WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

ENROLLED
SENATE BILL NO. 711-S

(By Mr. Boettner, Mr. Ask, et al.)

PASSED ____________ April 11, ______ 1981

In Effect _____________ September 1, 1981
ENROLLED

Senate Bill No. 711-S

(By Mr. Boettner, Mr. Ash, Ms. Chace, Mr. Heck, Mr. Holliday, Mr. McCune and Mr. White)

[Passed April 11, 1981; in effect September 1, 1981.]

AN ACT to repeal sections four, five, six, seven and eight, article five-a, and article five-b, chapter seventeen-c; to amend and reenact sections seven and eight, article two, and sections five, eight and nine, article three, chapter seventeen-b; to amend and reenact section two, article five, and to further amend said article by adding thereto eight new sections, designated sections two-a, four, five, six, seven, eight, nine and ten; to amend and reenact sections one, two, three and four, article five-a, chapter seventeen-c; to amend article six, chapter sixty by adding thereto a new section, designated section twenty-four, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to driving a motor vehicle under the influence of alcohol, controlled substances or drugs generally; requiring that applicants for a license to operate a motor vehicle shall be tested on their knowledge of the effects of alcohol upon persons and the dangers of driving a motor vehicle while under the influence of alcohol; prescribing the form and content of a license to operate a motor vehicle and requiring licenses to be marked so as to indicate past violations resulting in suspension; setting forth the grounds for mandatory revocation of licenses upon conviction of certain offenses; placing limitations on the period of suspension; providing for the surrender and return of licenses and the willful refusal to return a license and fees in connection therewith; defining criminal offenses involving driving a motor vehicle while under the influence of alcohol, controlled substances or drugs and setting forth the penalties therefor;
providing for implied consent to blood alcohol tests and the administration of such tests; defining the term "law-enforcement officer"; prescribing how preliminary breath analysis to be administered and how the results thereof are to be used; describing how blood tests are administered, and granting immunities to persons administering tests; permitting persons to refuse to take tests upon being warned of penalties for refusal; providing administrative penalties for refusal and allowing right to hearing before suspension; setting forth hearing procedure; providing for judicial review of suspension based on refusal to submit to tests; providing for the interpretation and use of chemical tests and describing presumptions arising from such tests; granting person arrested the right to demand test; allowing fee for withdrawing blood sample and permitting recovery of fee upon conviction; providing for implied consent to administrative procedures dealing with suspension and revocation of licenses; allowing temporary suspension and subsequent revocation of license; setting forth hearing procedures; defining the scope of the hearing; providing for findings to be made prior to revocation of license; providing for order of suspension and judicial review of the same; establishing a safety and treatment program for persons violating article; providing a procedure for reissuance of revoked license; requiring commissioner to report prior offenses to police officer submitting report of violations; establishing penalties to be imposed on officer or commissioner for failure to file affidavits or mail reports within time periods prescribed; requirement for posting informational sign in establishments selling alcoholic beverages or nonintoxicating beer.

Be it enacted by the Legislature of West Virginia:
That sections four, five, six, seven and eight, article five-a, and article five-b, chapter seventeen-c be repealed; that sections seven and eight, article two, and sections five, eight and nine, article three, chapter seventeen-b be amended and reenacted; that section two, article five, chapter seventeen-c be amended and reenacted, and that said article be further amended by adding thereto eight new sections, designated sections two-a, four, five, six, seven, eight, nine and ten; and that sections one, two, three and four, article five-a, chapter seventeen-c be amended and reenacted; and that article six, chapter sixty be amended by adding thereto a new section, designated section twenty-four, all to read as follows:
CHAPTER 17B. MOTOR VEHICLE OPERATOR'S AND
CHAUFFEUR'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND
RENEWAL.

§17B-2-7. Examination of applicants.
1 (a) Upon the exhibiting by the applicant under the age of
2 eighteen years, of his or her birth certificate, or a certified
3 copy thereof, as evidence that the applicant is of lawful age,
4 the department of public safety shall examine every applicant
5 for a license to operate a motor vehicle in this state, except as
6 otherwise provided in this section. Such examination shall
7 include a test of the applicant's eyesight, his ability to read
8 and understand highway signs regulating, warning, and
9 directing traffic, his knowledge of the traffic laws of this state,
10 his knowledge of the effects of alcohol upon persons and the
11 dangers of driving a motor vehicle under the influence of
12 alcohol, and shall include an actual demonstration of ability
13 to exercise ordinary and reasonable control in the operation
14 of a motor vehicle, and such further physical and mental
15 examination as the department of motor vehicles deems
16 necessary to determine the applicant's fitness to operate a
17 motor vehicle safely upon the highways.
18 (b) The commissioner shall adopt and promulgate
19 regulations concerning the examination of applicants for
20 licenses and the qualifications required of such applicants,
21 and the examination of such applicants by the department of
22 public safety shall be in accordance with such regulations.
23 Such regulations shall provide for the viewing of educational
24 material or films on the effects of alcohol upon persons and
25 the dangers of driving a motor vehicle while under the
26 influence of alcohol.

§17B-2-8. Issuance and contents of licenses; license fees.
1 On and after the first day of January, one thousand nine
2 hundred eighty-two, the department shall, upon payment of
3 the required fee, issue to every applicant qualifying therefor
4 an operator's or chauffeur's license which license shall
5 contain a coded number assigned to the licensee, the full
6 name, date of birth, residence address, a brief description and
7 a color photograph of the licensee and either a facsimile of the
8 signature of the licensee or a space upon which the signature
9 of the licensee shall be written with pen and ink immediately
10 upon receipt of the license. No license shall be valid until it
has been so signed by the licensee. The department shall use such process or processes in the issuance of licenses that will, insofar as possible, prevent any alteration, counterfeiting, duplication, reproduction, forging, or modification of, or the superimposition of a photograph on, such license. The color photograph shall be contained on all licenses issued on and after the first day of January, one thousand nine hundred eighty-two, and upon every such license issued under the provisions of section twelve of this article.

