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Date 3-29-83

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983

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ENROLLED

Com. Sub. for
HOUSE BILL No. 1402

(By Mr. Chambers + Mr. Steptoe)

— ● —

Passed March 12, 1983

In Effect Ninety Days From Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1402

(By MR. CHAMBERS and MR. STEPTOE)

[Passed March 12, 1983; in effect ninety days from passage.]

AN ACT to amend article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-a; to amend and reenact section sixteen of said article fifteen; to amend article two, chapter fifteen of said code by adding thereto two new sections, designated sections forty and forty-one; to amend and reenact section five, article three, chapter seventeen-b of said code; to amend and reenact section three, article four of said chapter seventeen-b; to amend and reenact sections two, two-a, four, five, seven, eight, nine and ten, article five, chapter seventeen-c of said code; to further amend said article five by adding thereto a new section, designated section eleven; to amend and reenact sections one and two, article five-a of said chapter seventeen-c; to further amend said article five-a by adding thereto a new section, designated section two-a; to amend and reenact sections three and four of said article five-a; and to further amend said chapter seventeen-c by adding thereto a new article, designated article five-b, all of said code, relating to driving under the influence of alcohol, controlled substances or drugs generally, denying consumers sales tax exemption on liquors and wines for resales by private clubs, and making the purchase of liquors or wines for resale subject to such tax; prescribing the form for tax returns for consumers sales tax and

the mode of payment; requiring the payment of consumers sales tax collected from licensed private clubs to be paid into a drunk driving prevention fund within the state treasury; creating a commission on drunk driving prevention, prescribing the membership thereof and the terms of office; providing for meetings and quorum; describing the powers and duties of the commission on drunk driving prevention; authorizing said commission to promulgate rules; setting forth monitoring and reporting functions of the commission; setting forth the grounds for mandatory revocation of licenses upon conviction of certain offenses; providing penalties for driving while license suspended or revoked; providing additional penalties for driving while license revoked for driving under influence of alcohol, controlled substances or drugs or for driving while having an alcoholic concentration of ten hundredths of one percent, or more, by weight, or for refusing a designated secondary chemical test; defining criminal offenses involving driving a motor vehicle while under the influence of alcohol, controlled substances or drugs and setting forth the penalties therefor; defining the phrase "in this state" and making certain terms or phrases synonymous; 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; 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; providing for the interpretation and use of chemical tests and describing presumptions arising from such tests; granting persons arrested the right to demand test; allowing fee for withdrawing blood sample and permitting recovery of fee upon conviction; requiring municipal ordinances to contain the same elements as offenses under article five, chapter seventeen-c or otherwise making them null and void; requiring municipal ordinances to prescribe the same penalties as are prescribed for offenses under article five, chapter seventeen-c containing the same elements; providing for implied consent to administrative procedures dealing with revocation of licenses; allowing revocation of license; authorizing legislative rules to set conditions for contesting secondary chemical test in administrative hearing; re-

quiring commissioner to promulgate certain procedural rules; setting forth hearing procedures; defining the scope of the hearing; providing for findings to be made prior to revocation of license; providing for order or revocation of judicial review of the same; authorizing assessment of cost against party requesting hearing; creation of special account for costs assessed at hearing; 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 statements or mail reports within time periods prescribed; requiring postmortem tests for alcohol in persons killed in motor vehicle accidents; providing time limit to conduct test and who may conduct test; granting civil and criminal immunity to person conducting test; providing fee for conducting test; relating to whom and how county medical examiners report results of blood test; limiting the admissibility of the results of test as evidence; and providing that the reports of the tests are only for statistical and highways safety purposes.

✓
OK
Ed.

Be it enacted by the Legislature of West Virginia:

That article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nine-a; that section sixteen of said article fifteen be amended and reenacted; that article two, chapter fifteen of said code be amended by adding thereto two new sections, designated sections forty and forty-one; that section five, article three, chapter seventeen-b of said code be amended and reenacted; that section three, article four of said chapter seventeen-b, be amended and reenacted; that sections two, two-a, four, five, seven, eight, nine and ten, article five, chapter seventeen-c of said code be amended and reenacted; that said article five be further amended by adding thereto a new section, designated section eleven; that sections one and two, article five-a of said chapter seventeen-c be amended and reenacted; that said article five-a be further amended by adding thereto a new section, designated section two-a, that sections three and four of said article five-a be amended and reenacted; that said chapter seventeen-c be further amended by adding thereto a new article, designated article five-b; all to read as follows:

CHAPTER 11. TAXATION

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-9a. Exemptions; exception for resale of liquors and wines.

1 The exemptions provided in this article for sales of tangible
2 personal property and services rendered for use or consumption
3 in connection with the conduct of the business of selling tan-
4 gible personal property to consumers or dispensing a service
5 subject to the tax under this article and, for sales of tangible
6 personal property for the purpose of resale in the form of
7 tangible personal property, shall not apply to persons or or-
8 ganizations licensed under authority of article seven of chapter
9 sixty of this code, for the purchase of liquor or wines from the
10 alcohol beverage control commissioner for resale.

§11-15-16. Tax return and payment; exception.

1 The taxes levied by this article shall be due and payable in
2 monthly installments, on or before the fifteenth day of the
3 month next succeeding the month in which the tax accrued.
4 The taxpayer shall, on or before the fifteenth day of each
5 month, make out and mail to the tax commissioner a return
6 for the preceding month, in the form prescribed by the tax
7 commissioner, showing: (a) The total gross proceeds of his
8 business for that month; (b) the gross proceeds of his busi-
9 ness upon which the tax is based: (c) the amount of the tax
10 for which he is liable; and (d) any further information neces-
11 sary in the computation and collection of the tax which the
12 tax commissioner may require. A remittance for the amount
13 of the tax shall accompany the return: *Provided*, That not-
14 withstanding the provisions of section thirty of this article any
15 such tax collected by the alcohol beverage control commission-
16 er from persons or organizations licensed under authority of
17 article seven of chapter sixty of this code shall be paid into a
18 revolving fund account in the state treasury, designated the
19 drunk driving prevention fund, to be administered by the
20 commission on drunk driving prevention, subject to appropria-
21 tions by the Legislature.

22 A monthly return shall be signed by the taxpayer or his
23 duly authorized agent.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-40. Commission on drunk driving prevention created; members; quorum; meetings.

1 There is hereby created within the department of public
2 safety the commission on drunk driving prevention which shall
3 consist of seven members as follows: the superintendent of the
4 department of public safety; the commissioner of the depart-
5 ment of motor vehicles; the alcohol beverage control commis-
6 sioner; a prosecuting attorney appointed by the governor from
7 a list of three prosecuting attorneys submitted by the prosecut-
8 ing attorney's association; a county sheriff appointed by the
9 governor from a list of three county sheriffs submitted by the
10 county sheriff's association; a municipal police officer appoint-
11 ed by the governor from a list of three officers submitted by
12 the state fraternal order of police; a lay citizen of the state
13 appointed by the governor, who has demonstrated an interest
14 in the prevention of drunk driving.

15 The superintendent of the department of public safety shall
16 be the chairman, ex officio, of the commission and shall pro-
17 vide the necessary staff and meeting facilities to the commis-
18 sion. The appointed members shall serve for a term of two
19 years and may be reappointed. Any appointed member who
20 ceases to occupy the position which qualifies him for the ap-
21 pointment shall immediately vacate his membership on the
22 commission. Each member shall serve until the appointment
23 of his successor.

24 No member shall receive any compensation, but shall be re-
25 imbursed for actual and necessary expenses incurred in the
26 performance of his duties.

