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**WEST VIRGINIA
MUNICIPAL LEAGUE**

ANNUAL MUNICIPAL JUDGE TRAINING

Floyd M. Sayre, III, Esq.
October 26, 2021
Charleston, WV

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Agenda

- Welcome - Overview of Training Session
- Session I – Update of law
- Session II - West Virginia Traffic Law (Part I)
- Session III - West Virginia Traffic Law (Part II)
- Session IV – DMV – Administrative hearings
- Session V – Ethics and Municipal Courts
- Session VI – Property Maintenance Violations
- Session VII - Roundtable Discussion and Wrap up

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A WORD OF CAUTION

These materials are presented with the understanding that the information provided is not legal advice. Due to the rapidly changing nature of the law, information contained in this presentation may become outdated. Anyone using information contained in this presentation should always research original sources of authority and update this information to ensure accuracy when dealing with a specific matter. No person should act or rely upon the information contained in this presentation without seeking the advice of an attorney.

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Update of Law

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SB 345

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SB 345

- The expansion of alcohol test and lock program to offenders with a drug-related offense;
- Authorizing the commissioner to require drug testing;
- Authorizing deferral of the revocation period for a participant with a drug offense;

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SB 345

- Authorizing an offender of driving while license suspended or revoked, driving while license revoked for driving under the influence of alcohol, controlled substances, or drugs or while having alcoholic concentration in the blood of eight hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents, to participate in the Motor Vehicle Alcohol and Drug Test And Lock Program

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SB 376

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SB 376

- Every solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.
- No person shall operate or move on any highway any motor vehicle, trailer, or semitrailer having any metal tire in contact with the roadway.

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SB 376

- No tire on a vehicle moved on a highway shall have on its periphery any block, stud, flange, cleat, or spike, or any other protuberance of any material other than rubber which projects beyond the tread of the traction surface of the tire.

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SB 376

- **Except that:**
 - It shall be permissible to use farm machinery with tires having protuberances which will not injure the highway;
 - it shall be permissible to use tire chains of reasonable proportions upon any vehicle when required for safety because of snow, ice, or other conditions tending to cause a vehicle to skid; and
 - it shall be permissible to use studded tires during the period from November 1 of each year until April 15;

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SB 376

- **Except that:**
 - Provided, That in the interest of highway maintenance, no vehicle moved on a highway, other than school buses, shall be equipped with studded tires which are operational with a recommended air pressure greater than 40 pounds per square inch.
 - The Commissioner of the Division of Highways and local authorities in their respective jurisdictions may in their discretion issue special permits

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SB 392

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SB 392

- Modifying the penalty for impersonation of a law-enforcement officer or official by adding a period of possible incarceration as a criminal penalty.
- Shall be fined not less than \$100 nor more than \$1,000, or confined in jail for not more than six months, or both fined and confined.

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HB 2195

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HB 2195

- Requiring all motor vehicle crash reports; requiring the investigating law-enforcement officer, within 24 hours of a motor vehicle crash, to provide the owner, operator, and insurance information for all the involved parties with each of the other involved parties and to each party's respective insurance agents; and information shall be provided without cost.

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HB 3106

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HB 3106

- Relating to bail; increasing the time for a secured bond hearing to 5 days; allowing a bond hearing to be held by any magistrate or judge; and clarifying the bond hearing procedure applies only to misdemeanors.

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HB 4958
2020

19

Plea Payment

- However, if they do not pay or request a payment plan on that day, they have up to 90 days to either pay in full, or to request a payment plan.

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**Failure to Pay or
Request Payment Plan**

- Defendants have 90 days after they plead guilty or no contest, or are found guilty to pay in full all fines, fees, and costs or to request a payment plan.

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**Failure to Pay or
Request Payment Plan**

- If the defendant does not pay or request a payment plan within the 90 days, courts may impose a \$10.00 late fee in addition to the amount owed. This fee will be retained by the court and is not remitted to the state.
- The imposition of the late fee is at the discretion of the court.

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**Failure to Pay or
Request Payment Plan**

- If the defendant has not paid in full or requested a payment plan within 90 days after adjudication of the case, the court must send a notice to the defendant.

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**Failure to Pay or
Request Payment Plan**

- The notice must contain:
 - The defendant’s payment is 90 days past due;
 - The defendant has failed to enroll in a payment plan;
 - A \$10.00 late fee has been assessed, if applicable;
 - Defendant may be the subject of a judgement lien or have their debt sent to a collection agency or both.

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Failure to Pay or Request Payment Plan

- If the defendant does not respond to the notice within 30 days from the date the notice is mailed, the court may file a judgement lien, consign the amount for collection, or do both.

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Payment Plan Administration

- There is a new method for enrolling in a payment plan, for determining payment amounts and number of payments, and options for penalty and collection if the defendant defaults on their plan.

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Payment Plan Administration

- Under the new statute, all defendants must be offered an opportunity to enroll in a payment plan.
- The Defendant must sign an affidavit attesting to the fact that they cannot pay the assessed fines, costs, and fees.

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Payment Plan Administration

- Although the affidavit is required, payment plans are not need based. There is no income threshold below which a person must fall to be able to enroll in a plan and the information contained in the affidavit is to facilitate the calculation of the maximum monthly payment.

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Payment Plan Administration

- When a defendant enrolls in a payment plan, the court shall charge a \$25.00 plan administration fee **in addition to** all other fines, costs, and fees.
- This fee is retained by the municipal court. The \$25.00 plan administration fee may be paid in full at the time of enrollment or divided into no more than five payments.

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Payment Plan Administration

- No payment from the defendant is required when enrolling in a payment plan unless the defendant elects to pay the \$25.00 plan administration fee in whole or in part.

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Payment Plan Administration

- The new statute has implemented a formula for calculating the maximum amount of payments and the number of payments in a plan.
- There is no longer a uniform time limit on the length of payment plans.

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Combining Payment Plans

- Combining payment plans for subsequent offenses
- It is the intention of the legislation that defendants only have one payment plan with any individual court.

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Combining Payment Plans

- The maximum amount of the payment will stay the same if the defendant has not undergone a change in economic circumstances, but the duration of the plan will change according to the new total amount due.

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Combining Payment Plans

- Combined payment plans are only available to defendants who are current with their existing payment plan.
- If the defendant is in arrears with their existing plan, the existing plan must be brought current, including the payment of any late fees, prior to establishing a new combined payment plan.

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Combining Payment Plans

- If the defendant cannot bring the account current, the court should advise the defendant that they have 90 days to remit the entire amount owed to the court, or the amount may be consigned to collection, or be placed as a judgement lien, or both.

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Combining Payment Plans

- If the defendant has undergone a change in economic circumstances that would affect the maximum payment due on the payment plan.
- The court may need to recalculate the maximum payment amount and apply that amount to the recalculated plan.

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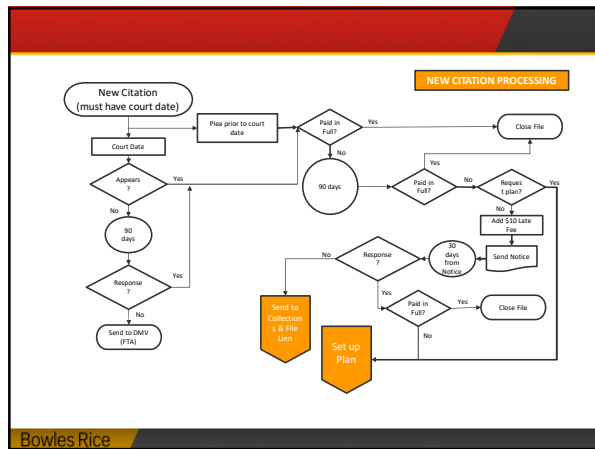
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Combining Payment Plans

- The court may also assess an additional \$25 administration fee for recalculating the payment plan.
- As with the initial fee, the \$25 may be paid in full at the time of recalculation or divided into no more than five payments.

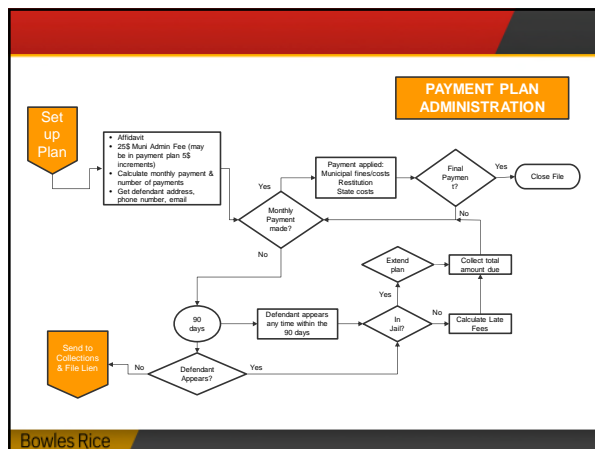
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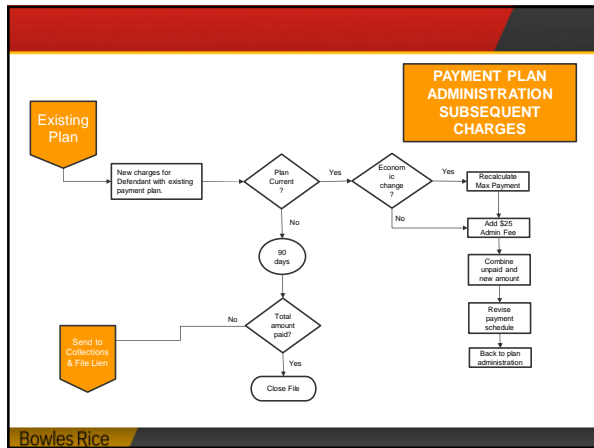
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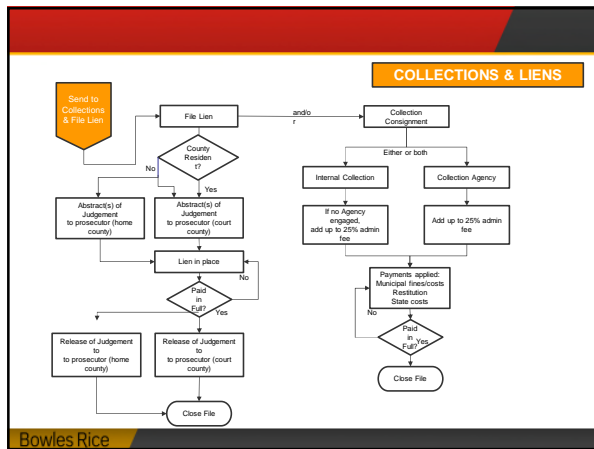


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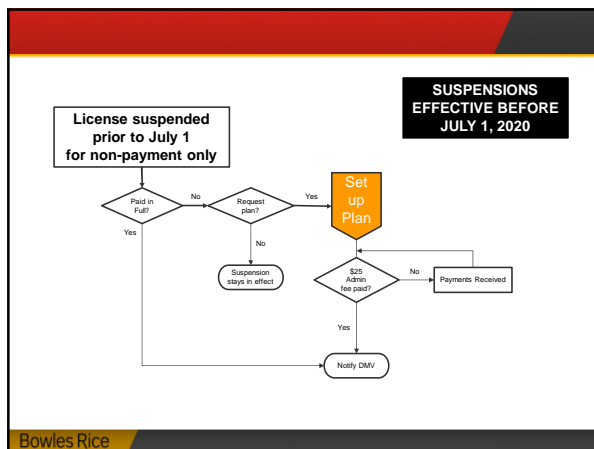
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**WEST VIRGINIA MUNICIPAL
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West Virginia Traffic Law

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All-Terrain Vehicles

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Definitions

- "All-terrain vehicle" or "ATV" means any motor vehicle designed for off-highway use and designed to travel on not less than three low-pressure tires, having a seat or saddle designed to be straddled by the operator and handlebars for steering control and intended by the manufacturer to be used by a single operator or by an operator and no more than one passenger.

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Definitions

- "Utility-terrain vehicle" means any motor vehicle with four or more low-pressure tires designed for off-highway use having bench or bucket seating for each occupant and a steering wheel for control.
- "Motorcycle" means any motor vehicle manufactured with no more than two wheels and having a seat or a saddle for the use of the operator.

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Definitions

- "Off-highway vehicle" means a vehicle intended for off-highway use and includes all-terrain vehicles, utility-terrain vehicles, motorcycles and off-road vehicles;
- "Off-road vehicle" means a vehicle that is suitable for off-road use. It includes a four-wheel drive vehicle such as a Jeep, pickup or sport utility vehicle. It also includes a specially designed, modified or customized off-road vehicle that is of a similar size to a vehicle manufactured for highway use.

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Applicability of Rules of Operation

- Every person operating an all-terrain vehicle upon a public road or highway of this state shall be subject to all of the duties applicable to the driver of a vehicle.

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Applicability of Rules of Operation

- Notwithstanding the provisions of subsection (a)
 - Motor vehicle operator's license is not required of an operator of an all-terrain vehicle when he or she is operating said vehicle except when the operator is under the age of eighteen and is transporting a passenger under the age of eighteen.

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Prohibited Acts

- No all-terrain vehicle may be operated in this state:
 - On any interstate highway except by public safety personnel responding to emergencies;

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Prohibited Acts

- On any road or highway with a center line or more than two lanes except for the purpose of crossing the road, street or highway, if:
 - The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;
 - The vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the highway;

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Prohibited Acts

- On any road or highway with a center line or more than two lanes except for the purpose of crossing the road, street or highway, if:
 - The operator yields his or her right-of-way to all oncoming traffic that constitutes an immediate potential hazard; and
 - Both the headlight and taillight are illuminated when the crossing is made if the vehicle is so equipped;

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Prohibited Acts

- With more than one passenger unless more passengers are allowed under manufacturers' recommendations;
- With a passenger under the age of eighteen, unless the operator has at a minimum a level two intermediate driver's license or its equivalent or is eighteen years of age or older;

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Prohibited Acts

- Unless riders under the age of eighteen are wearing size appropriate protective helmets that meet the current performance
- Anytime from sunset to sunrise without an illuminated headlight or lights and taillights;

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Prohibited Acts

- Without a manufacturer-installed or equivalent spark arrester and a manufacturer-installed or equivalent muffler in proper working order and properly connected to the vehicle's exhaust system;

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Prohibited Acts

- An all-terrain vehicle may be operated upon the shoulder, or as far to the right on the pavement as possible when there is not enough shoulder to safely operate, on any road, street or highway other than an interstate highway for a distance not to exceed ten miles to travel between a residence or lodging and off-road trails, fields and areas of operation, including stops for food, fuel, supplies and restrooms,

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Prohibited Acts

- if:
 - The vehicle is operated at speeds of twenty-five miles per hour or less; and
 - The vehicle is operated at any time from sunset to sunrise the all-terrain vehicle must be equipped with headlights and taillights which must be illuminated.
 - Operation of an all-terrain vehicle in accordance with subsection (b) shall not constitute operation of a motor vehicle on a road or highway of this state as contemplated by the provisions of section seven of this article.

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Prohibited Acts

- Notwithstanding any provision of this chapter to the contrary, a municipality, county or other political subdivision of the state may authorize the operation of all-terrain vehicles on certain specified roads, streets or highways which are marked with centerline pavement markings, other than interstate highways, to allow participation in parades, exhibitions and other special events, in emergencies or for specified purposes.

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Local Government Authority to Regulate

- The governing body of a municipality may regulate in any manner or prohibit, by lawfully enacted ordinance, the operation of all-terrain vehicles upon any street, road or avenue within the municipal corporate limits.

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Local Government Authority to Regulate

- Homeowner associations may petition the county commission of the county in which the area regulated by the homeowner association is located for an ordinance to regulate or prohibit the operation of all-terrain vehicles upon any street, road or avenue within the area regulated by the homeowner association.