The fee for the issuance of an operator's license shall be ten dollars. The fee for the issuance of a chauffeur's license shall be fifteen dollars.

The department of motor vehicles shall mark any license which is reissued following a suspension of a person's license to operate a motor vehicle in this state with the type of violation for which the original license was suspended and shall indicate the date of the violation. For purposes of this section, any conviction under the provisions of subsections (a) and (b) of the prior enactment of section two, article five, chapter seventeen-c of this code which offense was committed within a period of five years immediately preceding the effective date of the present section two, article five, chapter seventeen-c, shall be treated as a violation to which this section is applicable and suspensions based on such convictions shall be marked on licenses which are hereafter reissuued.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-5. Grounds for mandatory revocation of license by department.

The department shall forthwith revoke the license of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses, when such conviction has become final:

1. Manslaughter or negligent homicide resulting from the operation of a motor vehicle;
2. Any felony in the commission of which a motor vehicle is used;
3. Failure to stop and render aid as required under the laws of this state in the event of involvement in a motor vehicle accident resulting in the death or personal injury of another;
(4) Perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;
(5) Conviction, or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of twenty-four months;
(6) Nothing herein shall prohibit the department from exercising its authority to revoke or suspend a person's license to drive a motor vehicle in this state as provided in article seventeen-c of this chapter.

§17B-3-8. Period of suspension or revocation.
The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one year, except as provided in chapter seventeen-c of this code.

§17B-3-9. Surrender and return of license; willful refusal to return; additional fee for reinstatement.
The department upon suspending or revoking a license shall require that such license shall be surrendered to and be retained by the department, except that at the end of the period of suspension such license so surrendered shall be returned to the licensee: Provided, That, before such license may be reinstated, the licensee shall pay a fee of fifteen dollars, in addition to all other fees and charges, which fee shall be collected by the department and deposited in a special revolving fund to be appropriated to the department for use in the enforcement of the provisions of this section. If any person shall willfully fail to return to the department such suspended or revoked license, the commissioner shall forthwith notify the superintendent of the department of public safety who shall, without delay, secure possession thereof and return same to the department. Said superintendent of the department of public safety shall make a report in writing to the commissioner, within two weeks after being so notified by the commissioner, as to the result of his efforts to secure the possession and return of such license. For each license which shall have been suspended or revoked and which the holder thereof shall have willfully failed to return to the department within ten days from the time that such suspension or revocation becomes effective and which
shall have been certified to the superintendent of the
department of public safety as aforesaid, the holder thereof,
before the same may be reinstituted, in addition to all other fees
and charges, shall pay a fee of fifteen dollars, which shall be
collected by the department of motor vehicles and paid into
the state treasury and credited to the general fund to be
appropriated to the department of public safety for
application in the enforcement of the road laws.

CHAPTER 17C. TRAFFIC REGULATIONS AND
LAWS OF THE ROAD.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled
substances or drugs; penalties.
1 (a) Any person who, while under the influence of alcohol,
or under the influence of any controlled substance, or under
the influence of any other drug to a degree which renders him
incapable of safely driving, or under the combined influence
of alcohol and any controlled substance or any other drug to a
degree which renders him incapable of safely driving, drives
a vehicle in this state, and when so driving does any act
forbidden by law or fails to perform any duty imposed by law
in the driving of such vehicle, which act or failure
proximately causes the death of any person within one year
next following such act or failure, if such act or failure be
committed in reckless disregard of the safety of others, and if
the influence of alcohol, controlled substances or drugs is
shown to be a contributing cause to the death, shall be guilty
of a felony, and upon conviction thereof shall be confined in
the penitentiary for not less than one nor more than three
years and shall be fined not less than one thousand dollars.
(b) Any person who, while under the influence of alcohol,
or under the influence of any controlled substance, or under
the influence of any other drug to a degree which renders him
incapable of safely driving, or under the combined influence
of alcohol and any controlled substance or any other drug to a
degree which renders him incapable of safely driving, drives
a vehicle in this state, and when so driving does any act
forbidden by law or neglects any duty imposed by law in the
driving of such vehicle, which act or neglect proximately
causes the death of any person within one year next following
such act, shall be guilty of a misdemeanor, and upon
conviction thereof shall be confined in the county jail for not
less than ninety days nor more than one year and shall be
fined not less than five hundred dollars nor more than one
dozen dollars.
(c) Any person who, while under the influence of alcohol,
or under the influence of any controlled substance, or under
the influence of any other drug to a degree which renders him
incapable of safely driving, or under the combined influence
of alcohol and any controlled substance or any other drug to a
degree which renders him incapable of safely driving, drives
a vehicle in this state, and when so driving does any act
forbidden by law or neglects any duty imposed by law in the
driving of such vehicle, which act or neglect proximately
causes bodily injury to any person other than himself, shall be
guilty of a misdemeanor, and upon conviction thereof shall be
confined in the county jail for a period of not less than one
day nor more than one year, which jail term shall include
actual confinement of not less than twenty-four hours, and
shall be fined not less than two hundred dollars nor more
than one thousand dollars.
(d) Any person who, while under the influence of alcohol,
or under the influence of any controlled substance, or under
the influence of any other drug to a degree which renders him
incapable of safely driving, or under the combined influence
of alcohol and any controlled substance or any other drug to a
degree which renders him incapable of safely driving, drives
a vehicle in this state, shall be guilty of a misdemeanor, and
upon conviction thereof shall be confined in the county jail
for a period of not less than one day nor more than six
months, which jail term shall include actual confinement of
not less than twenty-four hours, and shall be fined not less
than one hundred dollars nor more than five hundred dollars.
(e) Any person who, being an habitual user of narcotic
drugs or amphetamine or any derivative thereof, drives a
vehicle in this state, shall be guilty of a misdemeanor, and
upon conviction thereof shall be confined in the county jail
for not more than six months.
(f) Any person who knowingly permits his vehicle to be
driven in this state by any other person who is under the
influence of alcohol, or under the influence of any controlled
substance, or under the influence of any other drug to a
degree which renders him incapable of safely driving, or
under the combined influence of alcohol and any controlled
substance or any other drug to a degree which renders him incapable of safely driving, or is an habitual user of narcotic drugs or amphetamine or any derivative thereof shall be guilty of a misdemeanor and upon conviction thereof shall be confined in the county jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(g) Any person violating any provision of subsection (b), (c), (d), (e) or (f) of this section shall, for the second offense under this section, be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for a period of not less than six months nor more than one year.