27 A majority of the members of the commission shall consti-
28 tute a quorum for the transaction of business. Meetings shall
29 be held at the call of the chairman or of a majority of its
30 members.

§15-2-41. Powers and duties of commission; rule-making authority; monitoring and reporting.

1 The commission shall have the following powers and duties:

2 (a) Develop and maintain a comprehensive program to pre-
3 vent drunk driving and to enhance the enforcement of laws
4 defining drunk driving offenses.

5 (b) Inquire and determine from state and local law-enforce-
6 ment agencies the availability and need for equipment and ad-
7 ditional personnel for the effective enforcement of laws defining
8 drunk driving offenses.

9 (c) Subject to appropriations of the Legislature, administer
10 the drunk driving prevention fund created by the provisions of
11 section sixteen, article fifteen, chapter eleven of this code by
12 providing grants to state and local law-enforcement agencies for
13 the purchase of equipment or hiring of additional personnel
14 for the effective enforcement of laws defining drunk driving of-
15 fenses and such other items as the commission may define by
16 legislative rule to be reasonable and necessary.

17 (d) Promulgate rules to guide and administer said fund and
18 to establish procedures and criteria for grants to state and local
19 law-enforcement agencies under this section, in accordance
20 with the provisions of article three, chapter twenty-nine-a of
21 this code.

22 (e) Monitor, review and evaluate the expenditure, use and
23 effectiveness of the fund and report to the Legislature annually
24 on the exercise of its power and duties under this section, in-
25 cluding an annual accounting of expenditures and of the grants
26 made under this section.

CHAPTER 17B. MOTOR VEHICLES OPERATOR'S AND CHAUFFEUR'S LICENSES.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

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

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

5 (1) Manslaughter or negligent homicide resulting from the
6 operation of a motor vehicle;

7 (2) Any felony in the commission of which a motor vehicle
8 is used;

9 (3) Failure to stop and render aid as required under the
10 laws of this state in the event of involvement in a motor ve-
11 hicle accident resulting in the death or personal injury of
12 another;

13 (4) Perjury or the making of a false affidavit or statement
14 under oath to the department under this chapter or under any
15 other law relating to the ownership or operation of motor ve-
16 hicles;

17 (5) Conviction, or forfeiture of bail not vacated, upon three
18 charges of reckless driving committed within a period of
19 twenty-four months;

20 (6) Driving under the influence of alcohol, controlled sub-
21 stances or other drugs outside the state of West Virginia
22 which conviction is under a municipal ordinance or statute
23 of the United States or any other state of an offense which
24 has the same elements as an offense described in section two,
25 article five, chapter seventeen-c of this code; and

26 (7) Nothing herein shall prohibit the department from exer-
27 cising its authority to revoke or suspend a person's license to
28 drive a motor vehicle in this state, as provided in chapter
29 seventeen-c of this code.

ARTICLE 4. VIOLATION OF LICENSE PROVISIONS.

§17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having an alcoholic concentration in the blood of ten hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol content.

1 (a) Except as otherwise provided in subsection (b) of this
2 section any person who drives a motor vehicle on any public
3 highway of this state at a time when his privilege so to do has

4 been lawfully suspended or revoked shall, for the first offense,
5 be guilty of a misdemeanor, and, upon conviction thereof, shall
6 be imprisoned in the county jail for forty-eight hours and, in
7 addition to such mandatory jail sentence, shall be fined not
8 less than fifty dollars nor more than five hundred dollars; for
9 the second offense, such person shall be guilty of a misde-
10 meanor, and, upon conviction thereof, shall be punished by
11 imprisonment in the county jail for a period of ten days and, in
12 addition to such mandatory jail sentence, shall be fined not
13 less than one hundred dollars nor more than five hundred dol-
14 lars; for the third or any subsequent offense, such person shall
15 be guilty of a misdemeanor, and, upon conviction thereof,
16 shall be imprisoned in the county jail for six months and, in
17 addition to such mandatory jail sentence, shall be fined not
18 less than one hundred fifty dollars nor more than five hundred
19 dollars.

20 (b) Any person who drives a motor vehicle on any public
21 highway of this state at a time when his privilege so to do has
22 been lawfully revoked for driving under the influence of al-
23 cohool, controlled substances or other drugs, or while having an
24 alcoholic concentration in his blood of ten hundredths of one
25 percent or more, by weight, or for refusing to take a second-
26 ary chemical test of blood alcohol content shall, for the
27 first offense, be guilty of a misdemeanor, and, upon con-
28 viction thereof, shall be imprisoned in the county jail for
29 not less than forty-eight hours nor more than six months
30 and, in addition to such mandatory jail sentence, shall be
31 fined not less than one hundred dollars nor more than
32 five hundred dollars; for the second offense, such person
33 shall be guilty of a misdemeanor, and, upon conviction
34 thereof, shall be punished by imprisonment in the county
35 jail for a period of not less than six months nor more than
36 one year and, in addition to such mandatory jail sentence,
37 shall be fined not less than one thousand dollars nor more
38 than three thousand dollars; for the third or any subsequent
39 offense, such person shall be guilty of a felony, and, upon con-
40 viction thereof, shall be imprisoned in the penitentiary for not
41 less than one year nor more than three years and, in addition
42 to such mandatory jail sentence, shall be fined not less than
43 three thousand dollars nor more than five thousand dollars.

44 (c) The department upon receiving a record of the con-
 45 viction of any person under this section upon a charge of
 46 driving a vehicle while the license of such person was law-
 47 fully revoked shall extend the period of such suspension for an
 48 additional like period and if the conviction was upon a charge
 49 of driving while a license was revoked lawfully the department
 50 shall not issue a new license for an additional period of one year
 51 from and after the date such person would otherwise have been
 52 entitled to apply for a new license.

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:

2 (1) Drives a vehicle in this state while he is:

3 (A) Under the influence of alcohol, or

4 (B) Under the influence of any controlled substance, or

5 (C) Under the influence of any other drug, or

6 (D) Under the combined influence of alcohol and any con-
 7 trolled substance or any other drug, and

8 (2) When so driving does any act forbidden by law or fails
 9 to perform any duty imposed by law in the driving of such ve-
 10 ~~hicle, which act or failure proximately causes the death of any~~
 11 person within one year next following such act or failure, and

12 (3) Commits such act or failure in reckless disregard of the
 13 safety of others, and when the influence of alcohol, controlled
 14 substances or drugs is shown to be a contributing cause to such
 15 death,

16 (4) Shall be guilty of a felony, and, upon conviction thereof,
 17 shall be imprisoned in the penitentiary for not less than one nor
 18 more than three years and shall be fined not less than one thou-
 19 sand dollars nor more than three thousand dollars.

20 (b) Any person who:

21 (1) Drives a vehicle in this state while he is:

22 (A) Under the influence of alcohol, or

23 (B) Under the influence of any controlled substance, or

24 (C) Under the influence of any other drug, or

25 (D) Under the combined influence of alcohol and any con-
26 trolled substance or any other drug, and

27 (2) When so driving does any act forbidden by law or
28 fails to perform any duty imposed by law in the driving of
29 such vehicle, which act or failure proximately causes the death
30 of any person within one year next following such act or
31 failure,

32 (3) Shall be guilty of a misdemeanor, and, upon conviction
33 thereof, shall be imprisoned in the county jail for not less
34 than ninety days nor more than one year and shall be fined
35 not less than five hundred dollars nor more than one thousand
36 dollars.