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Local Government Authority to Regulate

- County commissions are hereby authorized, upon receipt of a petition authorized by the provisions of this section, to enact an ordinance regulating or prohibiting the operation of all-terrain vehicles.
- The county commission of any county which has in effect and is operating under a countywide comprehensive plan may by lawfully enacted ordinance regulate or prohibit the operation of all-terrain vehicles

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Private Property Exemption

- This article does not apply if the all-terrain vehicle is operated exclusively on lands owned or leased by the vehicle owner or on private lands of others with the owner's permission.

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Traffic Regulations and Laws of the Road

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Failure To Obey Police Officer Or Special Officers

- No person shall willfully fail or refuse to comply with a lawful order or direction of any police officer or designated special officer invested by law with authority to direct, control or regulate traffic.
- No person shall willfully fail or refuse to comply with a lawful order or direction of any designated special officer.

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Traffic Laws Apply To Persons Riding Animals Or Driving Animal-drawn Vehicles

- Every person riding an animal or driving any animal-drawn vehicle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter, except those provisions of this chapter which by their very nature can have no application.

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Powers of Local Authorities

- The provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police powers:

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Powers of Local Authorities

- Regulating the standing or parking of vehicles;
- Regulating traffic by means of police officers or traffic-control devices;
- Regulating or prohibiting processions or assemblages on the highways;
- Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;

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Powers of Local Authorities

- Regulating the speed of vehicles in public parks;
- Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances at such intersection;

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Powers of Local Authorities

- Restricting the use of highways as authorized in section twelve, article seventeen of this chapter;
- Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee;
- Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

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Powers of Local Authorities

- Altering the speed limits as authorized herein;
- Adopting such other traffic regulations as are specifically authorized by this chapter.

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Powers of Local Authorities

- No local authority shall permit any parking on any state highway, or erect or maintain any stop sign or traffic-control device at any location so as to require the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the state road commissioner.

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Obedience To Traffic-control Devices

- The driver of any vehicle shall obey the instructions of any official traffic-control device applicable.
- Any person violating the provisions of this section shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

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Obedience To Traffic-control Devices

- No provision of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person.
- Whenever a particular section does not state that signs are required, such section shall be effective even though no signs are erected or in place.

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Obedience to Traffic-control Instructions

- The driver of any vehicle shall obey the traffic-control instructions of any law-enforcement officer or persons authorized by the commissioner of highways.

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Obedience to Traffic-control Instructions

- Shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

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Traffic Violations In Construction Zones

- Where street or highway construction work is being conducted, signs and other traffic control devices shall be posted giving the location of the work and notifying all motorists as to the speed limit and any other traffic restrictions.

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Traffic Violations In Construction Zones

- Any person who exceeds any posted speed restriction or traffic restriction at a construction site shall be fined not more than \$200.
- Any person who exceeds any posted speed restriction or traffic restriction at a construction site by fifteen miles per hour or more is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$200 or confined in a regional jail not more than twenty days, or both.

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Display of Unauthorized Devices

- No local authority or person shall place, maintain, or display upon or in view of any highway any unauthorized traffic-control device or traffic-control signal, or any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles an official traffic-control device.

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Display of Unauthorized Devices

- No person shall place or maintain nor shall any public authority permit upon any highway any traffic-control device bearing thereon any commercial advertising.
- This shall not be deemed to prohibit the erection upon private property adjacent to highway of signs giving useful directional information and of a type that cannot be mistaken for official signs.

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Display of Unauthorized Devices

- Every such prohibited device, signal, sign or marking is hereby declared to be a public nuisance and the state road commissioner or other authority having jurisdiction over the highway is hereby empowered to remove the same or cause it to be removed without notice.

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Vehicle Crashes

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Crashes Involving Death Or Personal Injuries; Erin's Law

- The driver of any vehicle involved in a crash resulting in the injury to or death of any person shall immediately stop the vehicle at the scene of the crash or as close to the scene as possible and return to and remain at the scene of the crash

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Crashes Involving Death Or Personal Injuries; Erin's Law

- That the driver may leave the scene of the crash as may reasonably be necessary for the purpose of rendering assistance to any person injured in the crash.

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Crashes Involving Death Or Personal Injuries; Erin's Law

- Any driver who is involved in a crash in which another person suffers bodily injury and who intentionally violates this code when he or she knows or has reason to believe that another person has suffered physical injury in said crash is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, confined in jail for not more than one year, or both fined and confined.

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Crashes Involving Damage To Vehicle

- The driver of any vehicle involved in a crash resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such crash or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such crash until he has fulfilled the requirements this article.

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Crashes Involving Damage To Vehicle

- Every such stop shall be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances is guilty of a misdemeanor.

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Duty To Give Information And Render Aid

- The driver of any vehicle involved in a crash resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall, if physically able to do so, provide to the person struck or the driver or occupant of or person attending any vehicle collided with, the following:
 -

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**Duty To Give Information And
Render Aid**

- His or her name, a valid telephone number where he or she may be contacted and the year, make, model and last four digits of the vehicle identification number of the vehicle he or she is driving; and
- Proof of security and financial responsibility or the certificate of insurance, including the name of the insured, the name and contact information of the insurer and insurance policy number.

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**Duty To Give Information And
Render Aid**

- A driver may meet the requirements of this subsection by providing the information required herein to a law-enforcement officer.
- The driver of any vehicle involved in a crash resulting in injury to or death of any person, if physically able to do so, shall render to any person injured in such crash reasonable assistance.

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**Duty Upon Striking Unattended
Vehicle**

- The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle, or

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Duty Upon Striking Unattended Vehicle

- shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances thereof.

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Incorporated City, Town, Etc., May Require Crash Reports

- May by ordinance require that the driver of a vehicle involved in a crash shall file with a designated city department a report of such crash. All such reports shall be for the confidential use of the city department.

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Serious Traffic Offenses

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Driving Under Influence

- Any person who drives a vehicle in this state while he or she is in an impaired state, and such impaired state proximately causes the death of any person, is guilty of a felony.

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Driving Under Influence

- Any person who drives a vehicle in this state while he or she is in an impaired state, and such impaired state proximately causes serious bodily injury to any person other than himself or herself, is guilty of a felony.

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Driving Under Influence

- Any person who drives a vehicle in this state while he or she is in an impaired state, and such impaired state proximately causes a bodily injury to any person other than himself or herself, is guilty of a misdemeanor.
- Upon conviction thereof, shall be confined in jail for not less than one day nor more than one year and shall be fined not less than \$200 nor more than \$1,000.

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Driving Under Influence

- Any person who drives a vehicle on any public highway or private road in this state: while he or she is in an impaired state but has an alcohol concentration in his or her blood of less than fifteen hundredths is guilty of a misdemeanor.
- Shall be confined in jail for up to six months and shall be fined not less than \$100 nor more than \$500.

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Driving Under Influence

- Any person who drives a vehicle on any public highway or private road in this state while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or more, is guilty of a misdemeanor
- Shall be confined in jail for not less than two days nor more than six months, which jail term is to include actual confinement of not less than 24 hours and shall be fined not less than \$200 nor more than \$1,000.

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Driving Under Influence

- Any person who, being a habitual user of narcotic drugs or amphetamines, or any derivative thereof, drives a vehicle on any public highway or private road in this state is guilty of a misdemeanor.
- Shall be confined in jail for not less than one day nor more than six months, which jail term is to include actual confinement of not less than 24 hours and shall be fined not less than \$100 nor more than \$500.

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Driving Under Influence

- Any person who knowingly permits his or her vehicle to be driven on any public highway or private road in this state by any other person who is in an impaired state is guilty of a misdemeanor.
- Shall be confined in jail for not more than six months and shall be fined not less than \$100 nor more than \$500.

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Driving Under Influence

- Any person who knowingly permits his or her vehicle to be driven on any public highway or private road in this state by any other person who is a habitual user of narcotic drugs or amphetamines, or any derivative thereof, is guilty of a misdemeanor.
- Shall be confined in jail for not more than six months and shall be fined not less than \$100 nor more than \$500.

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Driving Under Influence

- Any person under the age of 21 years who drives a vehicle on any public highway or private road in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight.
- Shall be fined not less than \$25 nor more than \$100.

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Driving Under Influence

- Any person who drives a vehicle on any public highway or private road in this state while he or she is in an impaired state and has within the vehicle one or more other persons who are unemancipated minors who have not yet reached their 16th birthday is guilty of a misdemeanor
- Shall be confined in jail for not less than two days nor more than 12 months, and shall be fined not less than \$200 nor more than \$1,000.

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Driving Under Influence

- Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense which offense occurred within the 10-year period immediately preceding the date of arrest in the current proceeding

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Driving Under Influence

- Upon entering the order of conviction for an offense under this section, or the imposition of conditional probation as provided in § 17C-5-2b of this code, the clerk of the court shall immediately transmit the order to the Commissioner of the Division of Motor Vehicles.

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Driving Under Influence – Deferral

- Except as provided in subsection (f) of this section, the court, without entering a judgment of guilt and with the consent of the accused, shall defer further proceedings and impose probation, when:
 - (A) The person pleads to or is found guilty of the offense
 - (B) The person has not previously been convicted of any offense

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Driving Under Influence – Deferral

- The person notifies the court within 30 days of his or her arrest of his or her intention to participate in a deferral pursuant to this section.
- If all the requirements in subdivision (1) of this subsection are met, the court, without entering a judgment of guilt, shall defer further proceedings and place the person on probation.
- successfully completes the Motor Vehicle Alcohol Test and Lock Program

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Driving Under Influence – Deferral

- Participation therein shall be for a period of at least 165 days after a 15-day suspension of his or her license to operate a motor vehicle and shall be completed within one year thereafter.

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Driving Under Influence – Deferral

- Should the defendant fail to complete or be removed from the Motor Vehicle Alcohol Test and Lock Program, the defendant waives the appropriate statute of limitations and the defendant's right to a speedy trial under any applicable federal or state constitutional provisions, statutes, or rules of court during the period of enrollment in the program.

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Driving Under Influence – Deferral

- When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol Test and Lock Program and complied with its conditions, the defendant may move the court for an order dismissing the charges.
- A copy of the motion shall be served on the prosecuting attorney who shall within 30 days after service advise the judge of any objections to the motion

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Driving Under Influence – Deferral

- There may be only one discharge and dismissal under this section with respect to any person.
- No person shall be eligible for dismissal and discharge under this section: if the person holds a commercial driver's license or operates commercial motor vehicles; or if the person has previously had his or her license to operate a motor vehicle revoked for any offense under a municipal ordinance.

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Driving Under Influence – Deferral

- After a period of not less than one year, which shall begin to run immediately upon the expiration of a term of probation imposed upon any person under this section, the person may apply to the court for an order to expunge all official records of his or her arrest, trial, and conviction.

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Driving Under Influence – Deferral

- A person prosecuted for an offense under § 17C-5-2(e) of this code, whose case is disposed of pursuant to the provisions of this section, shall be required to pay the amount of court costs that could be assessed against a person convicted of the offense.
- Payment of such costs may be made a condition of probation.

Bowles Rice

113

Reckless Driving

- Any person who drives any vehicle upon any street or highway, or upon any residential street, or in any parking area in a willful or wanton disregard for the safety of persons or property is guilty of reckless driving.

Bowles Rice

114

Reckless Driving

- Shall be confined in jail for a period of not less than five days nor more than ninety days, or fined not less than twenty-five dollars nor more than five hundred dollars, or both, and
- Upon conviction of a second or subsequent conviction thereof, shall be confined in jail not less than ten days nor more than six months, or fined not less than fifty dollars nor more than one thousand dollars, or both.

Bowles Rice

115

Implied Consent To Test

- Any person who drives a motor vehicle in this state is considered to have given his or her consent by the operation of the motor vehicle to a preliminary breath analysis and a secondary chemical test of either his or her blood or breath to determine the alcohol concentration in his or her blood, or the concentration in the person's body of a controlled substance, drug, or any combination thereof.

Bowles Rice

116

Implied Consent To Test

- A preliminary breath analysis may be administered in whenever a law-enforcement officer has reasonable cause to believe a person has committed an offense by an ordinance of a municipality of this state which has the same elements as an offense described in § 17C-5-2 of this code.

Bowles Rice

117

Implied Consent To Test

- A secondary test of blood or breath is incidental to a lawful arrest and is to be administered at the direction of the arresting law-enforcement officer having probable cause to believe the person has committed an offense by an ordinance of a municipality of this state which has the same elements.

Bowles Rice

118

Implied Consent To Test

- The law-enforcement agency that employs the arresting law-enforcement officer shall designate the secondary tests to be administered. The refusal to submit to a blood test only may not result in the revocation of the arrested person's license to operate a motor vehicle in this state.

Bowles Rice

119

Implied Consent To Test

- Any person to whom a preliminary breath test is administered who is arrested shall be advised verbally and given a written statement advising him or her of the following:
 - That the person's refusal to submit to the secondary chemical test, will result in the revocation of his or her license to operate a motor vehicle for a period of at least 45 days and up to life;

Bowles Rice

120

Implied Consent To Test

- That, if a designated secondary chemical test is taken, the results of the test may be used against him or her in court as evidence
- That, if the person first submits to the requested secondary chemical test, the person has the right to have a test or tests of his or her blood performed

Bowles Rice

121

Implied Consent To Test

- Any law-enforcement officer who has been properly trained in the administration of any secondary chemical test authorized by this article, including, but not limited to, certification by the Bureau for Public Health in the operation of any equipment required for the collection and analysis of a breath sample, may conduct the test at any location in the county wherein the arrest is made.

Bowles Rice

122

Implied Consent To Test

- If the arresting officer lacks proper training in the administration of a secondary chemical test, then any other law-enforcement officer who has received training in the administration of the secondary chemical test to be administered may, upon the request of the arresting law-enforcement officer and in his or her presence, conduct the secondary test.

Bowles Rice

123

Implied Consent To Test

- Only the person actually administering or conducting a test conducted pursuant to this article is competent to testify as to the results and the veracity of the test.

Bowles Rice

124

Implied Consent To Test

- A law-enforcement officer who has reasonable cause to believe that a person has committed an offense relating to the operation of a motorboat, jet ski, or other motorized vessel, shall follow the provisions when administering, or causing to be administered,

Bowles Rice

125

Preliminary Analysis Of Breath To Determine Alcoholic Content Of Blood

- Such breath analysis must be administered as soon as possible after the law-enforcement officer has a reasonable belief that the person has been driving while under the influence of alcohol, controlled substances or drugs.

Bowles Rice

126

Preliminary Analysis Of Breath To Determine Alcoholic Content Of Blood

- Any preliminary breath analysis required under this section must be administered with a device and in a manner approved by the department of health for that purpose.
- The results of a preliminary breath analysis shall be used solely for the purpose of guiding the officer in deciding whether an arrest should be made.

Bowles Rice

127

How Blood Test Administered

- Only a doctor of medicine or osteopathy, or registered nurse, or trained medical technician at the place of his or her employment, acting at the request and direction of the law-enforcement officer, may withdraw blood to determine the alcohol concentration in the blood, or the concentration in the blood of a controlled substance, drug, or any combination thereof.

Bowles Rice

128

How Blood Test Administered

- A nonalcoholic antiseptic shall be used for cleansing the skin prior to venapuncture. The person tested may, at his or her own expense, have a doctor of medicine or osteopathy, or registered nurse, or trained medical technician at the place of his or her employment, of his or her own choosing, administer a chemical test in addition to the test administered at the direction of the law-enforcement officer.

Bowles Rice

129

Refusal To Submit To Tests

- If any person under arrest refuses to submit to a secondary chemical test, the test shall not be given.

Bowles Rice

130

Refusal To Submit To Tests

- Upon requesting that a person submit to the secondary test, the person shall be given the written and verbal warnings
- After the person under arrest is given the required written and verbal warnings, the person shall have the opportunity to submit to, or refuse to submit to, the secondary test.
- A refusal to submit to the secondary test is considered final after 15 minutes have passed since the refusal

Bowles Rice

131

Refusal To Submit To Tests

- Provided, That during the 15 minutes following the refusal, the arresting officers shall permit the person under arrest to revoke his or her refusal and shall provide the person with the opportunity to submit to the test upon request.
- After the 15 minutes have passed following a refusal to submit to the secondary test, the arresting officer has no further duty to provide the person with an opportunity to take the secondary test.