(h) A person violating any provision of subsection (b), (c), (d), (e) or (f) of this section shall, for the third or any subsequent offense under this section, be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than three years.

(i) For purposes of subsections (g) and (h) of this section relating to second, third and subsequent offenses, any conviction under the provisions of subsections (a) or (b) of the prior enactment of this section which occurred within a period of five years immediately preceding the effective date of this section, shall be regarded as convictions under subsections (d) or (f) of this section.

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

(k) For purposes of this section, the term “controlled substance” shall have the meaning ascribed to it in chapter sixty-a of this code.

(l) The sentences provided herein upon conviction of a violation of this article are mandatory and shall not be subject to suspension or probation, except that the court may provide for community service, or work release alternatives, or weekends or part-time confinements.

§17C-5-2a. Phrases synonymous with driving under the influence of alcohol; validation of warrants and indictments.

(a) When used in this code, the terms or phrases “driving under the influence of intoxicating liquor,” “driving or
operating a motor vehicle while intoxicated," "for any person
who is under the influence of intoxicating liquor to drive any
vehicle," or any similar term or phrase shall be construed to
mean and be synonymous with the term or phrase "while
under the influence of alcohol . . . drives a vehicle" as the
latter term or phrase is used in section two of this article.

(b) From and after the effective date of this section, a
warrant or indictment which charges or alleges the offense
prohibited by the provisions of section two of this article and
which warrant or indictment uses any of the terms or phrases
set forth in subsection (a) of this section shall not thereby be
fatally defective if such warrant or indictment otherwise
informs the person so accused of the charges against him.

§17C-5-4. Implied consent to test; administration at direction of
law-enforcement officer; designation of type of test;
definition of law-enforcement officer.

Any person who drives a motor vehicle upon the public
streets or highways of this state shall be deemed to have given
his consent by the operation thereof, subject to the provisions
of this article, to a preliminary breath analysis and a
secondary chemical test of either his blood, breath or urine
for the purposes of determining the alcoholic content of his
blood. A preliminary breath analysis may be administered in
accordance with the provisions of section five of this article
whenever a police officer has reasonable cause to believe a
person to have been driving a motor vehicle upon the public
streets and highways while under the influence of alcohol,
controlled substances or drugs as prohibited by section two
of this article. A secondary test of blood, breath or urine shall
be incidental to a lawful arrest and shall be administered at
the direction of the arresting law-enforcement officer having
reasonable grounds to believe the person to have been
driving a motor vehicle upon the public streets or highways
while under the influence of alcohol, controlled substances or
drugs as prohibited by section two of this article. The
law-enforcement agency by which such law-enforcement
officer is employed shall designate which one of the aforesaid
secondary tests shall be administered: Provided, That if the
test so designated is a blood test and the person so arrested
refuses to submit to such blood test, then the
law-enforcement officer making such arrest shall designate in
lieu thereof, either a breath or urine test be administered, and
notwithstanding the provisions of section seven of this article, such refusal to submit to a blood test only shall not result in the suspension of the arrested person's license to operate a motor vehicle in this state. Any person to whom a preliminary breath test is administered who is then arrested shall be told that his refusal to submit to the secondary test finally designated as provided in this section, will result in the suspension of his license to operate a motor vehicle in this state for a period of one year.

For the purposes of this article the term "law-enforcement officer" shall mean and be limited to (1) any member of the department of public safety of this state, (2) any sheriff and any deputy sheriff of any county, and (3) any member of a municipal police department in any Class I, Class II or Class III city, as cities are classified in section three, article one, chapter eight of this code. If any Class I, Class II or Class III city does not have available to its law-enforcement officers the testing equipment or facilities necessary to conduct any secondary test which a law-enforcement officer may administer under this article, any member of the department of public safety, the sheriff of the county wherein the arrest is made or any deputy of such sheriff, may, upon the request of such arresting law-enforcement officer and in his presence, conduct such secondary test and the results of such test may be used in evidence to the same extent and in the same manner as if such test had been conducted by such arresting law-enforcement officer. Only the person actually administering or conducting such test shall be competent to testify as to the results and the veracity of such test.

§17C-5-5. Preliminary analysis of breath to determine alcoholic content of blood.

When a police officer has reason to believe a person to have been driving a motor vehicle upon the public streets and highways of this state while under the influence of alcohol, controlled substances or drugs, the police officer may require such person to submit to a preliminary breath analysis for the purpose of determining such person's blood alcohol content. Such breath analysis must be administered as soon as possible after the police officer has a reasonable belief that the person has been driving while under the influence of alcohol, controlled substances or drugs. 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. When a driver is arrested following a
preliminary breath analysis, the tests as hereinafter provided
in this article shall be administered in accordance with the
provisions thereof.