37 (c) Any person who:

38 (1) Drives a vehicle in this state while he is:

39 (A) Under the influence of alcohol, or

40 (B) Under the influence of any controlled substance, or

41 (C) Under the influence of any other drug, or

42 (D) Under the combined influence of alcohol and any
43 controlled substance or any other drug, and

44 (2) When so driving does any act forbidden by law or fails
45 to perform any duty imposed by law in the driving of such
46 vehicle, which act or failure proximately causes bodily injury
47 to any person other than himself,

48 (3) Shall be guilty of a misdemeanor, and, upon conviction
49 thereof, shall be imprisoned in the county jail for not less
50 than one day nor more than one year, which jail term shall
51 include actual confinement of not less than twenty-four hours,
52 and shall be fined not less than two hundred dollars nor more
53 than one thousand dollars.

54 (d) Any person who:

55 (1) Drives a vehicle in this state while he is:

56 (A) Under the influence of alcohol, or

57 (B) Under the influence of any controlled substance, or

58 (C) Under the influence of any other drug, or

59 (D) Under the combined influence of alcohol and any con-
60 trolled substance or any other drug,

61 (2) Shall be guilty of a misdemeanor, and, upon convic-
62 tion thereof, shall be imprisoned in the county jail for not
63 less than one day nor more than six months, which jail
64 term shall include actual confinement of not less than twenty-
65 four hours, and shall be fined not less than one hundred
66 dollars nor more than five hundred dollars.

67 (e) Any person who, being an habitual user of narcotic
68 drugs or amphetamine or any derivative thereof, drives a
69 vehicle in this state, shall be guilty of a misdemeanor,
70 and, upon conviction thereof, shall be imprisoned in the
71 county jail for not less than one day nor more than six
72 months, which jail term shall include actual confinement
73 of not less than twenty-four hours, and shall be fined not less
74 than one hundred dollars nor more than five hundred dollars.

75 (f) Any person who:

76 (1) Knowingly permits his vehicle to be driven in this
77 state by any other person who is:

78 (A) Under the influence of alcohol, or

79 (B) Under the influence of any controlled substance, or

80 (C) Under the influence of any other drug, or

81 (D) Under the combined influence of alcohol and any con-
82 trolled substance or any other drug,

83 (2) Shall be guilty of a misdemeanor, and, upon conviction
84 thereof, shall be imprisoned in the county jail for not more
85 than six months and shall be fined not less than one hundred
86 dollars nor more than five hundred dollars.

87 (g) Any person who:

88 (1) Knowingly permits his vehicle to be driven in this
89 state by any other person who is an habitual user of narcotic
90 drugs or amphetamine or any derivative thereof,

91 (2) Shall be guilty of a misdemeanor, and, upon conviction
92 thereof, shall be imprisoned in the county jail for not
93 more than six months and shall be fined not less than one
94 hundred dollars nor more than five hundred dollars.

95 (h) Any person violating any provision of subsection (b),
96 (c), (d), (e), (f) or (g) of this section shall, for the second
97 offense under this section, be guilty of a misdemeanor, and,
98 upon conviction thereof, shall be imprisoned in the county
99 jail for a period of not less than six months nor more than
100 one year, and the court may, in its discretion, impose a fine
101 of not less than one thousand dollars nor more than three
102 thousand dollars,

103 (i) ^{Any} ~~A~~ person violating any provision of subsection (b),
104 (c), (d), (e), (f) or (g) of this section shall, for the third or
105 any subsequent offense under this section, be guilty of a
106 felony, and, upon conviction thereof, shall be imprisoned in
107 the penitentiary for not less than one nor more than three
108 years, and the court may, in its discretion, impose a fine
109 of not less than three thousand dollars nor more than five
110 thousand dollars.

111 (j) For purposes of subsections (h) and (i) of this section
112 relating to second, third and subsequent offenses, the following
113 types of convictions shall ^{also} be regarded as convictions under
114 this section:

115 (1) Any conviction under the provisions of subsections
116 (a), (b), (c), (d), (e) or (f) of the prior enactment
117 of this section for an offense which occurred on
118 or after the first day of September, one thousand nine
119 hundred eighty-one and prior to the effective date of this
120 section;

121 (2) Any conviction under the provisions of subsections
122 (a) or (b) of the prior enactment of this sec-

123 tion for an offense which occurred within a period of
124 five years immediately preceding the first day of Septem-
125 ber, one thousand nine hundred eighty-one;

126 (3) Any conviction under a municipal ordinance of
127 this state or any other state or a statute of the United
128 States or of any other state of an offense which has
129 the same elements as an offense described in this section,
130 which offense occurred after the effective date of this
131 section.

132 (k) The fact that any person charged with a violation
133 of subsection (a), (b), (c), (d) or (e) of this section,
134 or any person permitted to drive as described under sub-
135 sections (f) or (g) of this section, is or has been legally
136 entitled to use alcohol, a controlled substance or a drug
137 shall not constitute a defense against any charge of vio-
138 lating subsection (a), (b), (c), (d), (e), (f) or (g) of this
139 section.

140 (l) For purposes of this section, the term "controlled
141 substance" shall have the meaning ascribed to it in chapter
142 sixty-a of this code.

143 (m) The sentences provided herein upon conviction for
144 a violation of this article are mandatory and shall not be
145 subject to suspension or probation: *Provided*, That the court
146 may apply the provisions of article eleven-a, chapter sixty-two
147 of this code to a person sentenced or committed to a term of
148 one year or less.

149 (n) The reenactment of this section in the regular session
150 of the Legislature during the year one thousand nine hundred
151 eighty-three shall not in any way add to or subtract from
152 the elements of the offenses set forth herein and earlier defined
153 in the prior enactment of this section.

**§17C-5-2a. Definition of phrase "in this state"; phrases synonymous
with driving under the influence of alcohol; validation
of warrants and indictments.**

1 (a) For purposes of this article and article five-a of this
2 chapter, the phrase "in this state" shall mean anywhere within

3 the physical boundaries of this state, including, but not limited
4 to, publicly maintained streets and highways, and subdivision
5 streets or other areas not publicly maintained but nonetheless
6 open to the use of the public for purposes of vehicular travel.

7 (b) When used in this code, the terms or phrases "driving
8 under the influence of intoxicating liquor," "driving or operat-
9 ing a motor vehicle while intoxicated," "for any person who is
10 under the influence of intoxicating liquor to drive any vehicle,"
11 or any similar term or phrase shall be construed to mean and
12 be synonymous with the term or phrase "while under the
13 influence of alcohol . . . drives a vehicle" as the latter term or
14 phrase is used in section two of this article.

15 (c) From and after the effective date of this section, a war-
16 rant or indictment which charges or alleges an offense, pro-
17 hibited by the provisions of section two of this article and
18 which warrant or indictment uses any of the terms or phrases
19 set forth in subsection (b) of this section shall not thereby be
20 fatally defective if such warrant or indictment otherwise informs
21 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.**

1 Any person who drives a motor vehicle in this state shall be
2 deemed to have given his consent by the operation thereof,
3 subject to the provisions of this article, to a preliminary breath
4 analysis and a secondary chemical test of either his blood,
5 breath or urine for the purposes of determining the alcoholic
6 content of his blood. A preliminary breath analysis may be ad-
7 ministered in accordance with the provisions of section five of
8 this article whenever a law-enforcement officer has reasonable
9 cause to believe a person to have committed an offense pro-
10 hibited by section two of this article or by an ordinance of a
11 municipality of this state which has the same elements as an
12 offense described in said section two of this article. A secondary
13 test of blood, breath or urine shall be incidental to a lawful
14 arrest and shall be administered at the direction of the arresting
15 law-enforcement officer having reasonable grounds to believe
16 the person to have committed an offense prohibited by section

17 two of this article or by an ordinance of a municipality of this
18 state which has the same elements as an offense described in
19 said section two of this article. The law-enforcement agency by
20 which such law-enforcement officer is employed shall design-
21 ate which one of the aforesaid secondary tests shall be ad-
22 ministered: *Provided*, That if the test so designated is a blood
23 test and the person so arrested refuses to submit to such blood
24 test, then the law-enforcement officer making such arrest shall
25 designate in lieu thereof, either a breath or urine test to be ad-
26 ministered, and notwithstanding the provisions of section seven
27 of this article, such refusal to submit to a blood test only shall
28 not result in the revocation of the arrested person's license to
29 operate a motor vehicle in this state. Any person to whom a
30 preliminary breath test is administered who is then arrested
31 shall be given a written statement advising him that his refusal
32 to submit to the secondary chemical test finally designated as
33 provided in this section, will result in the revocation of his
34 license to operate a motor vehicle in this state for a period of at
35 least one year and up to life.