Bowles Rice

132

Refusal To Submit To Tests

- The officer shall, within 48 hours of the refusal, sign and submit to the Commissioner of the Division of Motor Vehicles and the court having jurisdiction over the charge filed against the person.

Bowles Rice

133

Refusal To Submit To Tests

- The written statement that:
 - (1) He or she had probable cause to believe the person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances, or drugs;
 - (2) the person was lawfully placed under arrest for an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances, or drugs;

Bowles Rice

134

Refusal To Submit To Tests

- The written statement that:
 - (3) the person refused to submit to the secondary chemical test, and
 - (4) the person was given the verbal warnings and the written statement.

Bowles Rice

135

Refusal To Submit To Tests

- Any person who is unconscious or who is otherwise in a condition rendering him or her incapable of refusal shall be considered not to have withdrawn his or her consent for a test of his or her blood or breath.
- The test may be administered although the person is not informed that his or her failure to submit to the test will result in the revocation of his or her license to operate a motor vehicle in this state for the period provided for in this section.

Bowles Rice

136

Interpretation And Use Of Chemical Test

- Upon trial for the offense of driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, arising out of acts alleged to have been committed by any person driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, evidence of the amount of alcohol in the person's blood at the time of the arrest or of the acts alleged, as shown by a chemical analysis of his or her blood or breath, is admissible.

Bowles Rice

137

Interpretation And Use Of Chemical Test

- The evidence of the concentration of alcohol in the person's blood at the time of the arrest or the acts alleged gives rise to the following presumptions or has the following effect:
 - Evidence that there was, at that time, five hundredths of one percent or less, by weight, of alcohol in his or her blood, is prima facie evidence that the person was not under the influence of alcohol;

Bowles Rice

138

Interpretation And Use Of Chemical Test

- The evidence of the concentration of alcohol in the person's blood at the time of the arrest or the acts alleged gives rise to the following presumptions or has the following effect:
 - Evidence that there was, at that time, more than five hundredths of one percent and less than eight hundredths of one percent, by weight, of alcohol in the person's blood is relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of alcohol;

Bowles Rice

139

Interpretation And Use Of Chemical Test

- The evidence of the concentration of alcohol in the person's blood at the time of the arrest or the acts alleged gives rise to the following presumptions or has the following effect:
 - Evidence that there was, at that time, eight hundredths of one percent or more, by weight, of alcohol in his or her blood, shall be admitted as prima facie evidence that the person was under the influence of alcohol.

Bowles Rice

140

Interpretation And Use Of Chemical Test

- A chemical analysis of blood for the purpose of determining the controlled substance or drug concentration of a person's blood, must include, but is not limited to, the following drugs or classes of drugs:
 - Marijuana metabolites;
 - Cocaine metabolites;
 - Amphetamines;
 - Opiate metabolites;

Bowles Rice

141

Interpretation And Use Of Chemical Test

- A chemical analysis of blood for the purpose of determining the controlled substance or drug concentration of a person's blood, must include, but is not limited to, the following drugs or classes of drugs:
 - Phencyclidine (PCP);
 - Benzodiazepines;
 - Propoxyphene;
 - Methadone;
 - Barbiturates; and
 - Synthetic narcotics.

Bowles Rice

142

Interpretation And Use Of Chemical Test

- For the purposes of the admissibility of a chemical test under subsection (a):
 - A sample or specimen taken to determine the alcohol concentration of a person's blood, must be taken within two hours from the time of the person's arrest; or
 - For a sample or specimen to determine the controlled substance or drug content of a person's blood, must be taken within four hours of the person's arrest.

Bowles Rice

143

Right To Demand Test

- Any person lawfully arrested for driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs shall have the right to demand that a sample or specimen of his or her blood or breath to determine the alcohol concentration of his or her blood be taken within two hours from and after the time of arrest and a sample or specimen of his or her blood or breath to determine the controlled substance or drug content of his or her blood, be taken within four hours from and after the time of arrest.

Bowles Rice

144

Fees

- A reasonable fee shall be allowed to the person withdrawing a blood sample or administering a urine test at the request and direction of a law-enforcement officer in accordance with the provisions of this article.

Bowles Rice

145

Fees

- If said person is subsequently convicted of such charge, such fee shall be taxed as a part of the costs of the criminal proceeding and shall be paid, into the general fund of said municipality.

Bowles Rice

146

Bowles Rice

Traffic Regulations

147

Open Alcoholic Beverage Container

- It is unlawful for the operator or a passenger of a motor vehicle to consume any alcoholic beverage in the passenger area of a motor vehicle located on a public highway or right-of-way of a public highway in this state.
- It is unlawful for the operator or a passenger of a motor vehicle to knowingly possess any open alcoholic beverage container in the passenger area of any motor vehicle.

Bowles Rice

148

Open Alcoholic Beverage Container

- The provisions of this section are not applicable to a passenger:
 - In the passenger area of a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation including, but not limited to, a bus, taxicab or limousine; or
 - In the living quarters of a motorized or nonmotorized house coach, house trailer, motor home or self-contained camper.

Bowles Rice

149

Open Alcoholic Beverage Container

- A person who violates the provisions of subsection (a) or (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$100.

Bowles Rice

150

Speed Limitations

- No person may drive a vehicle on a highway at a speed greater than is reasonable and prudent under the existing conditions and the actual and potential hazards.
- In every event speed shall be controlled as necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highways in compliance with legal requirements and the duty of all persons to use due care.

Bowles Rice

151

Speed Limitations

- The following speed limits apply:
 - Fifteen miles per hour in a school zone during school recess or while children are going to or leaving school during opening or closing hours.
 - A school zone is all school property, including school grounds and any street or highway abutting the school grounds and extending one hundred twenty-five feet along the street or highway from the school grounds.

Bowles Rice

152

Speed Limitations

- The following speed limits apply:
 - Twenty-five miles per hour in any business or residence district; and
 - Fifty-five miles per hour on open country highways, except as otherwise provided by this chapter
- The speeds set forth in this section may be altered as authorized

Bowles Rice

153

Speed Limitations

- The driver of every vehicle shall, consistent drive at an appropriate reduced speed when:
 - Approaching and crossing an intersection or railway grade crossing,
 - Approaching and going around a curve,
 - Approaching a hill crest,
 - Traveling upon any narrow or winding roadway and
 - When a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

Bowles Rice

154

Speed Limitations

- The speed limit on controlled access highways and interstate highways, where no special hazard exists that requires a lower speed, shall be not less than fifty-five miles per hour

Bowles Rice

155

Speed Limitations

- Shall be fined not more than \$100; upon a second conviction within one year thereafter, shall be fined not more than \$200; and, upon a third or subsequent conviction within two years thereafter, shall be fined not more than \$500:

Bowles Rice

156

Speed Limitations

- If the third or subsequent conviction is based upon a violation of the provisions of this section where the offender exceeded the speed limit by fifteen miles per hour or more, then upon conviction, shall be fined not more than \$500 or confined in jail for not more than six months, or both fined and confined.

Bowles Rice

157

Speed Limitations

- If an owner or driver is arrested under the provisions of this section for the offense of driving above the posted speed limit on a controlled access highway or interstate highway and if the evidence shows that the motor vehicle was being operated at ten miles per hour or less above the speed limit, then, upon conviction thereof, that person shall be fined not more than \$5, plus court costs.

Bowles Rice

158

Speed Limitations

- Any person operating a commercial motor vehicle engaged in the transportation of coal on the coal resource transportation road system shall, upon conviction, be subject to fines in triple the amount.

Bowles Rice

159

Speed Limitations

- If an owner or driver is convicted on a controlled access highway or interstate highway of this state at ten miles per hour or less above the speed limit,
 - The certified abstract of the judgment on the conviction shall not be transmitted to the Division of Motor Vehicles:
 - That the provisions of this subsection do not apply to conviction of owners or drivers who have been issued a commercial driver's license

Bowles Rice

160

Speed Limitations

- If an owner or driver is convicted in another state if the evidence shows that the motor vehicle was being operated at ten miles per hour or less above what would be the maximum speed limit for a comparable controlled access highway or interstate highway in this state, then the conviction shall not be transmitted to the Division of Motor Vehicles or, shall not be recorded by the division.

Bowles Rice

161

Speed Limitations

- That the provisions does not apply to conviction of owners or drivers who have been issued a commercial driver's license as defined in chapter seventeen-e of this code, if the offense was committed while operating a commercial vehicle

Bowles Rice

162

ESTABLISHMENT OF STATE SPEED ZONES

- The state road commissioner shall determine any speed limit.

Bowles Rice

163

When Local Authorities May Alter Speed Limits

- At intersection.- Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that the speed permitted under this chapter at any intersection is greater than is reasonable or safe under the conditions found.

Bowles Rice

164

When Local Authorities May Alter Speed Limits

- Authority to increase twenty-five mile limit.- Local authorities in their respective jurisdictions by where there are no intersections or between widely spaced intersections.

Bowles Rice

165

When Local Authorities May Alter Speed Limits

- Authority to decrease fifty-five mile limit.- Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that the speed is greater than is reasonable or safe under the conditions found to exist

Bowles Rice

166

When Local Authorities May Alter Speed Limits

- Authority to decrease twenty-five mile limit.- A municipality may in its discretion upon local dedicated rights-of-way in a residential district.

Bowles Rice

167

When Local Authorities May Alter Speed Limits

- Alteration of limits on state highways in municipalities.- Alteration of limits on state highways or extensions thereof in a municipality by local authorities shall not be effective until such alteration has been approved by the commissioner of highways.

Bowles Rice

168

Minimum Speed Regulations

- No person shall drive a motor vehicle at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

Bowles Rice

169

Minimum Speed Regulations

- Whenever the commissioner or local authorities within their respective jurisdiction determine on the basis of an engineering and traffic investigation that slow speeds on any part of the highway consistently impede the normal and reasonable movement of traffic, the commissioner or such local authority may determine and declare a minimum speed limit

Bowles Rice

170

Minimum Speed Regulations

- Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction within two years thereafter, shall be fined not more than five hundred dollars.

Bowles Rice

171

Prima Facie Evidence Of Speed

- The speed of a motor vehicle may be proved by evidence obtained by use of any device designed to measure and indicate or record the speed of a moving object by means of microwaves or reflected light, when such evidence is obtained by members of the State Police, by police officers of incorporated municipalities in classes one, two and three

Bowles Rice

172

Prima Facie Evidence Of Speed

- by police officers of incorporated class four municipalities except upon controlled access or partially controlled access highways

Bowles Rice

173

Prima Facie Evidence Of Speed

- The evidence so obtained shall be accepted as prima facie evidence of the speed of the vehicle:
- Provided, That the evidence of speed is obtained and detected by a certified law enforcement officer who has completed training for speed measuring devices.

Bowles Rice

174

Prima Facie Evidence Of Speed

- That the Governor's Committee on Crime, Delinquency and Correction shall, on or before January 1, 2012, establish or certify an eight-hour training and certification program

Bowles Rice

175

Prima Facie Evidence Of Speed

- In order to inform and educate the public generally that speed of motor vehicles operating within the state is being tested by radar or laser mechanisms, the Division of Highways shall locate and place suitable and informative stationary and movable signs at strategic points on and along highways in each county of the state giving notice to the public that such radar or laser mechanisms are in use.

Bowles Rice

176

Prohibition Of The Use Of Traffic Law Photo-monitoring Devices

- "traffic law photo-monitoring device" means an electronic system consisting of a photographic, video, or electronic camera and a means of sensing the presence of a motor vehicle that automatically produces photographs, videotape, or digital images of the vehicle, its operator, or its license plate.
-

Bowles Rice

177

Prohibition Of The Use Of Traffic Law Photo-monitoring Devices

- No police officer may utilize a traffic law photo-monitoring device to determine compliance with, or to detect a violation of, a municipal or county ordinance or any provision of this code that governs or regulates the operation of motor vehicles.

Bowles Rice

178

Prohibition Of The Use Of Traffic Law Photo-monitoring Devices

- A violation of a municipal or county ordinance or any provision of this code that governs or regulates the operation of motor vehicles may not be proved by evidence obtained by the use of a traffic law photo-monitoring device.

Bowles Rice

179

Prohibition Of The Use Of Traffic Law Photo-monitoring Devices

- The provisions of this section do not prohibit the use of any device designed to measure and indicate the speed of a moving object by means of microwaves or reflected light to obtain evidence to prove the speed of a motor vehicle pursuant to section seven of this article.

Bowles Rice

180

Prohibition Of The Use Of Traffic Law Photo-monitoring Devices

- The provisions of this section do not prohibit use of a traffic law photo-monitoring device for any other lawful purposes other than to obtain evidence to prove violations of municipal or county ordinances or any provision of this code governing or regulating the operation of motor vehicles.

Bowles Rice

181

Racing

- The Legislature hereby determines and finds that the racing of motor vehicles on the public streets and highways of this state, whether within or in excess of the lawful speed limit is extremely dangerous to life, limb, and property, and that such racing is an ever-increasing problem.
- It is, therefore, hereby declared to be the public policy of this state to prohibit all forms of such racing.

Bowles Rice

182

Racing

- It is unlawful for any person to engage in, or aid or abet by serving as lookout or timer or in any other capacity whatever, any speed race, as defined herein, on any public street or highway in this state. For the purposes of this subdivision, "speed race" means:

Bowles Rice

183

Racing

- It is unlawful for any person to engage in, or aid or abet by serving as lookout or timer or in any other capacity whatever, any speed race, as defined herein, on any public street or highway in this state.

Bowles Rice

184

Racing

- The operation of a motor vehicle in speed acceleration competition with another motor vehicle or motor vehicles; or
- The operation of a motor vehicle in speed acceleration competition against time; or
- The operation of a motor vehicle in speed competition with another motor vehicle, or motor vehicles where speed exceeds the lawful speed limit.

Bowles Rice

185

Racing

- Any person who violates the provisions of subdivision
 - first offense by a fine of not less than \$50 nor more than \$100;
 - second offense by a fine of not less than \$50 nor more than \$500, or by imprisonment for not less than six days nor more than 60 days, or by both such fine and imprisonment;
 - third and each subsequent offense by a fine of not less than \$100 nor more than \$1000, or by imprisonment for not less than 60 days nor more than four months, or by both such fine and imprisonment.

Bowles Rice

186

Racing

- **The Division of Motor Vehicles shall in addition to the penalties hereinbefore provided, forthwith:**
 - For a first offense, revoke for a period of six months;
 - For a second offense occurring within a two-year period,, for a period of two years; or
 - For a third or any subsequent offense occurring within a five-year period, revoke for a period of five years.

Bowles Rice

187

Special Speed Limitations When Meeting Or Overtaking Waste Service Vehicles

- No person shall drive a motor vehicle and meet or overtake from either direction a stopped waste service vehicle at a speed in excess of fifteen miles per hour.

Bowles Rice

188

Special Speed Limitations When Meeting Or Overtaking Waste Service Vehicles

- For purposes of this section, “waste service vehicle” means any garbage collection vehicle, including a vehicle collecting recyclables or yard waste, which is used for curbside collection, makes frequent stops and is not fully automated.

Bowles Rice

189

Special Speed Limitations When Meeting Or Overtaking Waste Service Vehicles

- The speed limitation set forth in subsection (a) of this section applies only under the following circumstances:
 - The waste service vehicle is identifiable as a waste service vehicle based on the vehicle configuration or markings on the vehicle;
 - The waste service vehicle operator is giving a visual signal by means of a stationary sign to warn of the presence of workers or must use flashing lights as permitted in this code to caution other drivers; and
 - The waste service vehicle is not located on a private driveway, controlled access highway, interstate highway, turnpike or road or highway with a center line and more than two lanes..