§17C-5-6. How blood test administered; additional test at
option of person tested; use of test results; certain
immunity from liability incident to administering
test.

Only a doctor of medicine or osteopathy, or registered
nurse, or trained medical technician at the place of his
employment, acting at the request and direction of the
law-enforcement officer, may withdraw blood for the purpose
of determining the alcoholic content thereof. These
limitations shall not apply to the taking of a breath test or a
urine specimen. In withdrawing blood for the purpose of
determining the alcoholic content thereof, only a previously
unused and sterile needle and sterile vessel may be utilized
and the withdrawal shall otherwise be in strict accord with
accepted medical practices. A nonalcoholic antiseptic shall
be used for cleansing the skin prior to venapuncture. The
person tested may, at his own expense, have a doctor of
medicine or osteopathy, or registered nurse, or trained
medical technician at the place of his employment, of his own
choosing, administer a chemical test in addition to the test
administered at the direction of the law-enforcement officer.
Upon the request of the person who is tested, full information
concerning the test taken at the direction of the
law-enforcement officer shall be made available to him. No
person who administers any such test upon the request of a
law-enforcement officer as herein defined, no hospital in or
with which such person is employed or is otherwise
associated or in which such test is administered, and no other
person, firm or corporation by whom or with which such
person is employed or is in any way associated, shall be in
anywise criminally liable for the administration of such test,
or civilly liable in damages to the person tested unless for
gross negligence or willful or wanton injury.
§17C-5-7. Refusal to submit to tests; suspension of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing procedures; judicial review.

(a) If any person under arrest as specified in section four of this article refuses to submit to any secondary chemical test, the tests shall not be given: Provided, That prior to such refusal, the person is given a written statement advising him of the possible criminal and civil penalties for such refusal. The officer shall within twenty-four hours of such refusal, submit to the commissioner of motor vehicles a sworn statement of the officer that (1) he had reasonable grounds to believe such person had been driving a motor vehicle upon the public streets and highways of this state while under the influence of alcohol, controlled substances or drugs, (2) such person was lawfully placed under arrest for the offense of driving a motor vehicle upon the public streets or highways of this state while under the influence of alcohol, controlled substances or drugs, (3) such person refused to submit to the secondary test finally designated in the manner provided in section four of this article and (4) such person was told that his license to operate a motor vehicle in this state would be suspended for a period of one year if he refused to submit to the secondary test finally designated in the manner provided in section four of this article. The commissioner shall make and enter an order suspending such person’s license to operate a motor vehicle in this state for a period of one year. A copy of such order shall be forwarded to such person by registered or certified mail, return receipt requested. No such suspension shall become effective until ten days after receipt of the copy of such order. Any person who is unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn his consent for a test of his blood, breath or urine as provided in section one of this article and the test may be administered although such person is not told that his failure to submit to the test will result in the suspension of his license to operate a motor vehicle in this state for a period of one year.

A suspension hereunder shall run concurrently with the period of any suspension or revocation imposed in accordance with other provisions of this code and growing out of the same incident which gave rise to the arrest for driving a
motor vehicle while under the influence of alcohol, controlled
substances or drugs and the subsequent refusal to undergo
the test finally designated in accordance with the provisions
of section four of this article.

(b) Upon the written request of a person whose license to
operate a motor vehicle in this state has been suspended
under the provisions of subsection (a) of this section, the
commissioner of motor vehicles shall afford the person an
opportunity to be heard. Such written request must be filed
with the commissioner in person or by registered or certified
mail, return receipt requested, within ten days after receipt of
a copy of the order of suspension. The hearing shall be before
said commissioner or authorized deputy or agent of said
commissioner, and all of the pertinent provisions of article
five, chapter twenty-nine-a of this code shall apply to and
govern the hearing and the administrative procedures in
connection with and following such hearing, with like effect
as if the provisions of said article five were set forth in
extenso in this section, except that in the case of a resident of
this state the hearing shall be held in the county wherein the
person resides unless the commissioner or his authorized
depot or agent and such person agree that the hearing may
be held in some other county. Any such hearing shall be held
within twenty days after the date upon which the
commissioner received the timely written request therefor,
unless there is a postponement or continuance. The
commissioner may postpone or continue any hearing on his
own motion, or upon application of such person for good
cause shown. For the purpose of conducting such hearing,
the commissioner shall have the power and authority to issue
subpoenas and subpoenas duces tecum in accordance with
the provisions of section one, article five, chapter
twenty-nine-a of this code. All subpoenas and subpoenas
duces tecum shall be issued and served within the time and
for the fees and shall be enforced, as specified in section one,
article five of said chapter twenty-nine-a, and all of the said
section one provisions dealing with subpoenas and
subpoenas duces tecum shall apply to subpoenas and
subpoenas duces tecum issued for the purpose of a hearing
hereunder.

The scope of such hearing shall be (1) whether the arresting
law-enforcement officer had reasonable grounds to believe
such person had been driving a motor vehicle upon the public streets or highways of this state while under the influence of alcohol, controlled substances or drugs, (2) whether such person was lawfully placed under arrest for the offense of driving a motor vehicle upon the public streets or highways of this state while under the influence of alcohol, controlled substances or drugs, (3) whether such person refused to submit to the secondary test finally designated in the manner provided in section four of this article, and (4) whether such person had been told that his license to operate a motor vehicle in this state would be suspended for a period of one year if he refused to submit to the test finally designated in the manner provided in section four of this article.