36 For the purpose of this article the term "law-enforcement of-
37 ficer" or "police officer" shall mean and be limited to (1) any
38 member of the department of public safety of this state, (2)
39 any sheriff and any deputy sheriff of any county, and (3) any
40 member of a police department in any municipality as defined
41 in section two, article one, chapter eight of this code. If any
42 municipality does not have available to its law-enforcement of-
43 ficers the testing equipment or facilities necessary to conduct
44 any secondary test which a law-enforcement officer may ad-
45 minister under this article, any member of the department of
46 public safety, the sheriff of the county wherein the arrest is
47 made or any deputy of such sheriff or any municipal law-
48 enforcement officer of another municipality within the county
49 wherein the arrest is made may, upon the request of such
50 arresting law-enforcement officer and in his presence, conduct
51 such secondary test and the results of such test may be used
52 in evidence to the same extent and in the same manner as if
53 such test had been conducted by such arresting law-enforce-
54 ment officer. Only the person actually administering or con-
55 ducting such test shall be competent to testify as to the
56 results and the veracity of such test.

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

1 When a law-enforcement officer has reason to believe a
2 person has committed an offense prohibited by section two of
3 this article or by an ordinance of a municipality of this state
4 which has the same elements as an offense described in said
5 section two of this article, the law-enforcement officer may
6 require such person to submit to a preliminary breath analysis
7 for the purpose of determining such person's blood alcohol
8 content. Such breath analysis must be administered as soon as
9 possible after the law-enforcement officer has a reasonable be-
10 lief that the person has been driving while under the influence
11 of alcohol, controlled substances or drugs. Any preliminary
12 breath analysis required under this section must be administer-
13 ed with a device and in a manner approved by the department
14 of health for that purpose. The results of a preliminary breath
15 analysis shall be used solely for the purpose of guiding the
16 officer in deciding whether an arrest should be made. When a
17 driver is arrested following a preliminary breath analysis, the
18 tests as hereinafter provided in this article shall be administered
19 in accordance with the provisions thereof.

§17C-5-7. Refusal to submit to tests; revocation of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing.

1 (a) If any person under arrest as specified in section
2 four of this article refuses to submit to any secondary chemical
3 test, the test shall not be given: *Provided*, That prior to such
4 refusal, the person is given a written statement advising him
5 that his refusal to submit to the secondary test finally desig-
6 nated will result in the revocation of his license to operate a
7 motor vehicle in this state for a period of at least one year and
8 up to life. The officer shall within forty-eight hours of such re-
9 fusals, sign and submit to the commissioner of motor vehicles a
10 written statement of the officer that (1) he had reasonable
11 grounds to believe such person had been driving a motor ve-
12 hicle in this state while under the influence of alcohol, con-
13 trolled substances or drugs, (2) such person was lawfully placed
14 under arrest for an offense relating to driving a motor vehicle

15 in this state while under the influence of alcohol, controlled sub-
16 stances or drugs, (3) such person refused to submit to the
17 secondary chemical test finally designated in the manner pro-
18 vided in section four of this article and (4) such person was
19 given a written statement advising him that his license to oper-
20 ate a motor vehicle in this state would be revoked for a period
21 of at least one year and up to life if he refused to submit to the
22 secondary chemical test finally designated in the manner pro-
23 vided in section four of this article. The signing of the state-
24 ment required to be signed by this section shall constitute an
25 oath or affirmation by the person signing such statement that
26 the statements contained therein are true and that any copy filed
27 is a true copy. Such statement shall contain upon its face a
28 warning to the officer signing that to willfully sign a statement
29 containing false information concerning any matter or thing,
30 material, or not material, is false swearing and is a misdemea-
31 nor. Upon receiving the statement the commissioner shall make
32 and enter an order revoking such person's license to operate a
33 motor vehicle in this state for the period prescribed by this sec-
34 tion.

35 For the first refusal to submit to the designated secondary
36 chemical test, the commissioner shall make and enter an order
37 revoking such person's license to operate a motor vehicle in
38 this state for a period of one year. If the commissioner has
39 previously revoked the person's license under the provisions of
40 this section, the commissioner shall, for the refusal to submit to
41 the designated secondary chemical test, make and enter an
42 order revoking such person's license to operate a motor vehicle
43 in this state for a period of ten years: *Provided*, That the license
44 may be reissued in five years in accordance with the provisions
45 of section three, article five-a of this chapter. If the commis-
46 sioner has previously revoked the person's license more than
47 once under the provisions of this section, the commissioner
48 shall, for the refusal to submit to the designated secondary
49 chemical test, make and enter an order revoking such person's
50 license to operate a motor vehicle in this state for a period of
51 life: *Provided*, That the license may be reissued in ten years in
52 accordance with the provisions of section three, article five-a,
53 of this chapter. A copy of each such order shall be forwarded

54 to such person by registered or certified mail, return receipt re-
55 quested, and shall contain the reasons for the revocation and
56 shall specify the revocation period imposed pursuant to this sec-
57 tion. No such revocation shall become effective until ten days
58 after receipt of the copy of such order. Any person who is un-
59 conscious or who is otherwise in a condition rendering him in-
60 capable of refusal, shall be deemed not to have withdrawn his
61 consent for a test of his blood, breath or urine as provided in
62 section four of this article and the test may be administered al-
63 though such person is not informed that his failure to submit to
64 the test will result in the revocation of his license to operate a
65 motor vehicle in this state for the period provided for in this
66 section.

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

75 (b) For the purposes of this section, where reference is made
76 to previous suspensions or revocations under this section, the
77 following types of suspension or revocations shall also be re-
78 garded as suspensions or revocations under this section.

79 (1) Any suspension or revocation on the basis of a con-
80 viction under a municipal ordinance of another state or a
81 statute of the United States or of any other state of an offense
82 which has the same elements as an offense described in section
83 two of this article, for conduct which occurred on or after the
84 effective date of this section;

85 (2) Any revocation under the provisions of sections one or
86 two, article five-a of this chapter, for conduct which occurred
87 on or after the effective date of this section.

88 (c) A person whose license to operate a motor vehicle in
89 this state has been revoked shall be afforded an opportunity
90 to be heard, in accordance with the provisions of section two,
91 article five-a of this chapter.

§17C-5-8. Interpretation and use of chemical test.