Bowles Rice

190

Special Speed Limitations When Meeting Or Overtaking Waste Service Vehicles

- Any person who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$300.
- If the person convicted of violating subsection (a) exceeded the speed limit by fifteen miles per hour or more or caused serious injury or death to a service vehicle worker, then the person shall be fined not less than \$300 nor more than \$1,000 or confined in jail for not more than one year, or both confined and fined.

Bowles Rice

191

Bowles Rice

Operation of Vehicle

192

Driving On Right Side Of Roadway

- Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, **except**
 - When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;
 - When the right half of a roadway is closed to traffic while under construction or repair;

Bowles Rice

193

Driving On Right Side Of Roadway

- Upon all roadways of sufficient width a vehicle shall be driven upon the right half of the roadway, **except**
 - Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon; or
 - Upon a roadway designated and signposted for one-way traffic.

Bowles Rice

194

Driving On Right Side Of Roadway

- Upon all roadways any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb.
- Except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection.

Bowles Rice

195

Driving On Right Side Of Roadway

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

196

Passing Vehicles Proceeding In Opposite Directions

- Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon roadways having width for not more than one line of traffic in each direction each driver shall give to the other at least one half of the main-traveled portion of the roadway as nearly as possible.

Bowles Rice

197

Passing Vehicles Proceeding In Opposite Directions

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

198

**Overtaking And Passing Vehicle Or
Bicycle Proceeding In Same Direction**

- The driver of a vehicle overtaking another vehicle proceeding in the same direction shall give an audible signal and pass to the left of the overtaken vehicle at a safe distance and may not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

Bowles Rice

199

**Overtaking And Passing Vehicle Or
Bicycle Proceeding In Same Direction**

- The driver of a vehicle overtaking a bicycle traveling in the same direction shall pass to the left of the bicycle at a distance of not less than three feet at a careful and reduced speed, and may not again drive to the right side of the roadway until safely clear of the overtaken bicycle.

Bowles Rice

200

**Overtaking And Passing Vehicle Or
Bicycle Proceeding In Same Direction**

- Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and may not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

Bowles Rice

201

Overtaking And Passing Vehicle Or Bicycle Proceeding In Same Direction

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100; upon a second conviction within one year thereafter, shall be fined not more than \$200; and upon a third or subsequent conviction, shall be fined not more than \$500.

Bowles Rice

202

When Overtaking On The Right Is Permitted

- The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:
 - When the vehicle overtaken is making or about to make a left turn;
 - Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction;

Bowles Rice

203

When Overtaking On The Right Is Permitted

- The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:
 - Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

Bowles Rice

204

When Overtaking On The Right Is Permitted

- The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

Bowles Rice

205

Limitations On Overtaking On The Left

- No vehicle shall be driven to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle.

Bowles Rice

206

Limitations On Overtaking On The Left

- In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within one hundred feet of any vehicle approaching from the opposite direction.

Bowles Rice

207

Limitations On Overtaking On The Left

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

208

Further Limitations On Driving To Left Of Center Of Roadway

- No vehicle shall at any time be driven to the left side of the roadway under the following conditions:
 - When approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed
 - When approaching within one hundred feet of or traversing any intersection or railroad grade crossing;
 - When the view is obstructed upon approaching within one hundred feet of any bridge, viaduct, or tunnel.

Bowles Rice

209

Further Limitations On Driving To Left Of Center Of Roadway

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

210

No-Passing Zones

- The commissioner of highways is hereby authorized to determine those portions of any highway where overtaking and passing or driving to the left of the roadway would be especially hazardous and may by appropriate signs or markings on the roadway indicate the beginning and end of such zones.

Bowles Rice

211

No-Passing Zones

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

212

One-Way Roadways And Rotary Traffic Islands

- The commissioner of highways may designate any highway or any separate roadway under its jurisdiction for one-way traffic and shall erect appropriate signs giving notice thereof.

Bowles Rice

213

One-Way Roadways And Rotary Traffic Islands

- Upon a roadway designated and signposted for one-way traffic a vehicle shall be driven only in the direction designated.
- A vehicle passing around a rotary traffic island shall be driven only to the right of such island.

Bowles Rice

214

One-Way Roadways And Rotary Traffic Islands

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

215

Driving On Roadways Laned For Traffic

- Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:
 - A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

Bowles Rice

216

Driving On Roadways Laned For Traffic

- Upon a roadway which is divided into three lanes a vehicle shall not be driven in the center lane which is clearly marked as a left turn lane except in preparation for a left turn or
- where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation.

Bowles Rice

217

Driving On Roadways Laned For Traffic

- Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway and drivers of vehicles shall obey the directions of every such sign.

Bowles Rice

218

Driving On Roadways Laned For Traffic

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

219

Following Too Closely

- The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

Bowles Rice

220

Following Too Closely

- It shall be unlawful for the operator of any motor truck, registered for a gross weight of more than eight thousand pounds, bus, special mobile equipment or any motor vehicle drawing another vehicle operating upon any roadway outside of a business or residence district, to follow within two hundred feet

Bowles Rice

221

Following Too Closely

- Provided, That this provision shall not be construed to
 - prevent overtaking and passing,
 - apply upon any lane specially designated for the use of motor trucks or combinations of vehicles, or within any section of a roadway posted or marked as a "no-passing zone,"
 - apply to any convoy of vehicles of the military service of the United States or of this State and
 - apply to funeral processions.

Bowles Rice

222

Following Too Closely

- Motor vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger.

Bowles Rice

223

Following Too Closely

- This provision shall not apply to
 - funeral processions; or
 - any convoy of vehicles of the military service of the United States or of this State.

Bowles Rice

224

Controlled-Access Roadway

- No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.

Bowles Rice

225

Controlled-Access Roadway

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

226

Right Turns

- Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

Bowles Rice

227

Right Turns

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

228

Left Turns On Two-way Roadways

- At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection
- After entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered.
- Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

Bowles Rice

229

Left Turns On Two-way Roadways

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

230

Left Turns On Other Than Two-way Roadways

- At any intersection where traffic is restricted to one direction on one or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle
- After entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered.

Bowles Rice

231

Left Turns On Other Than Two-way Roadways

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

232

Local Authorities May Specify Different Course For Turns

- Local authorities in their respective jurisdictions may cause markers, buttons, or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this article be traveled by vehicles turning at an intersection, and when markers, buttons or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by such markers, buttons, or signs.

Bowles Rice

233

Turning On Curve Or Crest Of Grade

- No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet.

Bowles Rice

234

Turning On Curve Or Crest Of Grade

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

235

Turning Movements And Required Signals

- No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety.

Bowles Rice

236

Turning Movements And Required Signals

- No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.

Bowles Rice

237

Turning Movements And Required Signals

- A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.

Bowles Rice

238

Turning Movements And Required Signals

- No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

Bowles Rice

239

Turning Movements And Required Signals

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

240

Signals To Be Given By Hand And Arm Or Signal Device

- Any stop or turn signal when required herein shall be given either by means of the hand and arm or by a signal lamp or lamps or mechanical signal device, but when a vehicle is so constructed or loaded that hand-and-arm signal would not be visible both to the front and rear of such vehicle then said signals must be given by such a lamp or lamps or signal device.

Bowles Rice

241

Method Of Giving Hand-and-arm Signals

- All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signals shall indicate as follows:
 - Left turn.--Hand and arm extended horizontally.
 - Right turn.--Hand and arm extended upward.
 - Stop or decrease speed.--Hand and arm extended downward.

Bowles Rice

242

Vehicle Approaching Or Entering Intersection

- The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different highway.
- When two vehicles enter an intersection from a different highway at approximately the same time the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right

Bowles Rice

243

Vehicle Turning Left At Intersection

- The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close

Bowles Rice

244

Vehicle Turning Left At Intersection

- Said driver, having so yielded and having given a signal may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicles making the left turn.

Bowles Rice

245

Vehicle Entering Through Highway Or Stop Intersections

- The driver of a vehicle shall stop at the entrance to a through highway and shall yield the right-of-way to other vehicles which have entered the intersection from said through highways or which are approaching so closely on said through highway as to constitute an immediate hazard but said driver having so yielded may proceed.

Bowles Rice

246

Vehicle Entering Through Highway Or Stop Intersections

- The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.

Bowles Rice

247

Operation Of Vehicles On Approach Of Authorized Emergency Vehicles

- Upon the immediate approach of an authorized emergency vehicle equipped with at least one flashing lighted lamp which is visible under normal atmospheric conditions from a distance of five hundred feet to the front of such vehicle other than a police vehicle when operated as an authorized emergency vehicle, and when the driver is giving audible signal by siren, exhaust whistle, or bell:

Bowles Rice

248

Operation Of Vehicles On Approach Of Authorized Emergency Vehicles

- The driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

Bowles Rice

249

Operation Of Vehicles On Approach Of Authorized Emergency Vehicles

- This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

Bowles Rice

250

Bowles Rice

Bicycles

251

Obedience

- It is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this article.

Bowles Rice

252

Obedience

- The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this chapter.
- These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein.

Bowles Rice

253

Traffic Laws Apply To Persons Riding Bicycles

- Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this chapter.

Bowles Rice

254

Riding On Bicycle Seats; Carrying More Than One Person On Bicycle

- A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto.
- No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

Bowles Rice

255

Clinging To Vehicles

- No person riding upon any bicycle, coaster, roller skates, sled, or toy vehicle shall attach the same or himself to any streetcar or vehicle upon a roadway.

Bowles Rice

256

Riding On Roadways And Bicycle Paths

- Any person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride in the lane marked for bicycle use or,
- if no lane is marked for bicycle use, as close as practicable to the right-hand curb or edge of the roadway **except:**

Bowles Rice

257

Riding On Roadways And Bicycle Paths

- When overtaking and passing another bicycle or vehicle proceeding in the same direction;
- When preparing for a left turn at an intersection or into a private road or driveway; or
- When reasonably necessary to avoid any condition or potential conflict. (b) Any person operating a bicycle upon a one-way roadway with two or more marked traffic lanes may ride as near the left-hand curb or edge of such roadway as practicable.

Bowles Rice

258

Riding On Roadways And Bicycle Paths

- Persons riding bicycles upon a roadway may not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

Bowles Rice

259

Lamps And Other Equipment On Bicycles

- Every bicycle when in use at nighttime shall be equipped with:
 - Lamp on the front which emits a white light visible from a distance of at least five hundred feet to the front
 - Red reflector on the rear of a type approved by the department which shall be visible from all distances from fifty feet to three hundred feet to the rear

Bowles Rice

260

Lamps And Other Equipment On Bicycles

- Every bicycle shall be equipped with a brake that enables the operator to make the braked wheels skid on dry, level and clean pavement.

Bowles Rice

261

Electric Bicycles

- The operator of an electric bicycle has all of the rights and privileges and is subject to all of the duties applicable to the driver of a vehicle
- A person owning or operating an electric bicycle is not subject to code, relating to registration, title, driver's license, and financial responsibility requirements.

Bowles Rice

262

Electric Bicycles

- A person may not tamper with or modify an electric bicycle so as to change the motor-powered speed capability or motor engagement between pedal-assist and throttle-assist types of engagement.
- If a motor on an electric bicycle is modified so that a limit is exceeded, that vehicle is no longer an electric bicycle.

Bowles Rice

263

Electric Bicycles

- The provisions of this subsection are not applicable to a modified electric bicycle operated solely and exclusively on a person's own property.
- An electric bicycle must comply with the equipment and manufacturing requirements for bicycles adopted by the United States Consumer Product Safety Commission (16 C.F.R. Part 1512).

Bowles Rice

264

Electric Bicycles

- The motor on an electric bicycle must disengage or cease to propel the electric bicycle when the operator stops pedaling, or when the operator applies the brakes and stops pedaling.
- A Class 3 electric bicycle must be equipped with a speedometer that displays the speed the electric bicycle is traveling in miles per hour.

Bowles Rice

265

Electric Bicycles

- Electric bicycles operated on public roadways, public bicycle paths, public multiuse paths, and other public rights-of-way where bicycles are permitted to travel are subject to the following restrictions:
 - (1) A Class 1 electric bicycle may be used in places where bicycles are permitted to travel, including, but not limited to, public roadways, public bicycle paths, public multiuse trails, and public single-use trails.

Bowles Rice

266

Electric Bicycles

- A Class 3 electric bicycle may not be operated on a bicycle path, multiuse trail, or single-use trail unless it is within a highway or roadway.
- Provided, That the provisions of this subdivision are not applicable to a bicycle path, multiuse trail, or single-use trail if the municipality, local authority, or governing body of a state agency that has jurisdiction over the bicycle path, multiuse trail, or single-use trail expressly permits that operation.

Bowles Rice

267

Electric Bicycles

- This subsection may not be construed to limit the authority of the owner of a private way or the owner of private property to restrict or allow the operation of electric bicycles on the way or property.

Bowles Rice

268

Electric Bicycles

- Age restrictions related to the operation of electric bicycles are as follows:
 - (1) A person under 16 years of age may not operate a Class 3 electric bicycle;
 - (2) A person under 15 years of age may only be a passenger on a Class 3 electric bicycle, including as a passenger within any attachment to the vehicle designed to transport an additional person, including a child, provided the operator of the electric bicycle is 18 years of age or older; and

Bowles Rice

269

Electric Bicycles

- Age restrictions related to the operation of electric bicycles are as follows:
 - A person under 15 years of age who is an operator or passenger on an electric bicycle shall wear a properly fitted and fastened bicycle helmet, pursuant to the Child Bicycle Safety Act, § 17C-11A-1 et seq. of this code.

Bowles Rice

270

Electric Bicycles

- A person under the influence of alcohol or controlled substances shall not operate a Class 1 or Class 3 electric bicycle.

Bowles Rice

271

Helmet

- It is unlawful for any person under fifteen years of age to operate or be a passenger on a bicycle or any attachment to a bicycle used on a public roadway, public bicycle path or other public right-of-way unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit, fastened securely upon the head with the straps of the helmet.

Bowles Rice

272

Helmet

- It is unlawful for any parent or legal guardian of a person under fifteen years of age to knowingly permit such person to operate or be a passenger on a bicycle or on any attachment to a bicycle used on a public roadway, public bicycle path or other public right-of-way unless at all times when the person is so engaged he or she wears a protective bicycle helmet of good fit, fastened securely upon the head with the straps of the helmet.

Bowles Rice

273

Penalties

- Notwithstanding the provisions of section one, article eighteen of this chapter, any parent or legal guardian violating any requirement set forth in section four of this article shall be fined ten dollars or
- be required to perform two hours in community service related to a child injury prevention program

Bowles Rice

274

Penalties

- No court costs may be assessed to any person violating the requirements of section four of this article.

Bowles Rice

275

Penalties

- In the case of a first violation of section four of this article, the court may waive the fine upon receipt of satisfactory proof that the person has a helmet or purchased or otherwise obtained, a protective bicycle helmet.
- It is an absolute defense to a charge for a violation of this article that a parent or legal guardian is unable to pay for the protective bicycle helmet.

Bowles Rice

276

Stopping

277

Obedience To Signal Indicating Approach Of Train

- Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall not proceed until he can do so safely.

Bowles Rice

278

Obedience To Signal Indicating Approach Of Train

- The foregoing requirements shall apply when:
 - A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train;
 - A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach
 - A railroad train approaching within approximately one thousand five hundred feet of the highway crossing emits a signal audible from such distance

Bowles Rice

279

Obedience To Signal Indicating Approach Of Train

- Any approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

Bowles Rice

280

Obedience To Signal Indicating Approach Of Train

- No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

Bowles Rice

281

Obedience To Signal Indicating Approach Of Train

- Any person failing to comply with the requirements is guilty of a misdemeanor, and, upon conviction thereof,
 - shall be fined one hundred dollars or imprisoned for not more than ten days.
 - The commissioner shall promulgate rules to further penalize those convicted of violating this section by levying three points against the violator's driver's license record

Bowles Rice

282

All Vehicles Must Stop At Certain Railroad Grade

- The state road commission and local authorities with the approval of the state road commission are hereby authorized to designate particularly dangerous highway grade crossings of railroads and to erect stop signs thereat.
- When such stop signs are erected the driver of any vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall proceed only upon exercising due care.