After such hearing and consideration of all of the testimony, evidence and record in the case, the commissioner shall make and enter an order affirming or rescinding his earlier order of suspension. The commissioner shall affirm his earlier order of suspension if he finds that (1) the arresting law-enforcement officer had reasonable grounds to believe such person had been driving a motor vehicle upon the public streets or highways of this state while under the influence of alcohol, controlled substances or drugs, (2) such person was lawfully placed under arrest for the offense of driving a motor vehicle upon the public streets or highways of the state while under the influence of alcohol, controlled substances or drugs, (3) such person refused to submit to the test finally designated in the manner provided in section four of this article, and (4) such person had been told that his license to operate a motor vehicle in this state would be suspended for a period of one year if he refused to submit to the test finally designated in the manner provided in section four of this article. If the commissioner finds to the contrary with respect to any one of the above issues, he shall rescind his earlier order of suspension.

A copy of the commissioner's order made and entered following the hearing shall be served upon such person by registered or certified mail, return receipt requested. The commissioner shall not stay enforcement of the order; and pending appeal, the court to which such appeal is made, may grant a stay or supersedeas of such order only upon motion and hearing, and a finding by the court upon the evidence presented, that there is a reasonable probability that the
appellant shall prevail upon the merits, and that the appellant
will suffer irreparable harm if such order is not stayed.
(c) If the commissioner shall after hearing make and enter
an order affirming his earlier order of suspension, such
person shall be entitled to judicial review thereof. All of the
pertinent provisions of section four, article five, chapter
twenty-nine-a of this code shall apply to and govern such
review with like effect as if the provisions of said section four
were set forth in extenso in this section. The judgment of the
circuit court shall be final unless reversed on appeal to the
supreme court of appeals, in accordance with the provisions
of section one, article six, chapter twenty-nine-a of this code,
except that notwithstanding the provisions of said section
one, the petition seeking such review must be filed with said
supreme court of appeals within thirty days from the date of
entry of the judgment of the circuit court.

§17C-5-8. Interpretation and use of chemical test.
Upon trial for the offense of driving a motor vehicle on the
public streets or highways of this state while under the
influence of alcohol, controlled substances or drugs, or upon
the trial of any civil or criminal action arising out of acts
alleged to have been committed by any person while 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 blood, breath or urine,
is admissible, if the sample or specimen was taken within two
hours from and after the time of arrest or of the acts alleged,
and shall give rise to the following presumptions or have the
following effect:
(a) Evidence that there was, at that time, five hundredths
of one percent or less, by weight, of alcohol in his blood, shall
be prima facie evidence that the person was not under the
influence of intoxicating liquor;
(b) Evidence that there was, at that time, more than five
hundredths of one percent and less than ten hundredths of
one percent, by weight, of alcohol in the person's blood shall
be relevant evidence, but it is not to be given prima facie
effect in indicating whether the person was under the
influence of intoxicating liquor;
(c) Evidence that there was, at that time, ten hundredths
of one percent or more, by weight, of alcohol in his blood,
shall be admitted as prima facie evidence that the person was
under the influence of intoxicating liquor.
Percent by weight of alcohol in the blood shall be based
upon milligrams of alcohol per one hundred cubic
centimeters of blood.
A chemical analysis of a person's blood, breath or urine,
in order to give rise to the presumptions or to have the effect
provided for in subdivisions (a), (b) and (c) of this section,
must be performed in accordance with methods and
standards approved by the state department of health. A
chemical analysis of blood or urine to determine the alcoholic
content of blood shall be conducted by a qualified laboratory
or by the state police scientific laboratory, of the criminal
identification bureau of the department of public safety.
The provisions of this article shall not limit the introduction
in any administrative or judicial proceeding of any other
competent evidence bearing on the question of whether the
person was under the influence of alcohol, controlled
substances or drugs.
§17C-5-9. Right to demand test.
Any person lawfully arrested for driving a motor vehicle on
the public streets or highways of this state while under the
influence of alcohol, controlled substances or drugs who is
lawfully arrested as aforesaid by a police officer, shall have
the right to demand that a sample or specimen of his blood,
breath or urine be taken within two hours from and after the
time of arrest, and that a chemical test thereof be made. The
analysis disclosed by such chemical test shall be made
available to such arrested person forthwith upon demand.
§17C-5-10. Fee for withdrawing blood sample and making urine
test; payment of 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. If the person
whose blood sample was withdrawn or whose urine was
tested was arrested and charged with a violation of
subsection (a) of section two, article five of this chapter, the
county having venue of such charge shall pay said fee, and 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, notwithstanding any other provision of this code to the contrary, into the general fund of said county. If the person whose blood sample was withdrawn or whose urine was tested was arrested and charged with a violation of a similar ordinance of any municipality, said municipality shall pay said fee, and 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, notwithstanding any other provision of this code to the contrary, into the general fund of said municipality.

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.

§17C-5A-1. Implied consent to administrative procedure; revocation for driving under the influence of alcohol, controlled substances or drugs or driving with alcoholic concentration in blood of ten hundredths of one percent (.10), or more, by weight; temporary suspension of license.

(a) Any person who drives a motor vehicle upon the public streets or highways of this state shall be deemed to have given his consent by the operation thereof, subject to the provisions of this article, to the administrative procedure set forth in this article for the determination of whether his license to operate a motor vehicle in this state should be revoked or suspended because he did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcoholic concentration in his blood of ten hundredths of one percent (.10), or more, by weight.

(b) Any law-enforcement officer arresting a person for an offense described in section two, article five of this chapter shall report to the commissioner of the department of motor vehicles by sworn, written statement within twenty-four hours the name and address of the person so arrested. Such report shall include the specific offense with which the person is charged, and, if applicable, a copy of the results of any secondary tests of blood, breath or urine. The law-enforcement officer shall certify that such tests were
administered in accordance with the provisions of article five of this chapter, and that he believes the results to be correct.