1 Upon trial for the offense of driving a motor vehicle in this
2 state while under the influence of alcohol, controlled sub-
3 stances or drugs, or upon the trial of any civil or criminal
4 action arising out of acts alleged to have been committed by
5 any person while driving a motor vehicle while under the in-
6 fluence of alcohol, controlled substances or drugs, evidence of
7 the amount of alcohol in the person's blood at the time of the
8 arrest or of the acts alleged, as shown by a chemical analysis
9 of his blood, breath or urine, is admissible, if the sample or
10 specimen was taken within two hours from and after the time
11 of arrest or of the acts alleged, and shall give rise to the fol-
12 lowing presumptions or have the following effect:

13 (a) Evidence that there was, at that time, five hundredths
14 of one percent or less, by weight, of alcohol in his blood,
15 shall be prima facie evidence that the person was not under
16 the influence of alcohol;

17 (b) Evidence that there was, at that time, more than five
18 hundredths of one percent and less than ten hundredths of one
19 percent, by weight, of alcohol in the person's blood shall be
20 relevant evidence, but it is not to be given prima facie effect
21 in indicating whether the person was under the influence of
22 alcohol;

23 (c) Evidence that there was, at that time, ten hundredths
24 of one percent or more, by weight, of alcohol in his blood,
25 shall be admitted as prima facie evidence that the person was
26 under the influence of alcohol.

27 Percent by weight of alcohol in the blood shall be based
28 upon milligrams of alcohol per one hundred cubic centimeters
29 of blood.

30 A chemical analysis of a person's blood, breath or urine,
31 in order to give rise to the presumptions or to have the effect
32 provided for in subdivisions (a), (b) and (c) of this section,
33 must be performed in accordance with methods and standards
34 approved by the state department of health. A chemical analy-
35 sis of blood or urine to determine the alcoholic content of
36 blood shall be conducted by a qualified laboratory or by the

37 state police scientific laboratory, of the criminal identification
38 bureau of the department of public safety.

39 The provisions of this article shall not limit the introduc-
40 tion in any administrative or judicial proceeding of any other
41 competent evidence bearing on the question of whether the
42 person was under the influence of alcohol, controlled sub-
43 stances or drugs.

§17C-5-9. Right to demand test.

1 Any person lawfully arrested for driving a motor vehicle in
2 this state while under the influence of alcohol, controlled sub-
3 stances or drugs shall have the right to demand that a sample
4 or specimen of his blood, breath or urine be taken within two
5 hours from and after the time of arrest, and that a chemical
6 test thereof be made. The analysis disclosed by such chemical
7 test shall be made available to such arrested person forthwith
8 upon demand.

**§17C-5-10. Fee for withdrawing blood sample and making urine
test; payment of fees.**

1 A reasonable fee shall be allowed to the person withdrawing
2 a blood sample or administering a urine test at the request and
3 direction of a law-enforcement officer in accordance with the
4 provisions of this article. If the person whose blood sample
5 was withdrawn or whose urine was tested was arrested and
6 charged with a violation of section two of this article, the
7 county having venue of such charge shall pay said fee, and if
8 said person is subsequently convicted of such charge, such fee
9 shall be taxed as a part of the costs of the criminal proceeding
10 and shall be paid, notwithstanding any other provision of this
11 code to the contrary, into the general fund of said county. If
12 the person whose blood sample was withdrawn or whose urine
13 was tested was arrested and charged with a violation of a
14 similar ordinance of any municipality, said municipality shall
15 pay said fee, and if said person is subsequently convicted of
16 such charge, such fee shall be taxed as a part of the costs of
17 the criminal proceeding and shall be paid, notwithstanding any
18 other provision of this code to the contrary, into the general
19 fund of said municipality.

§17C-5-11. Municipal ordinances to contain same elements as offenses under this article; penalties in municipal ordinances required to conform to state penalties.

1 (a) Notwithstanding the provisions of section five, article
2 twelve, chapter eight of this code, on and after the first day of
3 September, one thousand nine hundred eighty-three, each and
4 every municipal ordinance defining a misdemeanor offense of or
5 relating to driving under the influence of alcohol or driving
6 under the influence of intoxicating liquor or otherwise pro-
7 hibiting conduct made unlawful by this article shall be null and
8 void and of no effect unless such ordinance defines such an
9 offense in substantially similar terms as an offense defined
10 under the provisions of this article and such offense contains
11 the same elements as an offense defined herein.

12 (b) Notwithstanding the provisions of section one, article
13 eleven, chapter eight of this code, on and after the first day
14 of August, one thousand nine hundred eighty-three, each and
15 every municipal ordinance defining a misdemeanor offense of or
16 relating to driving under the influence of alcohol or driving
17 under the influence of intoxicating liquor or otherwise pro-
18 hibiting conduct made unlawful by this article shall prescribe
19 the same penalty for such offense as is prescribed for an
20 offense under this article containing the same elements.

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

**§17C-5A-1. Implied consent to administrative procedure; revoca-
tion for driving under the influence of alcohol, con-
trolled substances or refusal to submit to secondary
chemical test.**

1 (a) Any person who is licensed to operate a motor vehicle in
2 this state and who drives a motor vehicle in this state shall be
3 deemed to have given his consent by the operation thereof, sub-
4 ject to the provisions of this article, to the procedure set forth in
5 this article for the determination of whether his license to oper-
6 ate a motor vehicle in this state should be revoked because he
7 did drive a motor vehicle while under the influence of alcohol,

8 controlled substances, or drugs, or combined influence of al-
9cohol or controlled substances or drugs, or did drive a motor
10 vehicle while having an alcoholic concentration in his blood of
11 ten hundredths of one percent or more, by weight, or did re-
12 fuse to submit to any designated secondary chemical test.

13 (b) Any law-enforcement officer arresting a person for an
14 offense described in section two, article five of this chapter or
15 for an offense described in a municipal ordinance which has
16 the same elements as an offense described in said section two
17 of article five, shall report to the commissioner of the depart-
18 ment of motor vehicles by written statement within forty-eight
19 hours the name and address of the person so arrested. Such re-
20 port shall include the specific offense with which the person is
21 charged, and, if applicable, a copy of the results of any sec-
22 ondary chemical test of blood, breath or urine. The signing of the
23 statement required to be signed by this subsection shall consti-
24 tute an oath or affirmation by the person signing such state-
25 ment that the statements contained therein are true and that
26 any copy filed is a true copy. Such statement shall contain up-
27 on its face a warning to the officer signing that to willfully
28 sign a statement containing false information concerning any
29 matter or thing, material or not material, is false swearing and
30 is a misdemeanor.


31 (c) If, upon examination of the written statement of the
32 officer and the test results described in subsection (b) of
33 this section, the commissioner shall determine that a person
34 was arrested for an offense described in section two, article
35 five of this chapter or for an offense described in a municipal
36 ordinance which has the same elements as an offense described
37 in said section two of article five, and that the results of the
38 tests indicate that at the time the test or tests were administered
39 the person had, in his blood, an alcohol concentration of
40 ten hundredths of one percent or more, by weight, or at the
41 time the person was arrested he was under the influence of
42 alcohol, controlled substances or drugs, the commissioner shall
43 make and enter an order revoking such person's license to
44 operate a motor vehicle in this state. A copy of such order
45 shall be forwarded to such person by registered or certified
46 mail, return receipt requested, and shall contain the reasons

47 for the revocation and the revocation periods provided for in
48 section two of this article. No revocation shall become effec-
49 tive until ten days after receipt of a copy of such order.

§17C-5A-2. Hearing; revocation; review.