Bowles Rice

283

Certain Vehicles Must Stop At All Railroad Grade

- The driver of a commercial motor vehicle specified in subsection shall not cross a railroad track or tracks at grade unless he or she first: Stops the commercial motor vehicle within fifty feet of, and not closer than fifteen feet to, the tracks;

Bowles Rice

284

Certain Vehicles Must Stop At All Railroad Grade

- Thereafter, listens and looks in each direction along the tracks for an approaching train;
- Ascertains that no train is approaching.
- The driver shall not shift gears while crossing the tracks.

Bowles Rice

285

Certain Vehicles Must Stop At All Railroad Grade

- The following commercial vehicles are required to stop at railroad tracks or tracks at grade:
 - Every bus transporting passengers;
 - Every commercial motor vehicle transporting any quantity of a United States department of transportation defined division 2.3 chlorine;
 - Every commercial motor vehicle which, in accordance with United States department of transportation regulations, is marked or placarded and is required to stop in accordance with 49 C.F.R. part § 392.10(a)(3)(2001).

Bowles Rice

286

Certain Vehicles Must Stop At All Railroad Grade

- The following commercial vehicles are required to stop at railroad tracks or tracks at grade:
 - Every cargo tank motor vehicle loaded or empty, used for the transportation of any hazardous material
 - Every cargo tank motor vehicle transporting a commodity which, at the time of loading, has a temperature above its flashpoint as determined by 49 C.F.R. § 173.120 (2001); and
 - Every cargo tank motor vehicle, whether loaded or empty transporting any commodity exemption in accordance with 49 C.F.R. part § 107 subpart B (2001).

Bowles Rice

287

Certain Vehicles Must Stop At All Railroad Grade

- The following commercial vehicles are required to stop at railroad tracks or tracks at grade:
 - Any vehicle owned by an employer which, in carrying on the employer's business or in carrying employees to and from work, carries more than six employees

Bowles Rice

288

Certain Vehicles Must Stop At All Railroad Grade

- All drivers of commercial motor vehicles not required to stop at railroad tracks may not cross a railroad track or tracks at grade unless he or she first slows the commercial motor vehicle to a speed which will permit the commercial motor vehicle to be stopped before reaching the nearest rail of the railroad crossing and permit exercise of due caution to ascertain that the tracks are clear of an approaching train.

Bowles Rice

289

Certain Vehicles Must Stop At All Railroad Grade

- All drivers of commercial motor vehicles may not proceed to cross a railroad crossing unless there is sufficient space to drive completely through the crossing without stopping and the vehicle has sufficient undercarriage clearance to drive completely through the crossing without stopping.

Bowles Rice

290

Certain Vehicles Must Stop At All Railroad Grade

- No stop need be made at:
 - Any crossing where a police officer, crossing flagger or a traffic-control signal directs traffic to proceed;
 - A streetcar crossing, or railroad tracks used exclusively for industrial switching purposes
 - A railroad grade crossing controlled by a functioning highway traffic signal transmitting a green indication which, or
 - A railroad grade crossing which is marked with a sign indicating that the rail line is out of service.

Bowles Rice

291

Certain Vehicles Must Stop At All Railroad Grade

- Any person driving a vehicle specified in this section or a vehicle that requires a commercial driver's license who fails to comply with the requirements of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined one hundred dollars or imprisoned for not more than ten days: Provided, That if the electric or mechanical signal device is malfunctioning, this subsection shall not apply.

Bowles Rice

292

Vehicles Must Stop At Through Highways; Erection Of Signs

- The state road commission with reference to state highways and local authorities with reference to other highways under their jurisdiction may designate through highways and erect stop signs at specified entrances thereto or may designate any intersection as a stop intersection and erect like signs at one or more entrances to such intersection.

Bowles Rice

293

Vehicles Must Stop At Through Highways; Erection Of Signs

- Every said sign shall bear the word "Stop" in letters not less than six inches in height and such sign shall at nighttime be rendered luminous by steady or flashing internal illumination, or by a fixed floodlight projected on the face of the sign, or by efficient reflecting elements on the face of the sign.

Bowles Rice

294

Vehicles Must Stop At Through Highways; Erection Of Signs

- Every stop sign shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the roadway.

Bowles Rice

295

Vehicles Must Stop At Through Highways; Erection Of Signs

- Every driver approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection or in the event there is no crosswalk shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting highway where the driver has a view of approaching traffic on the intersecting highway

Bowles Rice

296

Stopping Before Emerging From Alley Or Private Driveway

- The driver of a vehicle within a business or residence district emerging from any alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or private driveway, and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

Bowles Rice

297

Stopping Before Emerging From Alley Or Private Driveway

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

298

School Bus

- The driver of a vehicle, upon meeting or overtaking from either direction any school bus which has stopped for the purpose of receiving or discharging any school children, shall stop the vehicle before reaching the school bus when there is in operation on the school bus flashing warning signal lights,

Bowles Rice

299

School Bus

- The driver may not proceed until the school bus resumes motion, or is signaled by the school bus driver to proceed or the visual signals are no longer actuated.
- This section applies wherever the school bus is receiving or discharging children including, but not limited to, any street, highway, parking lot, private road, or driveway.

Bowles Rice

300

School Bus

- Provided, That the driver of a vehicle upon a controlled access highway need not stop upon meeting or passing a school bus which is on a different roadway or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

Bowles Rice

301

School Bus

- Any driver acting in violation of subsection
 - first offense, shall be fined not less than \$500 or more than \$1,000, or confined in jail not more than six months,
 - second violation of subsection (a) of this section, the driver shall be fined not less than \$1,000 nor more than \$1,500, or confined in jail not more than six months, or both fined and confined.
 - third or subsequent violation of subsection (a) of this section, the driver shall be fined \$2,000 and confined not less than 48 hours in jail but not more than six months.

Bowles Rice

302

School Bus

- Where the actual identity of the operator of a motor vehicle is unknown but the license plate number of the motor vehicle is known,
- it may be inferred that the operator was an owner or lessee of the motor vehicle for purposes of the probable cause determination.
- Where there is more than one registered owner or lessee, the inference created by this subsection shall apply to the first listed owner or lessee as found on the motor vehicle registration:

Bowles Rice

303

School Bus

- Provided, That a person charged with a violation, where the sole evidence against the owner or lessee is the presence of the vehicle at the scene at the time of the offense shall only be subject to the applicable fine

Bowles Rice

304

Bowles Rice

Parking

305

Stopping, Standing Or Parking

- Upon any highway, no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the highway when it is practicable to stop, park, or so leave such vehicle off such part of said highway.

Bowles Rice

306

Stopping, Standing Or Parking

- But in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicles shall be available from a distance of two hundred feet in each direction upon such highway.

Bowles Rice

307

Stopping, Standing Or Parking

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

308

Stopping, Standing Or Parking

- This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a highway in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position.

Bowles Rice

309

Stopping, Standing Or Parking Prohibited In Specified Places

- No person shall stop, stand or park a vehicle,, in any of the following places:
 - On a sidewalk;
 - In front of a public or private driveway;
 - Within an intersection;
 - Within fifteen feet of a fire hydrant;
 - In a properly designated fire lane;
 - On a crosswalk;
 - Within twenty feet of a crosswalk at an intersection;

Bowles Rice

310

Stopping, Standing Or Parking Prohibited In Specified Places

- No person shall stop, stand or park a vehicle,, in any of the following places:
 - Within thirty feet upon the approach to any flashing beacon, stop sign or traffic-control signal located at the side of a roadway;
 - Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by signs or markings;

Bowles Rice

311

Stopping, Standing Or Parking Prohibited In Specified Places

- No person shall stop, stand or park a vehicle,, in any of the following places:
 - Within fifty feet of the nearest rail of a railroad crossing;
 - Within twenty feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of the entrance (when properly signposted);
 - Alongside or opposite any street excavation or obstruction when stopping, standing or parking would obstruct traffic;

Bowles Rice

312

Stopping, Standing Or Parking Prohibited In Specified Places

- No person shall stop, stand or park a vehicle,, in any of the following places:
 - On the roadway side of any vehicle stopped or parked at the edge or curb of a street;
 - On any bridge or other elevated structure on a highway or within a highway tunnel;
 - At any place where official signs prohibit stopping;
 - Within twenty feet of any mail receptacle served regularly by a carrier using a motor vehicle for daily deliveries, if the parking interferes with or causes delay in the carrier’s schedule;

Bowles Rice

313

Stopping, Standing Or Parking Prohibited In Specified Places

- No person shall stop, stand or park a vehicle,, in any of the following places:
 - On any controlled-access highway;
 - At any place on any highway where the safety and convenience of the traveling public is thereby endangered;
 - In front of a wheelchair accessible ramp or curb cut which is part of a sidewalk designed for use by the general public when the ramp or curb cut is properly marked with blue paint.

Bowles Rice

314

Stopping, Standing Or Parking Prohibited In Specified Places

- No person shall move a vehicle not lawfully under his or her control into any prohibited area or away from a curb such distance as is unlawful.
- Any person violating the provisions of this section shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

315

Parking

- Except as otherwise provided in this section, every vehicle stopped or parked upon a roadway where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within eighteen inches of the right-hand curb.

Bowles Rice

316

Parking

- Any person violating the provisions, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

317

Parking

- Local authorities may by ordinance permit parking of vehicles with the left-hand wheels adjacent to and within eighteen inches of the left-hand curb of a one-way roadway.

Bowles Rice

318

Parking

- Local authorities may by ordinance permit angle parking on any roadway, except that angle parking shall not be permitted on any federal-aid or state highway unless the division of highways has determined by resolution or order entered in its minutes that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

Bowles Rice

319

Bowles Rice

Miscellaneous

320

Limitations On Backing

- The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic.

Bowles Rice

321

Limitations On Backing

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

322

Obstruction To Driver's View

- No person shall drive a vehicle when it is so loaded as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.

Bowles Rice

323

Obstruction To Driver's View

- No passenger in a vehicle shall ride in such position as to interfere with the driver's or operator's view ahead or to the sides, or to interfere with his or her control
- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

324

Passengers In Seat With Operator

- No more than three persons including the operator shall ride or be permitted by such operator to ride in the seat with the operator of any motor vehicle while said motor vehicle is being operated.

Bowles Rice

325

Passengers In Seat With Operator

- That the limitation of this section shall not apply to a truck cab or truck crew compartment properly designed for the occupancy of four persons including the operator, and so designated on the registration card by the division of motor vehicles.

Bowles Rice

326

Passengers In Seat With Operator

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

327

Passengers On Running Board

- No passenger shall ride, nor shall the operator permit any passenger to ride on the running boards of any motor vehicle while such vehicle is being operated on the streets or highways of this state.

Bowles Rice

328

Passengers On Running Board

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

329

Coasting Prohibited

- The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears of such vehicle in neutral.
- The driver of a commercial motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged.

Bowles Rice

330

Coasting Prohibited

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

331

Following Authorized Emergency

- The driver of any vehicle other than one on official business may not follow any authorized emergency vehicle or closer than five hundred feet or drive into or park such vehicle within the block where such authorized emergency vehicle has stopped in answer to a fire alarm or other emergency.

Bowles Rice

332

Following Authorized Emergency

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

333

Approaching Authorized Emergency Vehicles

- The driver of any vehicle approaching a stationary authorized emergency vehicle, when the authorized emergency vehicle is giving a signal by displaying alternately flashing red, red and white, blue, or red and blue lights or amber or yellow warning lights, **shall**:

Bowles Rice

334

Approaching Authorized Emergency Vehicles

- Any person who violates any subsection of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in the county or regional jail not more than sixty days, or both fined and imprisoned.

Bowles Rice

335

Approaching Authorized Emergency Vehicles

- Proceed with due caution, yield the right-of-way by making a lane change not adjacent to that of the authorized emergency vehicle, if possible with regard to safety and traffic conditions, if on a highway having at least four lanes with not less than two lanes proceeding in the same direction as the approaching vehicle and reduce speed to a safe level for road conditions; or
- Proceed with due caution, reduce the speed of the vehicle, maintaining a safe speed not to exceed fifteen miles per hour on any nondivided highway or street and twenty-five miles per hour on any divided highway depending on road conditions, if changing lanes would be impossible or unsafe.

Bowles Rice

336

Approaching Authorized Emergency Vehicles

- Any person who violates any subsection of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in the county or regional jail not more than sixty days, or both fined and imprisoned.
- If violation of this section results in property damage in addition to any other penalty imposed, driving privileges of the persons causing the property damage shall be suspended for ninety days.

Bowles Rice

337

Approaching Authorized Emergency Vehicles

- If violation of this section results in injury to another person in addition to any other penalty imposed, the driving privileges of the person causing the injury shall be suspended for six months.
- If violation of this section results in the death of another person in addition to any other penalty imposed, the driving privileges of the person causing the death shall be suspended for two years.

Bowles Rice

338

Approaching Authorized Emergency Vehicles

- Any person who violates any provision of this section and while doing so also violates section two, article five of this chapter is guilty of a misdemeanor and, upon conviction thereof, shall, in addition to the penalties set out in section two of said article and this section, be fined not less than one thousand dollars nor more than five thousand dollars, or confined in the county or regional jail for a period not more than six months, or both fined and imprisoned.

Bowles Rice

339

Crossing Fire Hose

- No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street, private driveway, or streetcar track, to be used at any fire or alarm of fire, without the consent of the fire department official in command.

Bowles Rice

340

Crossing Fire Hose

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

341

Putting Glass

- No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, or any other substance likely to injure any person, animal, or vehicle upon such highway.

Bowles Rice

342

Putting Glass

- Any person who drops, or permits to be dropped or thrown, upon any highway any destructive or injurious material shall immediately remove the same or cause it to be removed.
- Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

Bowles Rice

343

Vehicles Parked On Private Property

- It shall be unlawful for any driver of a vehicle to stop, park or leave standing unattended any vehicle on a private road or driveway or on private property without having express or implied permission from the owner, tenant or lessee of such land.

Bowles Rice

344

Vehicles Parked On Private Property

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

345

Vehicles Parked On Private Property

- The owner, of such private road or driveway or private property may move, or have moved, any vehicle stopped, parked or left standing unattended on his or her private road, driveway, or private property as above prohibited without any liability for the cost
- Nor shall he or she be liable to the owner of the vehicle for any damage done to such vehicle in moving it,

Bowles Rice

346

Vehicles Parked On Private Property

- Any person who removes any vehicle under the provisions of this section shall notify the West Virginia state police of such action, and, if such vehicle is removed within a municipality, shall, in addition notify the police department of such municipality.

Bowles Rice

347

Unlawful To Litter From Motor Vehicle

- It is unlawful for any driver or passenger of a motor vehicle or other conveyance to place, deposit, dump, throw or cause to be placed, deposited, dumped or thrown, any litter from a motor vehicle or other conveyance in or upon any public or private highway, road, street or alley; any private property; any public property; or the waters of the state or within one hundred feet of the waters of this state.

Bowles Rice

348

Unlawful To Litter From Motor Vehicle

- In addition to any penalty imposed for littering under the provisions of article fifteen-a, chapter twenty-two of this code, any driver of a motor vehicle or other conveyance convicted of violating this section shall have three points assessed against his or her driver's license.

Bowles Rice

349

Unlawful To Litter From Motor Vehicle

- When there is more than one occupant in a motor vehicle or other conveyance and it cannot be determined which occupant is responsible for violating this section, the driver shall be presumed to be responsible for the violation.