(c) If, upon examination of the sworn statement and the tests results described in subsection (b) of this section, the commissioner shall determine that a person was arrested for an offense described in section two, article five of this chapter, and that the results of the tests indicate that at the time the test or tests were administered the person had, in his blood, an alcohol concentration of ten hundredths of one percent (.10), or more, by weight, or at the time the person was arrested he was under the influence of a controlled substance or drug, the commissioner shall make and enter an order temporarily suspending such person's license to operate a motor vehicle in this state. A copy of such order shall be forwarded to such person by registered or certified mail, return receipt requested. No suspension shall become effective until ten days after receipt of a copy of such order.

§17C-5A-2. Hearing procedures; scope of hearing; revocation upon proof by a preponderance of the evidence; period of revocation imposed; order of suspension; service; judicial review.

(a) Upon the written request of a person whose license to operate a motor vehicle in this state has been suspended, under the provisions of section one of this article, the commissioner of motor vehicles shall afford the person an opportunity to be heard. Such written request must be filed with the commissioner in person or by registered or certified mail, return receipt requested, within ten days after receipt of a copy of the order of suspension. The hearing shall be before said commissioner or authorized deputy or agent of said commissioner and all of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply.

(b) Except that in the case of a resident of this state the hearing shall be held in the county wherein the person resides unless the commissioner or his authorized deputy or agent and such person agree that the hearing may be held in some other county. Any such hearing shall be held within twenty days after the date upon which the commissioner received the timely written request therefor, unless there is a postponement or continuance. The commissioner may postpone or continue any hearing on his own motion, or upon application for each person for good cause shown. For the purpose of conducting such hearing, the commissioner shall
have the power and authority to issue subpoenas and
subpoenas duces tecum in accordance with the provisions of
section one, article five, chapter twenty-nine-a of this code.
All subpoenas and subpoenas duces tecum shall be issued
and served within the time and for the fees and shall be
enforced, as specified in section one, article five of said
chapter twenty-nine-a, and all of the said section one
provisions dealing with subpoenas and subpoenas duces
tecum shall apply to subpoenas and subpoenas duces tecum
issued for the purpose of a hearing hereunder.
(c) The principal question at such hearing shall be
whether the person did drive a motor vehicle while under the
influence of alcohol, or under the influence of any controlled
substance, or under the influence of any other drug to a
degree which renders him incapable of safely driving, or
under the combined influence of alcohol and any controlled
substance or any other drug to a degree which renders him
incapable of safely driving, or did drive a motor vehicle while
having an alcoholic concentration in his blood of ten
hundredths of one percent (.10), or more, by weight.
The commissioner shall make specific findings as to (1)
whether the arresting law-enforcement officer had reasonable
grounds to believe such person to have been driving while
under the influence of alcohol, controlled substances or
drugs, (2) whether such person was lawfully placed under
arrest for an offense involving driving under the influence of
alcohol, controlled substances or drugs, and (3) whether the
tests which were administered were administered in
accordance with the provisions of this article and article five
of this code.
(1) If, in addition to a finding that the person did drive a
motor vehicle while under the influence of alcohol, or under
the influence of any controlled substance, or under the
influence of any other drug to a degree which renders him
incapable of safely driving, or under the combined influence
of alcohol and any controlled substance or any other drug to a
degree which renders him incapable of safely driving, or did
drive a motor vehicle while having an alcoholic concentration
in his blood of ten hundredths of one percent (.10), or more,
by weight, the commissioner also finds by a preponderance of
the evidence that the person when so driving did an act
forbidden by law or failed to perform a duty imposed by law,
which act or failure proximately caused the death of a person
and was committed in reckless disregard of the safety of
others, and if the commissioner further finds that the
influence of alcohol, controlled substances or drugs or the
alcoholic concentration in the blood was a contributing cause
to the death, the commissioner shall revoke the person's
license for a period of ten years: Provided, That if the
commissioner has previously suspended the person's license
under the provisions of this section, the period of revocation
shall be for the life of such person.
(2) If, in addition to a finding that the person did drive a
motor vehicle while under the influence of alcohol, or under
the influence of any controlled substance, or under the
influence of any other drug to a degree which renders him
incapable of safely driving, or under the combined influence
of alcohol and any controlled substance or any other drug to a
degree which renders him incapable of safely driving, or did
drive a motor vehicle while having an alcoholic concentration
in his blood of ten hundredths of one percent (.10), or more,
by weight, the commissioner also finds by a preponderance of
the evidence that the person when so driving did an act
forbidden by law or failed to perform a duty imposed by law,
which act or failure proximately caused the death of a person
the commissioner shall revoke the person's license for a
period of five years: Provided, That if the commissioner has
previously suspended the person's license under the
provisions of this section, the period of revocation shall be for
the life of such person.
(3) If, in addition to a finding that the person did drive a
motor vehicle while under the influence of alcohol, or under
the influence of any controlled substance, or under the
influence of any other drug to a degree which renders him
incapable of safely driving, or under the combined influence
of alcohol and any controlled substance or any other drug to a
degree which renders him incapable of safely driving, or did
drive a motor vehicle while having an alcoholic concentration
in his blood of ten hundredths of one percent (.10), or more,
by weight, the commissioner also finds by a preponderance of
the evidence that the person when so driving did an act
forbidden by law or failed to perform a duty imposed by law,
which act or failure proximately caused bodily injury to a
person other than himself, the commissioner shall revoke the
person's license for a period of two years: Provided, That if
the commissioner has previously suspended the person's license under the provisions of this section, the period of revocation shall be ten years.