1 (a) Upon the written request of a person whose license to
2 operate a motor vehicle in this state has been revoked under
3 the provisions of section one of this article or section seven,
4 article five of this chapter, the commissioner of motor vehicles
5 shall afford the person an opportunity to be heard. Such writ-
6 ten request must be filed with the commissioner in person or by
7 registered or certified mail, return receipt requested, within ten
8 days after receipt of a copy of the order of revocation. The
9 hearing shall be before said commissioner or authorized deputy
10 or agent of said commissioner and all of the pertinent provi-
11 sions of article five, chapter twenty-nine-a of this code shall
12 apply: *Provided*, That in the case of a resident of this state the
13 hearing shall be held in the county wherein the arrest was
14 made in this state unless the commissioner or his authorized
15 deputy or agent and such person agree that the hearing may be
16 held in some other county.

17 (b) Any such hearing shall be held within twenty days
18 after the date upon which the commissioner received the
19 timely written request therefor, unless there is a postponement
20 or continuance. The commissioner may postpone or continue
21 any hearing on his own motion, or upon application for each
22 person for good cause shown. The commissioner shall adopt
23 and implement by a procedural rule written policies govern-
24 ing the postponement or continuance of any such hearing on
25 his own motion or for the benefit of any law-enforcement
26 officer ~~and~~ any person requesting such hearing, and such
27 policies shall be enforced and applied to all parties equally.
28 For the purpose of conducting such hearing, the commissioner
29 shall have the power and authority to issue subpoenas and
30 subpoenas duces tecum in accordance with the provisions of
31 section one, article five, chapter twenty-nine-a of this code:
32 *Provided*, That the notice of hearing to the appropriate law-
33 enforcement officer by registered or certified mail, return
34 receipt requested, shall constitute a subpoena to appear at such



35 hearing without the necessity of payment of fees by the depart-
36 ment of motor vehicles. All subpoenas and subpoenas duces
37 tecum shall be issued and served within the time and for the
38 fees and shall be enforced, as specified in section one, article
39 five of said chapter twenty-nine-a, and all of said section one
40 provisions dealing with subpoenas and subpoenas duces tecum
41 shall apply to subpoenas and subpoenas duces tecum issued for
42 the purpose of a hearing hereunder.

43 (c) Law-enforcement officers shall be compensated for the
44 time expended in their travel and the appearance before the
45 commissioner by the law-enforcement agency by whom they
46 are employed at their regular rate if they are scheduled to be on
47 duty during said time or at their regular overtime rate if they
48 are scheduled to be off-duty during said time.

49 (d) The principal question at such hearing shall be whether
50 the person did drive a motor vehicle while under the influence
51 of alcohol, controlled substances, or drugs, or did drive a motor
52 vehicle while having an alcohol concentration in his blood of
53 ten hundredths of one percent or more, by weight, or did refuse
54 to submit to the designated secondary chemical test.

55 The commissioner may propose a legislative rule in compliance
56 with the provisions of article three, chapter twenty-nine-a of
57 this code, which rule may provide that if a person accused
58 of driving a motor vehicle while under the influence of alcohol,
59 controlled substances, or drugs, or accused of driving a motor
60 vehicle while having an alcohol concentration in his blood of
61 ten hundredths of one percent or more, by weight intends to
62 challenge the results of any secondary chemical test of blood,
63 breath or urine, or intends to cross-examine the individual or
64 individuals who administered the test or performed the chemi-
65 cal analysis, he shall, within an appropriate period of time
66 prior to the hearing, notify the commissioner in writing of
67 such intention. Such rule may provide that when there is a
68 failure to comply with the notice requirement, the results of
69 the secondary test, if any, shall be admissible as though the
70 person and the commissioner had stipulated the admissibility
71 of such evidence. Any such rule shall provide that the rule
72 shall not be invoked in the case of a person who is not repre-
73 sented by counsel unless the communication from the commis-

74 sioner to the person establishing a time and place for hearing
75 also informed the person of the consequences of his failure to
76 timely notify the commissioner of his intention to challenge the
77 results of the secondary chemical test or cross-examine the in-
78 dividual or individuals who administered the test or performed
79 the chemical analysis.

80 (e) In the case of a hearing wherein a person is accused of
81 driving a motor vehicle while under the influence of alcohol,
82 controlled substances, or drugs, or accused of driving a motor
83 vehicle while having an alcoholic concentration in his blood of
84 ten hundredths of one percent or more, by weight, the com-
85 missioner shall make specific findings as to (1) whether the
86 arresting law-enforcement officer had reasonable grounds to
87 believe such person to have been driving while under the in-
88 fluence of alcohol, controlled substances or drugs, or while
89 having an alcoholic concentration in his blood of ten hun-
90 dredths of one percent or more, by weight, (2) whether such
91 person was lawfully placed under arrest for an offense in-
92 volving driving under the influence of alcohol, controlled sub-
93 stances or drugs, and (3) whether the tests, if any, were ad-
94 ministered in accordance with the provisions of this article
95 and article five of this chapter.

96 (f) If, in addition to a finding that the person did drive
97 a motor vehicle while under the influence of alcohol, con-
98 trolled substances, or drugs, or did drive a motor vehicle
99 while having an alcoholic concentration in his blood of ten
100 hundredths of one percent or more, by weight, the
101 commissioner also finds by a preponderance of the evidence
102 that the person when so driving did an act forbidden by law
103 or failed to perform a duty imposed by law, which act or
104 failure proximately caused the death of a person and was
105 committed in reckless disregard of the safety of others, and if
106 the commissioner further finds that the influence of alcohol,
107 controlled substances or drugs or the alcoholic concentration
108 in the blood was a contributing cause to the death, the com-
109 missioner shall revoke the person's license for a period of ten
110 years: *Provided*, That if the commissioner has previously sus-
111 pended or revoked the person's license under the provisions of

112 this section or section one of this article, the period of revo-
113 cation shall be for the life of such person.

114 (g) If, in addition to a finding that the person did drive
115 a motor vehicle while under the influence of alcohol, con-
116 trolled substances, or drugs, or did drive a motor vehicle
117 while having an alcoholic concentration in his blood of ten
118 hundredths of one percent or more, by weight, the com-
119 missioner also finds by a preponderance of the evidence
120 that the person when so driving did an act forbidden by
121 law or failed to perform a duty imposed by law, which
122 act or failure proximately caused the death of a person,
123 the commissioner shall revoke the person's license for a
124 period of five years: *Provided*, That if the commissioner
125 has previously suspended or revoked the person's license
126 under the provisions of this section or section one of this article,
127 the period of revocation shall be for the life of such person.

128 (h) If, in addition to a finding that the person did drive
129 a motor vehicle while under the influence of alcohol, controlled
130 substances, or drugs, or did drive a motor vehicle while having
131 an alcoholic concentration in his blood of ten hundredths of one
132 percent or more, by weight, the commissioner also finds by
133 a preponderance of the evidence that the person when so
134 driving did an act forbidden by law or failed to perform a duty
135 imposed by law, which act or failure proximately caused bodily
136 injury to a person other than himself, the commissioner shall
137 revoke the person's license for a period of two years: *Provided*,
138 That if the commissioner has previously suspended or revoked
139 the person's license under the provisions of this section or sec-
140 tion one of this article, the period of revocation shall be ten
141 years: *Provided, however*, That if the commissioner has pre-
142 viously suspended or revoked the person's license more than
143 once under the provisions of this section or section one of this
144 article, the period of revocation shall be for the life of such
145 person.