Bowles Rice

350

Prohibited Use of an Electronic Communications Device

- (a) Except as provided in subsection (c) of this section, a person may not drive or operate a motor vehicle on a public street or highway while:
 1. Texting; or
 2. Using a cell phone or other electronic communications device, unless the use is accomplished by hands-free equipment.

Bowles Rice

351

Prohibited Use of an Electronic Communications Device

1. "Cell phone" shall mean a cellular, analog, wireless or digital telephone.
2. "Driving" or "operating a motor vehicle" means operating a motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays, but does not include operating a motor vehicle after the driver has moved the vehicle to the side of, or off, a highway and halted in a location where the vehicle can safely remain stationary.

Bowles Rice

352

Prohibited Use of an Electronic Communications Device

3. "Electronic communication device" means a cell telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, 2-way messaging device, electronic game, or portable computing device.

Bowles Rice

353

Prohibited Use of an Electronic Communications Device

- For the purposes of this section, an "electronic communication device" does not include:
 - A. Voice radios, mobile radios, land mobile radios, commercial mobile radios or two way radios with the capability to transmit and receive voice transmissions utilizing a push-to-talk or press-to-transmit function; or
 - B. Other voice radios used by a law-enforcement officer, an emergency services provider, an employee or agent of public safety organizations, first responders, Amateur Radio Operators (HAM) and school bus operators.

Bowles Rice

354

Prohibited Use of an Electronic Communications Device

- 4. "Engaging in a call" means when a person talks into or listens on an electronic communication device, but shall not include when a person dials or enters a phone number on a pushpad or screen to initiate the call.
- 5. "Hands-free electronic communication device" means an electronic communication device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such electronic communication device, by which a user engages in a call without the use of either hand or both hands.

Bowles Rice

355

Prohibited Use of an Electronic Communications Device

- 6. "Hands-free equipment" means the internal feature or function of a hands-free electronic communication device or the attachment or addition to a hands-free electronic communication device by which a user may engage in a call or text without the use of either hand or both hands.

Bowles Rice

356

Prohibited Use of an Electronic Communications Device

- "Texting" means manually entering alphanumeric text into, or reading text from, an electronic communication device, and includes, but is not limited to, short message service, e-mailing, instant messaging, a command or request to access a World Wide Web page or engaging in any other form of electronic text retrieval or entry, for present or future communication.

Bowles Rice

357

Prohibited Use of an Electronic Communications Device

- For purposes of this section, “texting” does not include the following actions:
 - A. Reading, selecting or entering a telephone number, an extension number, or voicemail retrieval codes and commands into an electronic device by the pressing the device in order to initiate or receive a phone call.

Bowles Rice

358

Prohibited Use of an Electronic Communications Device

- B. Inputting, selecting or reading information on a global positioning system or navigation system; or
- C. Using a device capable of performing multiple functions, including fleet management systems, dispatching devices, smart phones, citizens band radios or music players, for a purpose that is not otherwise prohibited in this section.

Bowles Rice

359

Prohibited Use of an Electronic Communications Device

- 8. “Using a cell phone or other electronic communication device” means holding in a person’s hand or hands an electronic communication device while:
 - A. Viewing or transmitting images or data;
 - B. Playing games;
 - C. Composing, sending, reading, viewing, accessing, browsing, transmitting, saving or retrieving e-mail, text messages or other electronic data; or
 - D. Engaging in a call.

Bowles Rice

360

Prohibited Use of an Electronic Communications Device

Shall not apply to:

1. A law-enforcement officer, a firefighter, an emergency medical technician, a paramedic or the operator of an authorized emergency vehicle in the performance of their official duties;
2. A person using an electronic communication device to report to appropriate authorities a fire, a traffic accident, a serious road hazard, or a medical or hazardous materials emergencies.
3. The activation or deactivation of hands-free equipment or a function of hands-free equipment.

Bowles Rice

361

Prohibited Use of an Electronic Communications Device

- Any person who violates the provisions of subsection (a) of this section is guilty of a traffic offense and, upon conviction thereof, shall for a first offense be fined \$100; for a second offense be fined \$200; and for a third or subsequent offense be fined \$300.

Bowles Rice

362

Sun-Screening

- No person may operate a motor vehicle that is registered or required to be registered in the state on any public highway, road or street that has a sun-screening device on the windshield, the front side wings and side windows adjacent to the right and left of the driver and windows adjacent to the rear of the driver that do not meet the requirements of this section.

Bowles Rice

363

Sun-Screening

- That law-enforcement K-9 and other emergency vehicles that are designed to haul animals, unmarked law-enforcement vehicles primarily used for covert or undercover enforcement and automobiles that have sun-screening devices installed at the factory by the manufacturer are exempt from this requirement.
- No unmarked law-enforcement vehicle, herein exempted, may engage in routine traffic stops.

Bowles Rice

364

Sun-Screening

- A sun-screening device when used in conjunction with the windshield must be nonreflective and may not be red, yellow or amber in color.
- A sun-screening device may be used only along the top of the windshield and may not extend downward beyond the ASI line or more than five inches from the top of the windshield whichever is closer to the top of the windshield.

Bowles Rice

365

Sun-Screening

- A sun-screening device shall be a nonreflective type with reflectivity of not more than twenty percent and have a light transmission of not less than thirty-five percent.
- The side windows behind the driver and the rear most windows that has a light transmission of not less than thirty-five percent and a reflectivity of not more than twenty percent.
- If a sun-screening device is used on glazing behind the driver, one right and one left outside rear view mirror is required

Bowles Rice

366

Sun-Screening

- Each manufacturer shall:
 - (1) Certify to the West Virginia State Police and Division of Motor Vehicles that a sun-screening device used by it is in compliance with the reflectivity and transmittance requirements of this section;
 - Provide a label not to exceed one and one-half square inches in size, and
 - The labeling or marking must be placed in the left lower corner of each glazing surface when facing the vehicle from the outside.

Bowles Rice

367

Sun-Screening

- No person may:
 - Offer for sale or for use any sun-screening product or material for motor vehicle use not in compliance with this section; or
 - Install any sun-screening product or material on vehicles intended for use on public roads without permanently affixing the label specified in this section

Bowles Rice

368

Sun-Screening

- The provisions of this section do not apply, who has an affidavit signed by a physician or an optometrist licensed to practice in this state that states that the person has a physical condition that makes it necessary to equip the motor vehicle with sun-screening material.
- The affidavit must be in the possession of the person so afflicted, or the person's legal guardian, at all times while being transported in the motor vehicle.

Bowles Rice

369

Sun-Screening

- The light transmittance requirement of this section does not apply to windows behind the driver on trucks, buses, trailers, mobile homes and multipurpose passenger vehicles.

Bowles Rice

370

Sun-Screening

- Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$200.

Bowles Rice

371

Video Screens, Video Monitors And Television Receivers In View Of Driver

- No motor vehicle may be operated on a street or highway in this state when equipped with a television receiver, video monitor, television or video screen unless the receiver, screen or monitor is configured so that the moving images are not in view of the operator while the vehicle is in motion.

Bowles Rice

372

Video Screens, Video Monitors And Television Receivers In View Of Driver

- This prohibition does not apply to the following equipment installed in a vehicle:
 - A visual display if it does not show video or television broadcast images in view of the operator while the motor vehicle is in motion;
 - A global positioning device;
 - A mapping display;
 - A visual display used to enhance or supplement the driver's view forward, behind or to the sides of a motor vehicle for the purpose of maneuvering the vehicle;

Bowles Rice

373

Video Screens, Video Monitors And Television Receivers In View Of Driver

- This prohibition does not apply to the following equipment installed in a vehicle:
 - A visual display used to enhance or supplement a driver's view of vehicle occupants; or
 - Television-type receiving equipment used exclusively for safety or traffic engineering information.

Bowles Rice

374

Video Screens, Video Monitors And Television Receivers In View Of Driver

- A television receiver, video monitor, television or video screen or other similar means of visually displaying a television broadcast or video signal is not prohibited if the equipment has an interlock device that, when the motor vehicle is driven, disables the equipment

Bowles Rice

375

Child Passenger Safety Devices

- Every driver who transports a child under the age of eight years in a passenger automobile, van or pickup truck other than one operated for hire shall, provide for the protection of the child by properly placing, maintaining and securing the child in a child passenger safety

Bowles Rice

376

Child Passenger Safety Devices

- That if a child is under the age of eight years and at least four feet nine inches tall, a safety belt shall be sufficient to meet the requirements of this section.
- Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than ten dollars nor more than twenty dollars.

Bowles Rice

377

Child Passenger Safety Devices

- If all seat belts in a vehicle are being used at the time of examination by a law officer and the vehicle contains more passengers than the total number of seat belts or other safety devices as installed in compliance with federal motor vehicle safety standards, the driver may not be considered in violation of this section.

Bowles Rice

378

Alteration of motor vehicles

- No person may operate upon a public highway any motor vehicle registered or required to be registered in this state if it has been modified by alteration of its height from the ground to the extent that its bumpers, measured to any point on the lower edge of the main horizontal bumper bar, exclusive of any bumper guards, do not fall within the limits specified herein for its gross vehicle weight rating category.

Bowles Rice

379

Alteration of motor vehicles

- The front and rear bumper height of motor vehicles whose gross vehicle weight rating is ten thousand pounds or less may be no less than six inches and no more than thirty-one inches.
- If a motor vehicle has a bumper, the bumper must be at least three inches in vertical width, centered on the center line of the motor vehicle and not less than the width of the wheel track distance.

Bowles Rice

380

Alteration of motor vehicles

- The provisions of this subsection do not apply to motor vehicles with a gross vehicle weight rating in excess of ten thousand pounds.

Bowles Rice

381

Alteration of motor vehicles

- The maximum distance between the vehicle body to the vehicle frame may not exceed three inches.
- The distance from the vehicle body to the vehicle frame shall be measured from the vehicle body mount seat to the vehicle frame mount seat:

Bowles Rice

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Alteration of motor vehicles

- Provided, That the maximum distance limitation shall not prohibit a body lift kit up to three inches to be added to the manufacturer's original spacer between the body and the frame.
- No vehicle may be modified to cause the vehicle body or chassis to come in contact with the ground, expose the fuel tank to damage from collision, or cause the wheels to come in contact with the body under normal operation.

Bowles Rice

383

Alteration of motor vehicles

- No part of the original suspension system may be disconnected to defeat the safe operation of the suspension system.
- Modification of the front end suspension by the use of lift blocks is expressly prohibited.

Bowles Rice

384

Alteration of motor vehicles

- Nothing contained in this section prevents the installation of heavy duty equipment, including shock absorbers and overload springs.
- Nothing contained in this section prohibits the operation on a public highway of a motor vehicle with normal wear to the suspension system if such normal wear does not adversely affect the control of the vehicle.

Bowles Rice

385

Alteration of motor vehicles

- This section does not apply to specially designed or modified motor vehicles when operated off the public highways in races and similar events.
- Such motor vehicles may be lawfully towed on the highways of this state.

Bowles Rice

386

Alteration of motor vehicles

- Modifications to motor vehicles, not prohibited herein, shall be made subject to inspection:
 - Modified solely by the installation of tires not larger than two sizes beyond the maximum specified by the manufacturer
 - Any motor vehicle which has been altered from the manufacturer's specification but within the allowable limits

Bowles Rice

387

Alteration of motor vehicles

- Modifications to motor vehicles, not prohibited herein, shall be made subject to inspection:
 - The fee for the modified vehicle stickers will be twenty-five dollars with the division of public safety establishing rules concerning such inspection. Each municipal, county and state law-enforcement agency must record on accident report forms whether a modified vehicle was involved in the accident.

Bowles Rice

388

Bowles Rice

Pedestrians

389

Pedestrian Walk And Wait Signals

- Whenever special pedestrian-control signals exhibiting the words “Walk” or “Wait” are in place such signals shall indicate as follows:
- Walk.- Pedestrians facing such signal may proceed across the roadway.
- Wait.- No pedestrian shall start to cross the roadway in the direction of such signal.

Bowles Rice

390

Pedestrian Walk And Wait Signals

- Any person violating the provisions of this section shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

391

Pedestrians' Right-of-way In Crosswalks

- When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or
- when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

Bowles Rice

392

Pedestrians' Right-of-way In Crosswalks

- No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.
- Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle.

Bowles Rice

393

Crossing At Other Than Crosswalks

- Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

Bowles Rice

394

Crossing At Other Than Crosswalks

- Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

Bowles Rice

395

Crossing At Other Than Crosswalks

- Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

Bowles Rice

396

Pedestrians To Use Right Half Of Crosswalks

- Pedestrians shall move, whenever practicable, upon the right half of crosswalks.

Bowles Rice

397

Pedestrians On Roadways

- Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.
- Where sidewalks are not provided any pedestrian walking along and upon a highway shall when practicable walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction.

Bowles Rice

398

Pedestrians On Roadways

- No person shall stand in a roadway for the purpose of soliciting a ride from the driver of any vehicle.

Bowles Rice

399

Penalty

- Any person violating the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars; upon a second conviction within one year thereafter, shall be fined not more than two hundred dollars; and upon a third or subsequent conviction, shall be fined not more than five hundred dollars.

Bowles Rice

400

Workmen/Workperson

- The driver of a vehicle shall yield the right-of-way to persons engaged in maintenance or construction work on a street or highway whenever he is notified of their presence by an official traffic-control device or flagman.

Bowles Rice

401

Bowles Rice

Procedure upon Arrest

402

Who?

- It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

Bowles Rice

403

Who?

- If the owner of a motor vehicle is present in the vehicle at a time when another driver is operating
 - With defective or improper equipment
 - in violation of the weight, height, length or width
 - improper registration
 - expired vehicle inspection
 - If the owner of the vehicle is not present therein, then the driver shall be cited for any violation enumerated in this section.

Bowles Rice

404

Procedure

- Whenever any person is arrested, they shall be immediately taken before a magistrate or court within the county in which the offense charged is alleged to have been committed in any of the following cases:
 - When a person arrested demands an immediate appearance before a magistrate or court;
 - When the person is arrested upon a charge of negligent homicide;

Bowles Rice

405

Procedure

- When the person is arrested upon a charge of driving while under the influence
- When the person is arrested upon a charge of failure to stop in the event of an accident causing death, personal injury or damage to property;
- When the person arrested is a resident of a state that has not entered into a nonresident violator compact;
- In any other event when the person arrested refuses to accept the written notice to appear in court as his or her promise to appear in court

Bowles Rice

406

Procedure

- To comply with the terms of the written notice to appear in court;
- When a person is arrested for driving with a suspended or revoked driver's license for miscellaneous reasons. Provided, That when a person is arrested for driving with a suspended or revoked driver's license for miscellaneous reasons, the arresting officer may issue a charge by citation if a magistrate or judge is not on duty or reasonably available.

Bowles Rice

407

Person Arrested To Be Given Five Days' Notice To Appear In Court

- Whenever a person is arrested for any violation of this chapter punishable as a misdemeanor, and such person is not immediately taken before court as hereinbefore required, the arresting officer shall prepare written notice to appear in court containing the name and address of such person.

Bowles Rice

408

Person Arrested To Be Given Five Days' Notice To Appear In Court

- The time specified in said notice to appear must be at least five days after such arrest unless the person arrested shall demand an earlier hearing.
- The place specified in said notice to appear must be before a justice or court within the township or county in which the offense charged is alleged to have been committed and who has jurisdiction of such offense.

Bowles Rice

409

Bowles Rice

Insurance

410

Insurance

- At the time of investigation of a motor vehicle offense the officer shall inquire of the operator of any motor vehicle involved the existence upon the vehicle or vehicles of the evidence of insurance.

Bowles Rice

411

Insurance

- A defendant who is charged with a traffic offense that requires an appearance in court shall present the court at the time of his or her appearance or subsequent appearance with proof that the defendant had security at the time of the traffic offenses

Bowles Rice

412

Insurance

- If, as a result of the defendant's failure to show proof, the court determines that the defendant has violated this article, the court shall notify the Division of Motor Vehicles within five days.