(4) If the commissioner finds by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, or under the influence of any controlled substance, or under the influence of any other drug to a degree which renders him incapable of safely driving, or under the combined influence of alcohol and any controlled substance or any other drug to a degree which renders him incapable of safely driving, or did drive a motor vehicle while having an alcoholic concentration in his blood of ten hundredths of one percent (.10), or more, by weight, or finds that the person, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, did drive a motor vehicle, or finds that the person knowingly permitted his vehicle to be driven by another person who was under the influence of alcohol, or under the influence of any controlled substance, or under the influence of any other drug to a degree which rendered him incapable of safely driving, or under the combined influence of alcohol and any controlled substance or any other drug to a degree which rendered him incapable of safely driving, the commissioner shall revoke the person's license for a period of six months: Provided, That if the commissioner has previously suspended the person's license under the provisions of this section, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended the person's license more than once under the provisions of this section, the period of revocation shall be for the life of the person.

(d) For the purpose of this section, a conviction for an offense under subsection (a) or (b) of the prior enactment of section two, article five, of this chapter, which offense was committed within five years immediately preceding the effective date of said section two, article five, shall be considered the same as a prior finding of the commissioner under this section.

(e) If the commissioner finds to the contrary with respect to the above issues, he shall rescind his earlier order of suspension or shall reduce the order of revocation to the appropriate period of revocation under this section.

A copy of the commissioner's order made and entered
following the hearing shall be served upon such person by registered or certified mail, return receipt requested. During the pendency of any such hearing, the suspension of the person's license to operate a motor vehicle in this state shall be stayed.

If the commissioner shall after hearing make and enter an order affirming his earlier order of suspension, such person shall be entitled to judicial review as set forth in chapter twenty-nine-a of this code, except that the commissioner shall not stay enforcement of the order; and, pending such appeal, the court may grant a stay or supersedeas of such order only upon motion and hearing, and a finding by the court upon the evidence presented, that there is a reasonable probability that the appellant shall prevail upon the merits, and that the appellant will suffer irreparable harm if such order is not stayed.

§17C-5A-3. Safety and treatment program to be established; application and reissuance of license; procedure.

(a) The department of motor vehicles in cooperation with the department of health, the division of alcoholism and drug abuse, shall establish by rule and regulation, a comprehensive safety and treatment program for persons found in initial and subsequent violations of this article. The program shall include, but not be limited to, treatment of alcoholism, alcohol and drug abuse, psychological counseling, educational courses on the dangers of alcohol and drugs as they relate to driving, defensive driving, or other safety driving instruction, and other programs designed to properly educate, train, and rehabilitate the offender.

(b) The department of motor vehicles, in cooperation with the department of health, the division of alcoholism and drug abuse, shall provide for the preparation of an educational and treatment program for each person found in violation of this article, which shall contain the following: (1) A listing and evaluation of the offender's prior traffic record; (2) characteristics and history of alcohol or drug use, if any; (3) his amenability to rehabilitation through the alcohol safety program; and (4) a recommendation as to treatment or rehabilitation, and the terms and conditions of such treatment or rehabilitation. The program shall be prepared by persons knowledgeable in the diagnosis of alcohol or drug abuse and treatment. The cost of the program shall be paid out of fees established by the commissioner of motor vehicles.
in cooperation with the department of health, division of
alcohol and drug abuse. These fees shall be deposited in a
special account administering the program, to be designated
the "driver's rehabilitation fund."

The commissioner, after giving due consideration to the
program developed for the offender, shall prescribe the
necessary terms and conditions for the reissuance of the
license to operate a motor vehicle in this state suspended
hereunder, which shall include successful completion of the
educational, treatment, or rehabilitation program, subject to
the following:

(1) When the period of revocation is six months, the
license to operate a motor vehicle in this state shall not be
reissuied until (1) at least thirty days have elapsed from the
date of the initial suspension, during which time the
suspension was actually in effect, (2) the offender has
successfully completed the program, (3) all costs of the
program and administration have been paid, (4) the
commissioner finds that the offender is not likely to repeat a
violation of this article, and (5) there is no unusual and
immediate danger to the public if the offender is permitted to
drive again.

(2) When the period of revocation is for a period of years,
the license to operate a motor vehicle in this state shall not be
reissuied until (1) at least one half of such time period has
elapsed from the date of the initial suspension, during which
time the suspension was actually in effect, (2) the offender has
successfully completed the program, (3) all costs of the
program and administration have been paid, (4) the
commissioner finds that the offender is not likely to repeat a
violation of this article, and (5) there is no unusual and
immediate danger to the public if the offender is permitted to
drive again.

(3) When the period of revocation is for life, the license to
operate a motor vehicle in this state shall not be reissuied until
(1) at least ten years have elapsed from the date of the initial
suspension, during which time the suspension was actually in
effect, (2) the offender has successfully completed the
program, (3) all costs of the program and administration have
been paid, (4) the commissioner finds that the offender is not
likely to repeat a violation of this article, and (5) there is no
unusual and immediate danger to the public if the offender is
permitted to drive again.
§17C-5A-4. Receipt of officer's affidavit; search and report to officer by commissioner; failure to report violation of this article to and failure to report prior offense by commissioner of department of motor vehicles; penalty.

The commissioner shall immediately upon receipt of the affidavits required by section seven, article five of this chapter and section one of this article record the date and time of day of the receipt of such affidavits and shall forthwith cause a search of the appropriate records of the department to be made for any record of prior offenses under this article and such commissioner shall immediately report to the officer making such affidavit an abstract showing any such prior offense, the date thereof, the identity of any court record which any proceedings in regard thereto were instituted and the disposition thereof.

