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OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA

**WEST VIRGINIA LEGISLATURE**  
**REGULAR SESSION, 1976**



**ENROLLED**

**SENATE BILL NO. 144**

(By Mr. Phillips & Mr. Hinder)



PASSED March 4, 1976

In Effect ninety days from Passage

FILED IN THE OFFICE OF  
SECRETARY OF STATE OF  
WEST VIRGINIA

THIS DATE 3/10/76

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# **ENROLLED**

## **Senate Bill No. 144**

(By MR. WILLIS and MR. HINKLE)

[Passed March 1, 1976; in effect ninety days from passage.]

AN ACT to amend and reenact section two, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to making it an offense for any person to drive any vehicle in this state while under the combined influence of alcohol and any controlled substance or any other drug to a degree which renders him incapable of safely driving; making it an offense for the owner of any vehicle to knowingly permit his vehicle to be driven in this state by any other person who is a habitual user of or under the influence of any controlled substance or who is under the influence of any other drug to a degree which renders him incapable of safely driving or who is under the combined influence of alcohol and any controlled substance or any other drug to a degree which renders him incapable of safely driving; granting a person convicted for the first offense of driving a vehicle in this state while under the influence of alcohol or while a habitual user of or under the influence of a controlled substance or other drugs or combinations thereof which renders him incapable of safely driving or of having permitted another person to drive his vehicle in this state while such person was under the influence of such substances in the same manner and to the same degree the option to attend an alcohol and drug counter-measure school conducted under the jurisdiction and supervision of the department of mental health with advice and consultation from the department of public safety; providing that a person who elects to attend the school may be issued a temporary operator's or chauffeur's license which he may use for certain limited purposes; providing for restoration of such person's operator's or

chauffeur's license upon completion of the six-month revocation period without any limitation as to use; authorizing the division of alcoholism and drug abuse of the department of mental health to collect from each offender who attends an alcohol and drug countermeasure school a fee not to exceed fifty dollars to pay the administrative costs thereof; and setting forth the procedures to be followed in the implementation and administration of such provisions of law.

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

That section two, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

**§17C-5-2. Driving under influence of alcohol, controlled substances or drugs.**

1 (a) It is unlawful and punishable as provided in sub-  
2 sections (c), (d) and (e) of this section for any person  
3 to drive any vehicle in this state while:

4 (1) He is under the influence of alcohol;

5 (2) He is a habitual user of or under the influence of  
6 any controlled substance or he is under the influence of  
7 any other drug to a degree which renders him incapable  
8 of safely driving; or

9 (3) He is under the combined influence of alcohol and  
10 any controlled substance or any other drug to a degree  
11 which renders him incapable of safely driving.

12 The fact that any person charged with a violation of  
13 subsection (a) or (b) of this section is or has been legally  
14 entitled to use alcohol, a controlled substance or a drug  
15 shall not constitute a defense against any charge of  
16 violating subsection (a) or (b) of this section.

17 For purposes of this section, the term "controlled  
18 substance" shall have the meaning ascribed to it in chap-  
19 ter sixty-a of this code.

20 (b) It is unlawful and punishable as provided in sub-  
21 sections (c), (d) and (e) of this section for the owner  
22 of any vehicle to knowingly permit his vehicle to be

23 driven in this state by any other person who is under  
24 the influence of alcohol, or who is a habitual user of or  
25 under the influence of any controlled substance or who  
26 is under the influence of any other drug to a degree or  
27 in the manner set forth in subdivisions (1), (2) and (3)  
28 of subsection (a) of this section.

29 (c) A person violating any provisions of subsection  
30 (a) or (b) of this section shall, for the first offense, be  
31 guilty of a misdemeanor, and, upon conviction thereof,  
32 shall be imprisoned in the county jail for a period of  
33 not less than twenty-four hours nor more than six months  
34 and, in addition to such mandatory jail sentence, such  
35 person may be fined not less than fifty nor more than  
36 one hundred dollars; and, in every case of such conviction,  
37 such convicted person's operator's or chauffeur's  
38 license shall be revoked for a period of six months. The  
39 court which convicted such person shall require him to  
40 surrender his operator's or chauffeur's license to it and  
41 the court shall cause such license and a certified abstract  
42 of the judgment on such conviction to be sent to the  
43 department as provided in section four, article three,  
44 chapter seventeen-b of this code.

45 A person convicted for a first offense under subsection  
46 (a) or (b) of this section and if the records of the department  
47 do not disclose that he had been previously  
48 convicted for such an offense shall be granted the option  
49 to attend an alcohol and drug countermeasure school  
50 conducted under the jurisdiction and supervision of the  
51 division of alcoholism and drug abuse of the department  
52 of mental health. Such person who elects to attend the  
53 school shall have a temporary operator's or chauffeur's  
54 license issued to him by the department upon it receiving  
55 certification from the division of alcoholism and drug  
56 abuse of the department of mental health that the person  
57 is enrolled in a course of instruction in the school. Any  
58 person who is issued such temporary operator's or chauffeur's  
59 license may use it only for the limited purpose of  
60 driving to and from the school and to and from his  
61 regular place of education or employment, or both, and  
62 to drive any vehicle required as a necessary part of his  
63 employment. If any person who has been issued such

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64 temporary operator's or chauffeur's license fails to attend  
65 any session of an alcohol and drug countermeasure school  
66 in which he is enrolled without proper reason or excuse,  
67 the division of alcoholism and drug abuse of the depart-  
68 ment of mental health shall promptly notify the depart-  
69 ment and the department shall revoke that person's  
70 temporary operator's or chauffeur's license immedi-  
71 ately.