146 (i) If the commissioner finds by a preponderance of the
147 evidence that the person did drive a motor vehicle while under
148 the influence of alcohol, controlled substances, or drugs, or
149 did drive a motor vehicle while having an alcoholic concentra-
150 tion in his blood of ten hundredths of one percent or more,

151 by weight, or finds that the person, being an habitual user
152 of narcotic drugs or amphetamine or any derivative thereof,
153 did drive a motor vehicle, or finds that the person knowingly
154 permitted his vehicle to be driven by another person who
155 was under the influence of alcohol, controlled substances, or
156 drugs, or knowingly permitted his vehicle to be driven by
157 a person who had an alcoholic concentration in his blood of
158 ten hundredths of one percent or more, by weight, the com-
159 missioner shall revoke the person's license for a period of
160 six months: *Provided*, That if the commissioner has pre-
161 viously suspended or revoked the person's license under the
162 provisions of this section or section one of this article, the
163 period of revocation shall be ten years: *Provided, however*,
164 That if the commissioner has previously suspended or revoked
165 the person's license more than once under the provisions of
166 this section or section one of this article, the period of revoca-
167 tion shall be for the life of such person.

168 (j) For purposes of this section, where reference is made
169 to previous suspensions or revocations under this section, the
170 following types of criminal convictions or administrative sus-
171 pensions or revocations shall also be regarded as suspensions or
172 revocations under this section or section one of this article:

173 (1) Any administrative revocation under the provisions
174 of the prior enactment of this section for conduct which
175 occurred on or after the first day of September, one thousand
176 nine hundred eighty-one, and prior to the effective date of
177 this section;

178 (2) Any conviction under the provisions of a prior enact-
179 ment of section two, article five of this chapter for conduct
180 which occurred within a period of five years immediately pre-
181 ceding the first day of September, one thousand nine hundred
182 eighty-one;

183 (3) Any suspension or revocation on the basis of a con-
184 viction under a municipal ordinance of another state or a statute
185 of the United States or of any other state of an offense which
186 has the same elements as an offense described in section two,
187 article five of this chapter, for conduct which occurred on or
188 after the effective date of this section;

189 (4) Any suspension or revocation on the basis of a conviction
190 under a statute of the United States or of any other state
191 of an offense which has the same elements as an offense
192 described in section two, article five of this chapter, or a prior
193 enactment of said section, for conduct which occurred within
194 a period of five years immediately preceding the first day of
195 September, one thousand nine hundred eighty-one;

196 (5) Any revocation under the provisions of section seven,
197 article five of this chapter, for conduct which occurred on
198 or after the effective date of this section.

199 (k) In the case of a hearing wherein a person is accused
200 of refusing to submit to a designated secondary test, the
201 commissioner shall make specific findings as to (1) whether
202 the arresting law-enforcement officer had reasonable grounds
203 to believe such person had been driving a motor vehicle
204 in this state while under the influence of alcohol, controlled
205 substances or drugs, (2) whether such person was lawfully
206 placed under arrest for an offense relating to driving a motor
207 vehicle in this state while under the influence of alcohol, controlled
208 substances or drugs, (3) whether such person refused
209 to submit to the secondary test finally designated in the manner
210 provided in section four of this article, and (4) whether
211 such person had been given a written statement advising
212 him that his license to operate a motor vehicle in this state
213 would be revoked for at least one year and up to
214 life if he refused to submit to the test finally designated
215 in the manner provided in section four, article five of this
216 chapter.

217 (l) If the commissioner finds by a preponderance of the
218 evidence that (1) the arresting law-enforcement officer had
219 reasonable grounds to believe such person had been driving
220 a motor vehicle in this state while under the influence of
221 alcohol, controlled substances or drugs, (2) such person was
222 lawfully placed under arrest for an offense relating to driving
223 a motor vehicle in this state while under the influence of
224 alcohol, controlled substances or drugs, (3) such person refused
225 to submit to the secondary chemical test finally designated,
226 and (4) such person had been given a written statement

227 advising him that his license to operate a motor vehicle in this
 228 state would be revoked for a period of at least one year and up
 229 to life if he refused to submit to the test finally designated,
 230 the commissioner shall revoke the person's license to operate
 231 a motor vehicle in this state for the periods specified in
 232 section seven, article five of this chapter.

233 (m) If the commissioner finds to the contrary with respect
 234 to the above issues, he shall rescind his earlier order of revoca-
 235 tion or shall reduce the order of revocation to the appropriate
 236 period of revocation under this section, or section seven,
 237 article five of this chapter.

238 A copy of the commission's order made and entered follow-
 239 ing the hearing shall be served upon such person by registered
 240 or certified mail, return receipt requested. During the pendency
 241 of any such hearing, the revocation of the person's license
 242 to operate a motor vehicle in this state shall be stayed.

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

§17C-5A-2a. Assessment of costs; special account created.

1 The department of motor vehicles is hereby authorized
 2 and required to assess witness costs at the same rate as witness
 3 fees in circuit court and a docket fee of ten dollars for each
 4 hearing request against any person filing a request for a hearing
 5 under section two of this article who fails to appear, fails to
 6 have said order rescinded or fails to have said order modified
 7 to a lesser period of revocation.

8 All fees and costs collected hereunder shall be paid into a
 9 special revenue account in the state treasury. The funds in
 10 said account shall be used to pay or reimburse the various

11 law-enforcement agencies at the same rate as witnesses in
12 circuit court for the travel and appearance of its officers
13 before the commissioner or authorized deputy or agent pur-
14 suant to a hearing request under the provisions of this article.
15 The department shall authorize payment to the law-enforce-
16 ment agencies from said account as the fees for a particular
17 hearing request are received from the person against whom
18 the costs were assessed. The department shall authorize trans-
19 fer to an appropriate agency account from the special account to
20 pay costs of registered and certified mailings and other ex-
21 penses associated with the conduct of hearings under this
22 article as the docket fee for a particular hearing request is
23 received from the person against whom the costs were assessed.

24 In the event judicial review results in said order being
25 rescinded or modified to a lesser period of revocation the
26 costs assessed shall be discharged.

§17C-5A-3. Safety and treatment program; reissuance of license.

1 (a) The department of motor vehicles, in cooperation with
2 the department of health, the division of alcoholism and drug
3 abuse, shall establish by rule and regulation a comprehensive
4 safety and treatment program for persons whose license has
5 been revoked under the provisions of this article, or section
6 seven, article five of this chapter, or subsection (6), section
7 three, article five, chapter seventeen-b of this code, and shall
8 likewise establish the minimum qualifications for persons con-
9 ducting the safety and treatment program. The program shall
10 include, but not be limited to, treatment of alcoholism, alcohol
11 and drug abuse, psychological counseling, educational courses
12 on the dangers of alcohol and drugs as they relate to driving, de-
13 fensive driving, or other safety driving instruction, and other
14 programs designed to properly educate, train, and rehabilitate
15 the offender.

16 (b) (1) The department of motor vehicles, in cooperation
17 with the department of health, the division of alcoholism and
18 drug abuse, shall provide for the preparation of an educational
19 and treatment program for each person whose license has been
20 revoked under the provisions of this article or section seven,
21 article five of this chapter, or subsection (6), section five,

22 article three, chapter seventeen-b of this code, which shall con-
23 tain the following: (A) A listing and evaluation of the of-
24 fender's prior traffic record; (B) characteristics and history of
25 alcohol or drug use, if any; (C) his amenability to rehabilita-
26 tion through the alcohol safety program; and (D) a recom-
27 mendation as to treatment or rehabilitation, and the terms and
28 conditions of such treatment or rehabilitation. The program
29 shall be prepared by persons knowledgeable in the diagnosis of
30 alcohol or drug abuse and treatment. The cost of program
31 shall be paid out of fees established by the commissioner of
32 motor vehicles in cooperation with the department of health,
33 division of alcohol and drug abuse. These fees shall be de-
34 posited in a special account administering the program, to be
35 designated the "driver's rehabilitation fund."