Any police officer who fails to file the affidavits required by this chapter within twenty-four hours of the arrest of any person charged for any violation of article five shall be guilty of a misdemeanor and shall be subject to a fine of not less than twenty dollars nor more than five hundred dollars. And if the commissioner shall willfully fail to post by United States mail or other adequate means of communication a written report addressed to the police officer of any such offense, as required by this section, within a period of twenty-four hours after the receipt of the affidavit, the commissioner shall be guilty of a misdemeanor and shall be subject to a fine of not less than twenty dollars nor more than five hundred dollars.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-24. Requirement for posting informational sign.

Each store or outlet controlled or operated by the state alcohol beverage control commission, and any store, supermarket, club, restaurant, or other facility selling alcoholic beverages or nonintoxicating beer for either on premise or off premise consumption, shall post in an open and prominent place within such establishment a blood-alcohol chart containing information showing the estimated percent of alcohol in the blood by the number of drinks in relation to body weight and time of consumption, as follows:
### BLOOD-ALCOHOL CHART

SHOWING ESTIMATED % OF ALCOHOL IN THE BLOOD 
BY NO. OF DRINKS IN RELATION TO BODY WEIGHT

<table>
<thead>
<tr>
<th>DRINKS</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
<th>11</th>
<th>12</th>
</tr>
</thead>
<tbody>
<tr>
<td>100 lb.</td>
<td>.038</td>
<td>.075</td>
<td>.113</td>
<td>.150</td>
<td>.188</td>
<td>.225</td>
<td>.263</td>
<td>.300</td>
<td>.338</td>
<td>.375</td>
<td>.413</td>
<td>.450</td>
</tr>
<tr>
<td>120 lb.</td>
<td>.031</td>
<td>.063</td>
<td>.094</td>
<td>.125</td>
<td>.156</td>
<td>.188</td>
<td>.219</td>
<td>.250</td>
<td>.281</td>
<td>.313</td>
<td>.344</td>
<td>.375</td>
</tr>
<tr>
<td>140 lb.</td>
<td>.027</td>
<td>.054</td>
<td>.080</td>
<td>.107</td>
<td>.134</td>
<td>.161</td>
<td>.188</td>
<td>.214</td>
<td>.241</td>
<td>.268</td>
<td>.295</td>
<td>.321</td>
</tr>
<tr>
<td>160 lb.</td>
<td>.023</td>
<td>.047</td>
<td>.070</td>
<td>.094</td>
<td>.117</td>
<td>.141</td>
<td>.164</td>
<td>.188</td>
<td>.211</td>
<td>.234</td>
<td>.258</td>
<td>.281</td>
</tr>
<tr>
<td>180 lb.</td>
<td>.021</td>
<td>.042</td>
<td>.063</td>
<td>.083</td>
<td>.104</td>
<td>.125</td>
<td>.146</td>
<td>.167</td>
<td>.188</td>
<td>.208</td>
<td>.229</td>
<td>.250</td>
</tr>
<tr>
<td>200 lb.</td>
<td>.019</td>
<td>.038</td>
<td>.056</td>
<td>.075</td>
<td>.094</td>
<td>.113</td>
<td>.131</td>
<td>.150</td>
<td>.169</td>
<td>.188</td>
<td>.206</td>
<td>.225</td>
</tr>
<tr>
<td>220 lb.</td>
<td>.017</td>
<td>.034</td>
<td>.051</td>
<td>.068</td>
<td>.085</td>
<td>.102</td>
<td>.119</td>
<td>.136</td>
<td>.153</td>
<td>.170</td>
<td>.188</td>
<td>.205</td>
</tr>
<tr>
<td>240 lb.</td>
<td>.016</td>
<td>.031</td>
<td>.047</td>
<td>.063</td>
<td>.078</td>
<td>.094</td>
<td>.109</td>
<td>.125</td>
<td>.141</td>
<td>.156</td>
<td>.172</td>
<td>.188</td>
</tr>
</tbody>
</table>

TRAFFIC RESEARCH & SAFETY DIVISION 
W.VA. DEPARTMENT OF PUBLIC SAFETY
HAS ALCOHOL AFFECTED YOUR DRIVING ABILITY?

The % of alcohol in your blood will tell you. This % can be estimated by—
COUNTING YOUR DRINKS (1-drink equalling 1 volume oz. of 100 proof alcohol
or 1-12 oz. bottle of beer).

Use Blood-Alcohol Chart below. Under number of DRINKS and opposite
Body-Weight find the % of Blood-Alcohol listed.

SUBTRACT from this number the % of alcohol "burned up" during the time
elapsed since your first drink.

No. Hours Since 1st Drink 1 2 3 4 5 6

SUBTRACT .015% .030% .045% .060% .075% .090%

Example—180 lb. man - 8 drinks in 4 hours
.167% minus .060% = .107%

THIS REMAINDER IS AN ESTIMATE of the % of alcohol in your blood.

INTERPRETATION OF RESULTS

% OF BLOOD-ALCOHOL INTOXICATED? IF YOU DRIVE A CAR—

.000 to .050 You Are Not Take It Easy
.050 to .100 You Probably Are Better Not

FOR BEST RESULTS - DON'T DRINK AND DRIVE
The size of display and location of said blood-alcohol chart shall be prescribed by the commissioner, by rule and regulation. Enforcement of the posting provisions of this section shall be carried out by the West Virginia nonintoxicating beer commissioner in establishments which are required to post such notice but are not subject to the supervision of the West Virginia alcohol beverage control commissioner.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect September 1, 1981.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ___________ this the ________ day of ____________, 1981.

Governor