Bowles Rice

413

Suspension Or Revocation Of License

- Any owner of a motor vehicle, subject to this article, who fails to have the required security in effect at the time such vehicle is registered or being operated upon the roads or highways shall have his or her driver's license

Bowles Rice

414

Suspension Or Revocation Of License

- Pays a penalty fee of \$200 before the effective date, the driver's license suspension of thirty days may not be imposed and the vehicle registration revocation may not be imposed
- If the motor vehicle is titled and registered in more than one name, the commissioner shall suspend the driver's license of only one of the owners.

Bowles Rice

415

Suspension Or Revocation Of License

- Any person who is not the vehicle owner and is convicted of operating a motor vehicle upon the roads or highways of this state which does not have the security required by this article shall have the conviction placed on his or her driver's license record.

Bowles Rice

416

Suspension Or Revocation Of License

- The division may not suspend or revoke a driver's license under this article for any citation of driving without insurance that is received by the division from a court that is more than one year from the date of the offense.

Bowles Rice

417

Penalty

- Shall be fined not less than two hundred dollars nor more than five thousand dollars, or confined in the county or regional jail not less than fifteen days nor more than one year, or both.

Bowles Rice

418

DMV- Hearings

Bowles Rice

419

Refusal Review Hearing

- For the purposes of this section, the term “refusal review hearing” refers to a hearing to review a person’s alleged refusal to submit to a secondary chemical test, as documented in a statement submitted to the court by a law-enforcement

Bowles Rice

420

Refusal Review Hearing

- The court shall enter an order finding that a person did refuse to submit to a secondary chemical test:

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421

Refusal Review Hearing

- At the person's first appearance before the court, the court shall advise the person that his or her license to operate a motor vehicle shall be revoked for the applicable period unless the person requests a refusal review hearing within the 30 days following the first appearance.

Bowles Rice

422

Refusal Review Hearing

- If the person does not request a refusal review hearing within 30 days following the first appearance, the court shall enter an order finding that a person charged did refuse to submit to a secondary chemical test; and
- If the person requests a refusal review hearing within 30 days following the first appearance, the court shall conduct the review and enter the appropriate order

Bowles Rice

423

Refusal Review Hearing

- Refusal review hearing.
 - The court shall schedule and conduct a refusal review hearing if the person, named in a statement submitted to the court by a law-enforcement officer, requests the hearing within 30 days following his or her first appearance before the court.

Bowles Rice

424

Refusal Review Hearing

- Refusal review hearing.
 - The refusal review hearing, the court shall review the statement documenting the person's refusal to submit to the secondary chemical test, along with any testimony or evidence presented by the person or law-enforcement officer during the hearing.

Bowles Rice

425

Refusal Review Hearing

- Based on the hearing, the court shall enter an order finding that the person did refuse to submit to a secondary chemical test, if the court determines, by a preponderance of the evidence, that:
 - The arresting law-enforcement officer had reasonable grounds to believe the arrested person had committed a violation;

Bowles Rice

426

Refusal Review Hearing

- The law-enforcement officer requested the arrested person to submit to the chemical test or tests;
- At the time the test was requested, the law-enforcement officer administered the required written and verbal warnings; and
- The arrested person refused to submit to the chemical test or tests requested by the law-enforcement officer.

Bowles Rice

427

Refusal Review Hearing

- If the court determines, by a preponderance of the evidence, that one or more of the required conditions listed above did not occur.
- The court shall enter an order finding that the person did not refuse to submit to the secondary chemical test.
- If the court enters such an order, the Commissioner may not revoke the person's license.

Bowles Rice

428

Refusal Review Hearing

- The clerk of the court in which the charges are pending shall immediately transmit any order entered to the Commissioner of the Division of Motor Vehicles.

Bowles Rice

429

Revocation Upon Conviction For Driving Under The Influence Of Alcohol

- The Commissioner of the Division of Motor Vehicles shall revoke or suspend a person's license to operate a motor vehicle in any of the following circumstances:
 - The person is convicted of an offense described in a municipal ordinance which has the same elements as an offense which requires a minimum period of revocation or suspension.

Bowles Rice

430

Revocation Upon Conviction For Driving Under The Influence Of Alcohol

- The person has a term of conditional probation (deferral);
- A court enters an order, finding that the person did refuse to submit to a secondary chemical test; or
- The person is convicted of an offense, appeals the conviction, and the conviction is affirmed by the highest appellate court in which an appeal in the matter is filed.

Bowles Rice

431

Revocation Upon Conviction For Driving Under The Influence Of Alcohol

- If the conviction is the judgment of a mayor or police court judge or municipal court judge, the clerk or recorder shall forward the order and any related transcript when the person convicted has not filed a notice of appeal within 10 days from and after the date upon which the sentence is imposed.

Bowles Rice

432

Bowles Rice

Ethics in Action: The Rules Matter

433

The Proof is in Your Actions

Action indeed is the sole medium of
expression for ethics.

Jane Addams

Bowles Rice

434

What are the Rules [for today] ?

- ***Governmental Ethics Act.*** It covers all state, county, and local officials & employees.

Bowles Rice

435

Einstein on Ethics

A man's ethical behavior should be based effectually on sympathy, education, and social ties; no religious basis is necessary. Man would indeed be in a poor way if he had to be restrained by fear of punishment and hope of reward after death.

Albert Einstein

Bowles Rice

436

Unsolicited Advice

Despite Einstein...

Let the fear of punishment restrain you [if nothing else does].

Bowles Rice

437

Bowles Rice

WV Attorney General

"No showing of bad faith, corruption or evil intent is required under this section, for the conduct proscribed by this statute is unlawful precisely because it is forbidden by statute, not because it is inherently evil, corrupt or immoral."

438

The Governmental Ethics Act
(West Virginia Code as §§ 6B-1-1 *et seq*)



439

Use of Public Office for Private Gain

- A public official or employee may not knowingly and intentionally use his or her office or the prestige of his or her office:
 - For his or her own private gain, or
 - The private gain of another person.
- This rule is not violated by performing the usual and customary duties of the position, or constituent services, without compensation

440

Soliciting Charitable Contributions

- A public official or employee may not solicit any gift except for a charitable purpose with no direct pecuniary benefit to the official or employee or his or her immediate family.
- Nor may an official or employee solicit even a charitable gift from any person who is also an official or employee, and whose position is subordinate to the soliciting official or employee.

441



Gifts

- No official or employee may knowingly accept any gift, directly or indirectly, from any person whom he or she has reason to know.
 - Is doing or seeking to do business of any kind with the public body, or
 - Is engaged in activities that are regulated by the public body, or
 - Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or non-performance of the official's or employee's official duties.

Bowles Rice

442

Gifts

- **Exceptions.** A public official or employee may accept the gifts listed on the next slide **IF** the gifts do not impair the official's or employee's impartiality and independent judgment and the official or employee did not have reason to think that they were offered for those purposes.

Bowles Rice

443

Exceptions



- Meals and beverages
- Ceremonial gifts and awards of insignificant monetary value
- Unsolicited gifts of nominal value or trivial items of informational value
- Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which he or she participates in a panel or speaking engagement

Bowles Rice

444

Exceptions


- Gifts of tickets or free admission extended to an official or employee to attend charitable, cultural or political events, if the purpose of the gift is a courtesy or ceremony customarily extended to the office
- Gifts that are purely private and personal in nature, and
- Gifts from relatives by blood or marriage, or a member of the same household.

Bowles Rice

445

What Amount is Nominal?

In this day and age, what amount is nominal, trivial or insignificant?



Bowles Rice

446

Honoraria

- A public official or elected official may accept a reasonable honorarium within guidelines adopted by the Ethics Commission.
- However, an elected public official may accept an honorarium only when:
 - It is not related to the member's public position or duties; and
 - It is for services provided by the member that are related to his or her regular, nonpublic trade, profession, occupation, hobby or avocation; and
 - It is not provided in exchange for any promise or action on the part of the public official.

Bowles Rice


447

Political Contributions

The rules against using public office for private gain, soliciting charitable contributions, accepting certain gifts and honoraria, and having a financial interest in public body transactions do not themselves prohibit the giving of a lawful political contribution in accordance with other laws

Bowles Rice

448

 **Confidential Information**

- No present or former public official or employee may:
 - Knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties, nor
 - Use such information to further his or her personal interests or the interests of another person.

Bowles Rice

449

Soliciting Private Business

No public official or employee may solicit private Business from a subordinate public official or employee whom he or she has the authority to direct, supervise, or control, except that he or she may solicit private business when:

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450

Soliciting Private Business

- The solicitation is a general one directed to the public at large through a mailing or other distribution of a letter, pamphlet, handbill, circular or other printed media, or
- Is limited to the posting of a notice in a communal work area, or
- Is for the sale of property of a kind that the person is not regularly engaged in selling, or
- Is made at the location of a private business owned or operated by the person to which the subordinate public official or employee has come on his or her own initiative.

Bowles Rice

451

Interests in Public Contracts

The provisions of the Governmental Ethics Act concerning financial conflicts of interest are not as strict as the Pecuniary Interest Statute.

You must follow the stricter standard of the Pecuniary Interest Statute in such instances!

Bowles Rice

452

Interests in Public Contracts

- A public body may enter into certain transactions in which a board or council member or a member of his or her family may have a financial interest, but which are not prohibited by the Pecuniary Interest Statute or the Ethics Act.
- Example: The decision to hire a board member's spouse as a teacher.
- In such cases, the Act requires that the board member in question be "recused" from the matter, meaning that the member must:
 - Not participate in deciding or evaluating the proposition,
 - Not vote on the matter, and
 - Fully disclose the extent of his or her interest in the contract.

Bowles Rice

453

Possible Consequences for Violations

- Public reprimand
- Cease and desist order
- Order of restitution for money, things of value, or services taken or received
- Fine not to exceed \$1,000 per violation
- Removal from office
- Criminal conviction under any applicable criminal statutes, such as West Virginia's laws covering bribery in official matters, unlawful rewarding for past behavior, accepting unlawful gifts, and trading in public office

Bowles Rice

454

Remember...

Let the fear of punishment restrain you.



[if nothing else does]

Bowles Rice

455

EXCUSAL & RECUSAL

Bowles Rice

456

EXCUSAL

- A party has no right, statutory or otherwise, to excuse a municipal judge. This means that no party has the automatic right to disqualify the judge from hearing a case to which that judge has been assigned. If a party asks the judge to excuse him or herself, the judge should inform the party that excusal is not allowed in municipal court. However, when judges feel that they should not hear a case, recusal is the method by which they remove themselves.

Bowles Rice

457

RECUSAL

- **Grounds for Disqualification and Recusal**
 - The Code of Judicial Conduct states that a judge is disqualified and must recuse him or herself in any proceeding in which the “judge’s impartiality might reasonably be questioned.”

Bowles Rice

458

RECUSAL

- Some of the circumstances described in the Code for when a judge must recuse him or herself are listed in the following slides. However, under the Code, a judge is disqualified whenever the judge’s impartiality might reasonably be questioned, even if the judge’s situation does not fall within any of the listed circumstances.

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459

RECUSAL

- A judge must recuse him or herself from a case when any of the following circumstances apply:
 - The judge has a personal bias or prejudice concerning a party or a party's lawyer.

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460

RECUSAL

- The judge has personal knowledge of disputed evidentiary facts concerning the case.
- The judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to either (a) an issue in the proceeding; or (b) the controversy in the proceeding.

Bowles Rice

461

RECUSAL

- The judge knows that the judge or the judge's spouse, parent or child, or any other family member residing in the judge's household, has one of the following:
 - A financial interest in the subject matter in controversy.
 - A financial interest in a party to the case.
 - Any other significant interest that could be substantially affected by the outcome of the case.

Bowles Rice

462

RECUSAL

- The judge or the judge's spouse, or any person related to them within the third degree, or the spouse of any of those related people, meets one of the following:
 - Is a party to the case, or is an officer, director or trustee of a party.
 - Is acting as a lawyer in the case.
 - Is known by the judge to have a significant interest that could be substantially affected by the outcome of the case.
 - Is to the judge's knowledge likely to be a material witness in the case.

Bowles Rice

463

RECUSAL

- Judges are required to use reasonable efforts to keep informed about their own personal and fiduciary financial interests and the personal financial interests of their spouse and minor children residing in the household.

Bowles Rice

464

RECUSAL

- A judge who is disqualified for any reason other than personal bias or prejudice concerning a party can disclose this fact on the record and ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification.

Bowles Rice

465

RECUSAL

- The judge will be permitted to hear the case only if all the parties and their lawyers, without participation by the judge, agree in writing that the judge should not be disqualified. The agreement must be incorporated in the record of the proceeding. Without unanimous written agreement by all the parties and their lawyers, the judge remains disqualified and must recuse him or herself from the case.

Bowles Rice

466

**Dilapidated Buildings
On the Spot Citation Power
Registration**

Bowles Rice

467

**Immediately Issue Citations
For External Sanitation Violations
and Common Nuisances**

- The City will enact an ordinance providing its code enforcement officers the authority to issue “on the spot” citations for certain violations.

Bowles Rice

468

Immediately Issue Citations For External Sanitation Violations and Common Nuisances

- This citation power will extend to sanitation, drainage, sidewalks in disrepair, high weeds, grass, or both, graffiti, exterior garbage accumulation, open storage in residential districts, and nonresident recreational vehicles.

Bowles Rice

469

Immediately Issue Citations For External Sanitation Violations and Common Nuisances

- These citations may be issued to the owner, lessee, sublessee, tenant, occupant, or agent or manager thereof, presently having control over the property in question.

Bowles Rice

470

Liens for Actions Taken in Regard to Eyesores and Dilapidated Buildings

- The City will enact an ordinance permitting it to, after due notice, repair, alter, or demolish property, mow overgrown grass, and collect unlawful accumulations of garbage and rubbish and, without court approval, place a lien on the property for the amount expended by the City in taking such action.

Bowles Rice

471

Committee Substitute for SB 631

Bowles Rice

472

Committee Substitute for SB 631

- Relating generally to municipal ordinances and procedures;
- Creating a procedure for misdemeanor prosecutions of violations of municipal ordinances;
- Providing for the designation of enforcement agencies;

Bowles Rice

473

Committee Substitute for SB 631

- Providing a procedure for code enforcement agency officials to enter premises for investigation or inspection of a structure, dwelling or building;
- Granting plenary power to the governing body of every municipality to adopt an ordinance providing for the vacating, closing, removal or demolition of specific dwellings, structures or buildings by a municipality in the absence of owner agreement or court order

Bowles Rice

474

Committee Substitute for SB 631

- Providing for notice to the owner of the right to apply to the circuit court for a temporary injunction or other similar relief;
- Requiring a hearing to be held within twenty days if the owner makes such application to the circuit court;
- Requiring an owner to pay a bond into court if the owner seeks a continuance of the hearing seeking a temporary injunction or other similar relief

Bowles Rice

475

Committee Substitute for SB 631

- Allowing for the disbursement of moneys paid into court by an owner if a court finds that the property is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare;
- Permitting a governing body of a municipality to file a lien against the real property for an amount that reflects all costs incurred by a municipality for repairing, altering or improving, or of vacating and closing, removing or demolishing any dwelling or building;

Bowles Rice

476

Committee Substitute for SB 631

- Permitting a municipality to institute a civil action in circuit court against a landowner or other responsible party to obtain an order to take corrective action up to and including demolition of any structure, dwelling or building that is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare
- Permitting a municipality to recover all reasonable costs and expenses incurred by the municipality

Bowles Rice

477

Committee Substitute for SB 631

- Providing for service of notices of violations;
- Providing for a procedure to prosecute ordinances adopted under the section pertaining to regulating the repair, alteration, improvement, closing, demolition, etc., of structures, dwelling or buildings that are unsafe, unsanitary, dangerous or detrimental to the public safety or welfare.

Bowles Rice

478

§8-12-13. Building regulation; general and special codes; state building code.