72 Such person shall have his operator's or chauffeur's  
73 license restored to him by the department upon the ex-  
74 piration of the six-month period for which his operator's  
75 or chauffeur's license was revoked, without any limitation  
76 as to use, upon his compliance with all applicable re-  
77 quirements of state law and the rules and regulations  
78 promulgated thereunder by the commissioner.

79 A person convicted for a first offense under subsection  
80 (a) or (b) of this section shall receive written notifica-  
81 tion from the department of the provisions of this section  
82 and complete information regarding the revocation and  
83 restoration of his operator's or chauffeur's license and the  
84 alcohol and drug countermeasure school.

85 At the time a person is convicted for a first offense  
86 under subsection (a) or (b) of this section, the court  
87 shall inform the division of alcoholism and drug abuse  
88 of the department of mental health of such conviction  
89 and the division shall notify the person of when and  
90 where he can enroll and attend an alcohol and drug  
91 countermeasure school.

92 Alcohol and drug countermeasure schools shall be con-  
93 ducted in accordance with rules and regulations promul-  
94 gated by the director of the department of mental health  
95 in accordance with the provisions of chapter twenty-  
96 nine-a of this code. In promulgating such rules and regu-  
97 lations, the director shall establish and publish a curric-  
98 ulum to be applied uniformly throughout the state for  
99 the course taught in such schools to persons convicted  
100 for a first offense under subsection (a) or (b) of this  
101 section which shall consist of not less than twenty hours  
102 of instruction and training to be conducted during a  
103 period not to exceed six months. The department of  
104 public safety shall advise and consult with the division

105 of alcoholism and drug abuse of the department of mental  
106 health regarding the manner in which the schools are  
107 conducted and the curriculum of such course. The divi-  
108 sion of alcoholism and drug abuse of the department of  
109 mental health is hereby authorized to collect from each  
110 such convicted person who attends an alcohol and drug  
111 countermeasure school it conducts a fee not to exceed  
112 fifty dollars. All such fees shall be deposited in the state  
113 treasury in a special fund to be used only to pay admin-  
114 istrative costs necessarily incurred in providing such  
115 schools.

116 (d) A person violating any provision of subsection  
117 (a) or (b) of this section shall, for the second offense  
118 occurring within a five-year period, be guilty of a mis-  
119 demeanor, and, upon conviction thereof, shall be im-  
120 prisoned in the county jail for a period of not less than  
121 six months nor more than one year, which sentence shall  
122 not be subject to probation; and whenever the records  
123 of the department disclose that a conviction is the second  
124 such conviction of such person within a period of five  
125 years for a violation of subsection (a) or (b) of this  
126 section, his operator's or chauffeur's license shall be re-  
127 voked by the commissioner for a period of ten years,  
128 unless it is restored by the department as hereinafter  
129 provided. Whenever the commissioner, after full investi-  
130 gation, shall find that the character of any person who  
131 was convicted of a second offense under subsection  
132 (a) or (b) of this section and the circumstances at the  
133 time indicate that he is not likely to repeat his offense  
134 again and that the public good does not require that his  
135 license be longer revoked, the commissioner may if it  
136 is deemed advisable restore such license at any time more  
137 than five years after the date on which it was revoked.

138 (e) A person violating any provision of subsection  
139 (a) or (b) of this section shall, for the third or any  
140 subsequent offense occurring within a five-year period,  
141 be guilty of a felony, and, upon conviction thereof, shall  
142 be imprisoned in the penitentiary for not less than one  
143 nor more than three years; and whenever the records of  
144 the department disclose that a conviction is the third  
145 such or any subsequent conviction of such person within

146 a period of five years for a violation of subsection (a) or  
147 (b) of this section, his operator's or chauffeur's license  
148 shall be revoked by the commissioner for a period of  
149 ten years and indefinitely thereafter unless it is restored  
150 by the department as hereinafter provided. Whenever  
151 the commissioner, after full investigation, shall find that  
152 the character of any person who was convicted of a third  
153 or subsequent offense under subsection (a) or (b) of  
154 this section and the circumstances at the time indicate  
155 that he is not likely to repeat his offense again and the  
156 public good does not require that his license be longer  
157 revoked, the commissioner may if it is deemed advisable  
158 restore such license at any time more than ten years  
159 after the date on which it was revoked.

160 The discretionary power herein conferred may be  
161 exercised by the commissioner and the department with  
162 respect to the restoring of licenses revoked because of  
163 convictions prior to the passage hereof.



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

*James L. Davis*  
Chairman Senate Committee

*Clarence C. Christensen*  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*J. C. DeLong*  
Clerk of the Senate

*C. Blankenship*  
Clerk of the House of Delegates

*W. T. Brantley*  
President of the Senate

*Lewis N. W. Harris*  
Speaker House of Delegates

The within *approved* this the *9th*  
day of *March*, 1976

*Anna Shaw*  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/3/76

Time 5:05 a.m.