departments.
 - (2) Owned and operated by state, county and municipal civil defense organizations.
 - (3) Owned and operated by a manufacturer engaged in a type of business that requires fire fighter equipment to protect the safety of their plants and its employees.
 - (4) Owned and operated by volunteer fire departments.
 - (5) The Commercial Motor Vehicles Safety Act of 1986 exempts vehicles used exclusively for personal use such as recreation vehicles and rental trucks used only to transport the driver's personal or household property.
(WVaC 17E-1-8)

353.06 DRIVERS PROHIBITED FROM OPERATING WITH ANY ALCOHOL IN SYSTEM.

- (a) In addition to any other penalties provided by the West Virginia Code or these Codified Ordinances any person who:
- (1) Drives, operates or is in physical control of a commercial motor vehicle while having any measurable alcohol in his or her system; or
 - (2) Drives, operates or is in physical control of a commercial motor vehicle while having an alcohol concentration of his or her blood, breath or urine of four hundredths of one percent (0.04%) or more, by weight;
- (b) Upon conviction of an offense described in subsection (a) of this section:
- (1) For a violation of subdivision (1) thereof, such person shall be fined not more than one hundred dollars (\$100.00); for a second offense of subdivision (1) thereof, such person shall be fined not less than one hundred dollars (\$100.00) nor more than three hundred dollars (\$300.00) or imprisoned for a period not to exceed thirty days, and, for a third or any subsequent offense, shall be fined not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000) and shall be imprisoned for a period of time of not less than twenty-four hours and not more than thirty days.
 - (2) For a violation of subdivision (2) thereof, such person shall be imprisoned for not less than twenty-four hours nor more than thirty days and shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). A person violating the provisions of subdivision (2) thereof for the second or any subsequent offense, shall be imprisoned for a period of not more than thirty days and the court may, in its discretion, impose a fine of not less than one thousand dollars (\$1,000).
- (c) A person who violates the provisions of subsection (a)(2) of this section shall be taken immediately before a magistrate or court within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense.
- (d) In addition to any other penalties provided by this Traffic Code, a person who drives, operates or is in physical control of a commercial motor vehicle having any measurable alcohol in such person's system or who refuses to take a preliminary breath test to determine such person's blood alcohol content as provided by West Virginia Code 17E-1-15 must be placed out of service for twenty-four hours. (WVaC 17E-1-14)

353.99 PENALTY.

Unless another penalty is provided in this article, whoever violates any provision of this article shall be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000), or imprisoned for not more than thirty days, or both except that for the second violation of Section 353.04, the offender shall be fined not less than five hundred dollars (\$500.00) nor more than two thousand dollars (\$2,000) or imprisoned not more than thirty days, or both. For the third or any subsequent conviction for violation of Section 353.04, the offender shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500), or imprisoned for not more than thirty days, or both. (WVaC 17E-1-25)