- (a) The governing body of every municipality shall have plenary power and authority by ordinance or a code of ordinances to:
 - (1) Regulate the erection, construction, repair or alteration of structures of every kind within the corporate limits of the municipality, prohibit, within specified territorial limits, the erection, construction, repair or alteration of structures of wood or other combustible material, and regulate excavations upon private property;

Bowles Rice

479

§8-12-13. Building regulation; general and special codes; state building code.

- (2) Regulate electric wiring by prescribing minimum specifications to be followed in the installation, alteration or repair thereof; and
- (3) Regulate plumbing by prescribing the minimum specifications to be followed in the installation, alteration or repair of plumbing, including equipment, water and sewer pipe, traps, drains, cesspools and septic tanks.
- (b)....If the municipality votes to adopt a building code, it must be the state building code

Bowles Rice

480

§8-12-13. Building regulation; general and special codes; state building code.

- (d) Any misdemeanor prosecution of a violation of an ordinance adopted under this section before a municipal judge or other municipal official lawfully authorized to hear and determine violations of municipal code shall be initiated by a complaint presented to and sworn or affirmed before a municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code

Bowles Rice

481

§8-12-13. Building regulation; general and special codes; state building code.

- The presentation and oath or affirmation shall be made by a code enforcement department official or municipal attorney showing reason to have reliable information and belief.
- If the municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code finds probable cause, the complaint becomes the charging instrument initiating a criminal proceeding.

Bowles Rice

482

§8-12-13. Building regulation; general and special codes; state building code.

- A complaint shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that personal service of a summons and complaint may be made by a code enforcement department official.

Bowles Rice

483

§8-12-13. Building regulation; general and special codes; state building code.

- If service is made by certified mail and delivery of the summons and complaint is refused, the code enforcement department official, promptly upon the receipt of the notice of the refusal, shall mail to the person or entity being noticed, by first class mail, postage prepaid, a copy of the summons and complaint.

Bowles Rice

484

§8-12-13. Building regulation; general and special codes; state building code.

- If the first class mailing is not returned as undeliverable by the U. S. Postal Service, service of the summons and complaint is presumed to have been effectuated.
- Upon service of the summons and complaint consistent with this subsection, the violation may be prosecuted consistent with state and local law.

Bowles Rice

485

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (1) “Code enforcement agency” means either a code enforcement department as defined by 87 CSR 7-2, as may be amended, or an enforcement agency as permitted by subsection (c) of this section.
 - (2) “Code enforcement agency official” means any lawful agent of a code enforcement agency. officio members of the enforcement agency.

Bowles Rice

486

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (3) “Owner” or “landowner” means a person who individually or jointly with others:
 - (A) Has legal title to the property, with or without actual possession of the property;
 - (B) Has charge, care or control of the property as owner or agent of the owner;
 - (C) Is an executor, administrator, trustee or guardian of the estate of the owner;
 - (D) Is the agent of the owner for the purpose of managing, controlling or collecting rents; or
 - (E) May control or direct the management or disposition of

Bowles Rice

487

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (4) “Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare” means:
 - (A) Any door, aisle, passageway, stairway, exit or other means of egress that does not conform to the approved building or fire code related to the requirements for existing buildings;
 - (B) The walking surface of any aisle, passageway, stairway, exit or other means of egress is so warped, worn loose, torn or otherwise unsafe as to not provide safe and adequate means of egress;

Bowles Rice

488

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (4) “Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare” means:
 - (C) Any portion of a dwelling, building, structure or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism or by any other cause to an extent that it is likely to partially or completely collapse, or to become detached or dislodged;
 - (D) Any portion of a structure or building, or any member, appurtenance or ornamentation on the exterior that is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the original designed

Bowles Rice

489

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (4) “Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare” means:
 - (E) The dwelling, building or structure, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the building or structure is likely to fail or give way;
 - (F) The dwelling, building or structure, or any portion, is clearly unsafe for its use;

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490

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (4) “Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare” means:
 - (G) The dwelling, building or structure is neglected, damaged, dilapidated, unsecured or abandoned so as to become an attractive nuisance to children, becomes a harbor for vagrants, criminals, criminal activity or enables persons to resort to the dwelling, building or structure for committing a nuisance or an unlawful act;

Bowles Rice

491

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (4) “Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare” means:
 - (H) Any dwelling, building or structure constructed, exists or maintained in violation of any specific requirement or prohibition applicable to any dwelling, building or structure provided by the approved building or fire code of the jurisdiction or of any law or ordinance that presents either a substantial risk of fire, building collapse or any other threat to life and safety;

Bowles Rice

492

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (4) “Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare” means:
 - (I) A dwelling, building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, contamination by any hazardous substance or material including, but not limited to, substance resulting from the illegal manufacture of drugs, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical or plumbing system, or otherwise, is determined by the code enforcement agency to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease:

Bowles Rice

493

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (4) “Unsafe, unsanitary, dangerous or detrimental to the public safety or welfare” means:
 - (J) Any dwelling, building or structure, because of a lack of sufficient or proper fire resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system or other cause, is determined by the code official to be a threat to life or health; or
 - (K) Any portion of a building that remains on a site after the demolition or destruction of the building or structure, or whenever any building or structure is abandoned.

Bowles Rice

494

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (a) (b) Plenary power and authority are hereby conferred upon every municipality to adopt ordinances.
 - (b) (c) The governing body in formally adopting the ordinances any ordinance shall designate the enforcement agency, which shall consist of the mayor, the municipal engineer or building inspector and one member at large, to be selected by and to serve at the will and pleasure of the mayor. The ranking health officer and fire chief shall serve as ex

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495

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - Any municipality that has not adopted the state building code may designate an enforcement agency consisting of the mayor, the municipal engineer or building inspector and one member at large, to be selected by and to serve at the will and pleasure of the mayor, and the ranking health officer and fire chief who shall serve as ex officio members of the enforcement agency.

Bowles Rice

496

§8-12-16. Ordinances

- (a) For the purposes of this section:
 - (c) (d) Any ordinance adopted pursuant to under the provisions of this section must provide fair and equitable rules of procedure
 - Provided, That any entrance upon premises for the purpose of making examinations is made in a manner as to cause the least possible inconvenience to the persons in possession. corrective action taken by the code enforcement agency.

Bowles Rice

497

§8-12-16. Ordinances

- (e) When a code enforcement agency official enters the premises of the property for investigating or inspecting any structure, dwelling or building, the investigation shall be performed to minimize the inconvenience to the owner or persons in possession and shall be consistent with the following:
 - (1) Except in exigent circumstances and as permitted by law, the enforcement agency shall provide reasonable advance notice to the owner and request

Bowles Rice

498

§8-12-16. Ordinances

- (e) (2) If the owner cannot be located after reasonable inquiry by the code enforcement agency as required by this section, or if the owner refuses entry, the code enforcement agency may obtain an administrative search warrant from either the municipal court or the magistrate court located in the jurisdiction of the municipality or county where the structure, dwelling or building is located.

Bowles Rice

499

§8-12-16. Ordinances

- (e) (2) ..Before obtaining an administrative search warrant, a code enforcement agency official is required to make a sworn statement and prima facie case showing that the code enforcement agency was unable to gain access to the structure, dwelling or building after reasonable and good faith efforts, and that there is a legitimate and substantial safety concern involving the structure, dwelling or building that supports the requested entry.

Bowles Rice

500

§8-12-16. Ordinances

- (e) (3) If granted by the court, and if the owner can be located, the code enforcement agency shall provide the owner a copy of the administrative search warrant five days before entering the property. If applicable, the code enforcement agency shall also provide the same notice to any tenant or other person in possession of the structure, dwelling or building.

Bowles Rice

501

§8-12-16. Ordinances

– (e)(4) Entry is for the sole purpose of inspection of the structure, dwelling or building for unsafe or unsanitary conditions and not for the purpose of criminal prosecution or gathering evidence for use in any criminal charge or proceeding unrelated to the unsafe or unsanitary condition of the structure, dwelling or building.

Bowles Rice

502

§8-12-16. Ordinances

- (f) The governing body of every municipality has plenary power and authority to adopt an ordinance providing for the vacating, closing, removal or demolition of any dwelling, structure or building by the municipality in the absence of owner agreement or court order:
- Provided, That the ordinance requires the code enforcement agency to provide lawful notice to and undertake reasonable efforts to seek agreement from the owner before taking any action permitted by this section and shall comply with the requirements set forth in this subsection:

Bowles Rice

503

§8-12-16. Ordinances

- (1) Any ordinance adopted under this subsection applies only to dwellings, structures or buildings which meet the definition of unsafe, unsanitary, dangerous or detrimental to the public safety or
- Provided, That the dwelling, building or structure is vacant, abandoned or has been lawfully declared unfit for human habitation; and the reasonable estimated cost of repair, rehabilitation or corrective action exceeds the fair market value of the dwelling, building or structure.

Bowles Rice

504

§8-12-16. Ordinances

- (2) Any ordinance adopted under this subsection must provide for the following:
 - (A) The code enforcement agency shall produce a written notice containing the date of the last inspection, the name of the inspector, a reasonable description of the unsafe, unsanitary, dangerous, or detrimental condition(s), the corrective measures required, the allotted time to correct the substandard condition(s) and the allotted time the owner has to apply to the circuit court for a temporary injunction or other similar relief restraining action by the enforcement agency.

Bowles Rice

505

§8-12-16. Ordinances

- (2) Any ordinance adopted under this subsection must provide for the following:
 - (B) The notice shall be served upon the owner or landowner by conspicuously posting and attaching a copy of the notice to the subject property, and by serving the notice on the owner or landowner in the same manner as service of a complaint as set forth in subsection (j) of this section.

Bowles Rice

506

§8-12-16. Ordinances

- (2) Any ordinance adopted under this subsection must provide for the following:
 - (C) If the code enforcement agency cannot effect personal service on the owner, a code enforcement agency official shall subscribe a written affidavit, to be maintained for a minimum of two years, that demonstrates the structure, dwelling or building falls within one of the categories set forth above
 - memorializes the code enforcement agency official's efforts to contact or get permission for entry and corrective action from the owner;

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507

§8-12-16. Ordinances

- (2) Any ordinance adopted under this subsection must provide for the following:
 - (C) the code enforcement agency shall publish notice of its intent to enter the property for the purpose of demolition or correction, along with the address of the property, the name of the owner(s) and the date of the proposed action, as a Class II legal advertisement, the first of which shall run at least thirty days before the date of the proposed action by the enforcement agency, and the last being no later than twenty days before the date of the proposed action by the enforcement agency.

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- (2) Any ordinance adopted under this subsection must provide for the following:
 - (D) If there is no response to the notice by the owner or landowner in the time specified in the notice, then the municipality shall have the authority to proceed in correction or demolition of the subject dwelling, building or structure.

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§8-12-16. Ordinances

- (3) It shall be an absolute defense to any civil action by an owner, landowner or tenant for damages resulting from the closure, demolition or other corrective action taken by a municipality under this section: Provided, That the municipality acted in good faith, can demonstrate that the structure, dwelling or building falls within one of the categories set forth above and the municipality followed the procedures set forth in this subsection and the municipality had adopted the state building code at the time of the closure, demolition or other corrective action occurred.

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§8-12-16. Ordinances

- (4) Any ordinance adopted under this subsection must also provide for notice to the owner of the right of the owner to apply to the circuit court for a temporary injunction or other similar relief restraining correction or demolition by the enforcement agency. If the application is made by the owner, a hearing shall be had within twenty days of the application, or as soon as reasonably possible.

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§8-12-16. Ordinances

- (4) (A) Continuances of the hearing provided for in this subdivision may be made for cause only. If a continuance is granted upon request by the owner, the owner is required to pay into court, in the form of a bond, any reasonable and necessary costs related to the property likely to be incurred by the municipality during the continuance.
- (4)(B) At the conclusion of a hearing held under this subdivision, if the court finds that the property is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, the court shall make and enter an order granting the relief as requested by the municipality. The court may disburse any moneys paid into court by the owner in accordance with this section.

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§8-12-16. Ordinances

- (g) The governing body of every municipality has plenary power and authority to adopt an ordinance requiring the owner or owners of any dwelling or building under determination of the State Fire Marshal, or under order of the code enforcement agency of the municipality, to pay for the costs of repairing, altering or improving, or of vacating and closing, removing or demolishing any dwelling or building and may file a lien against the real property in question for an amount that reflects all costs incurred by the municipality for repairing, altering or improving, or of vacating and closing, removing or demolishing any dwelling or building.

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§8-12-16. Ordinances

▪ (h) Every municipality may also institute a civil action in circuit court against the landowner or other responsible party to get an order to take corrective action up to and including demolition of any structure, dwelling or building that is unsafe, unsanitary, dangerous or detrimental to the public safety or welfare; and to recover all reasonable costs and expenses incurred by the municipality with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action;

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§8-12-16. Ordinances

▪ (h) (1) No fewer than ten days before instituting a civil action as provided in this subsection, the governing body of the municipality shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the governing body's intention to institute such action.

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▪ (h) (2) The notice shall be sent to the most recent address of the landowner of record in the office of the assessor of the county where the subject property is located and to any other address for the landowner as may exist on record with the municipality. If, for any reason, such certified mail is returned without evidence of proper receipt thereof, then in such event, the governing body municipality shall resend the notice(s) by first class mail, postage prepaid, cause a Class III-0 legal advertisement to be published in a newspaper of general circulation in the county wherein the subject property is located and shall also post notice on the front door or other conspicuous location on the subject property.

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§8-12-16. Ordinances

▪ (i) To the extent not otherwise authorized by state law, all notices of violation or correction for violations that do not fall within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section issued by the enforcement agency of a municipality that has adopted the state building code shall be served in accordance with the process set forth in the state building code.

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§8-12-16. Ordinances

▪ (i) ...All notices of violation or correction orders for violations that do not fall within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section issued by a code enforcement agency of a municipality that has not adopted the state building code shall be served in accordance with the law of this state concerning the service of process in civil actions, except that personal service may be made by a code enforcement agency official

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§8-12-16. Ordinances

▪ (i) ...and the method of service effectuated by mail by the clerk of a court as permitted by Rule 4(d)(1)(D) of the West Virginia Rules of Civil Procedure is effectuated by mailing by a code enforcement agency official and shall be posted in a conspicuous place on the property that is the subject of the notice of violation or correction.

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§8-12-16. Ordinances

- (j) Any violation of an ordinance adopted under this section, may be initiated by a complaint presented to and sworn or affirmed before a municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code in the municipality where the offense is alleged to have occurred.

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§8-12-16. Ordinances

- (j) ...Unless otherwise provided by statute, the presentation and oath or affirmation shall be made by a code enforcement agency official or municipal attorney showing reason to have reliable information and belief. If from the facts stated in the complaint the municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code finds probable cause, the complaint becomes the charging instrument initiating a criminal proceeding.

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§8-12-16. Ordinances

- (j) ...A complaint lawfully authorized by this subsection along with a summons setting forth the date, time and place of appearance before a municipal judge and or other municipal official with lawful authority to hear and determine violations of municipal code shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that personal service of a summons and complaint may be made by a code enforcement agency official.

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§8-12-16. Ordinances

▪ (j) ...A complaint lawfully authorized by this subsection along with a summons setting forth the date, time and place of appearance before a municipal judge and or other municipal official with lawful authority to hear and determine violations of municipal code shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that personal service of a summons and complaint may be made by a code enforcement agency official. If service is made by certified mail under Rule 4(d)(1)(D) of the West Virginia Rules of Civil

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▪ (j) ...Procedure and delivery of the summons and complaint is refused, the code enforcement agency official, promptly upon the receipt of the notice of the refusal, shall mail to the person or entity being noticed, by first class mail, postage prepaid, a copy of the summons and complaint. If the first class mailing is not returned as undeliverable by the U. S. Postal Service, service of the summons and complaint is presumed to have been effectuated. Upon service of the summons and complaint consistent with this subsection, the violation may be prosecuted consistent with state and local law.

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Thank You!

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