36 (2) The commissioner, after giving due consideration to
37 the program developed for the offender, shall prescribe the
38 necessary terms and conditions for the reissuance of the license
39 to operate a motor vehicle in this state revoked under this
40 article, or section seven, article five of this chapter, or sub-
41 section (6), section five, article three, chapter seventeen-b of
42 this code, which shall include successful completion of the
43 educational, treatment, or rehabilitation program, subject to
44 the following:

45 (A) When the period of revocation is six months, the
46 license to operate a motor vehicle in this state shall not be
47 reissued until (i) at least ninety days have elapsed from the
48 date of the initial revocation during which time the revocation
49 was actually in effect, (ii) the offender has successfully com-
50 pleted the program, (iii) all costs of the program and ad-
51 ministration have been paid, and (iv) all costs assessed as a
52 result of a revocation hearing have been paid.

53 (B) When the period of revocation is for a period of
54 years, the license to operate a motor vehicle in this state shall
55 not be reissued until (i) at least one half of such time period
56 has elapsed from the date of the initial revocation during which
57 time the revocation was actually in effect, (ii) the offender has
58 successfully completed the program, (iii) all costs of the pro-
59 gram and administration have been paid, and (iv) all costs
60 assessed as a result of a revocation hearing have been paid.

61 (C) When the period of revocation is for life, the license
62 to operate a motor vehicle in this state shall not be reissued
63 until (i) at least ten years have elapsed from the date of the
64 initial revocation, during which time the revocation was
65 actually in effect, (ii) the offender has successfully com-
66 pleted the program, (iii) all costs of the program and ad-
67 ministration have been paid, and (iv) all costs assessed as a
68 result of a revocation hearing have been paid.

69 (c) Notwithstanding any provisions of this section to the
70 contrary, when the necessary terms and conditions for the
71 successful completion of the safety and treatment program
72 for the reissuance of the person's license to operate a motor
73 vehicle includes or requires full-time commitment to a treat-
74 ment facility for a period of one day or more, the person
75 shall be forthwith entitled to judicial review, pursuant to chap-
76 ter twenty-nine-a of this code, of the requirement of and neces-
77 sity for full-time commitment to a treatment facility as a condi-
78 tion for successful completion of the person's safety and
79 treatment program.

§17C-5A-4. Search for record of prior offenses by driver.

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

11 Any law-enforcement officer who fails to file the statements
12 required by this chapter within forty-eight hours of the arrest
13 of any person charged for any violation of section two, article
14 five of this chapter or for any offense described in a municipal
15 ordinance which has the same elements as an offense described
16 in said section two of article five, shall be guilty of a misde-
17 meanor and shall be subject to a fine of not less than twenty
18 dollars nor more than five hundred dollars. And if the com-

19 missioner shall willfully fail to post by United States mail or
20 other adequate means of communication a written report ad-
21 dressed to the law-enforcement officer of any such offense,
22 as required by this section, within a period of forty-eight hours
23 after the receipt of the statement, the commissioner shall be
24 guilty of a misdemeanor and shall be subject to a fine of not
25 less than twenty dollars nor more than five hundred dollars.

**ARTICLE 5B. POSTMORTEM TESTS FOR ALCOHOL IN PERSONS
KILLED IN MOTOR VEHICLE ACCIDENTS.**

**§17C-5B-1. Blood test for alcohol in drivers and adult pedestrians
killed in motor vehicle accidents; time limit for con-
ducting test; who may conduct test; express consent
to withdraw blood from dead body granted; granting
civil and criminal immunity to person conducting
test; fee for test.**

1 When any motor vehicle driver or adult pedestrian dies in a
2 motor vehicle accident in this state or dies within four hours
3 after having been involved in a motor vehicle accident in this
4 state, the physician in attendance, or law-enforcement officer
5 having knowledge of such death, or the funeral director, or any
6 other person present when such death occurred shall immedi-
7 ately report such death to the medical examiner of the county
8 in which such death occurred. Upon receipt of such notice, the
9 medical examiner shall take charge of the dead body and shall
10 conduct, or shall cause to be conducted, within twelve hours
11 after receiving such notice and before the dead body is em-
12 balmed, a blood test to determine the presence and percentage
13 concentration of alcohol in the blood of such dead body.

14 The blood test required under this section shall be conducted
15 only by a person qualified to conduct an autopsy under article
16 twelve, chapter sixty-one of this code or by a doctor of medi-
17 cine, doctor of osteopathy, registered nurse, trained medical
18 technician at the place of his employment, or county coroner
19 who is deemed qualified by the office of medical examina-
20 tions to conduct such blood test.

21 Any person who is to conduct a blood test under the pro-
22 visions of this section is hereby expressly authorized to with-
23 draw blood from the dead body in the quantity necessary to

24 conduct such blood test. Any person withdrawing blood from
25 the dead body and testing such blood and any hospital or clinic
26 in which such blood is withdrawn and tested under the provi-
27 sions of this section shall be immune from all civil and criminal
28 liability which might otherwise be imposed.

29 Any person conducting a blood test under the provisions of
30 this section shall receive a standardized fee in the amount de-
31 termined by the office of medical examinations, which fee
32 shall be paid from funds appropriated to the office of medi-
33 cal examinations.

34 Nothing contained in this section shall be construed to pre-
35 clude the taking of a blood test by any other person having
36 the right to take ^{any} such test or cause such test to be taken
37 while the medical examiner has charge of the body. ✓

**§17C-5B-2. To whom and how county medical examiners report
results of blood tests; such reports not admissible as
evidence; use of reports only for statistical and high-
way safety purposes.**

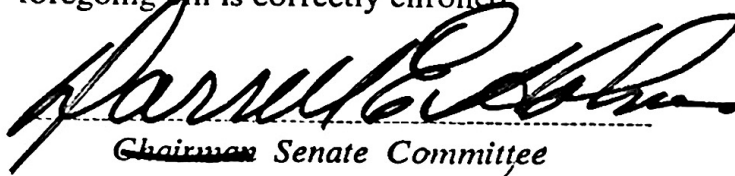
1 Each county medical examiner shall immediately report the
2 results of each blood test conducted under the authority of
3 section one of this article by him, or conducted at his request,
4 to the chief medical examiner of the office of medical exami-
5 nations and to the department of public safety. The results of
6 such blood test and report thereof shall be used only for re-
7 cordkeeping and statistical purposes. No results of such blood
8 test or any report thereof shall be admissible in evidence in any
9 action or proceeding of any kind in any court or before any
10 tribunal, board, agency or person.

11 The department of public safety shall compile the data from
12 all such reports submitted to it on a monthly basis. The depart-
13 ment shall forward such compilations to the governor's high-
14 way safety administration and the department of motor ve-
15 hicles. Such compilations shall be only for statistical purposes
16 and highway safety information and shall not disclose or re-
17 veal in any manner the identity of any dead person whose
18 blood was tested under the provisions of section one of this
19 article.

20 The department of public safety, the governor's highway
21 safety administration and department of motor vehicles shall
22 make use of such compilations in a manner to provide accur-
23 ate and useful statistical information to government and the
24 public relative to achieving a reduction in motor vehicle acci-
25 dents arising in whole or in part from the imbibing of alcohol
26 by motor vehicle drivers and adult pedestrians.

Enr. Com. Sub. for H. B. 1402] 36

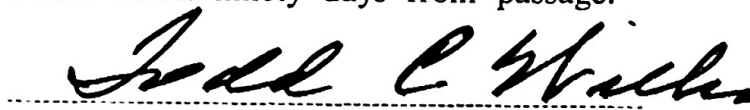
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled

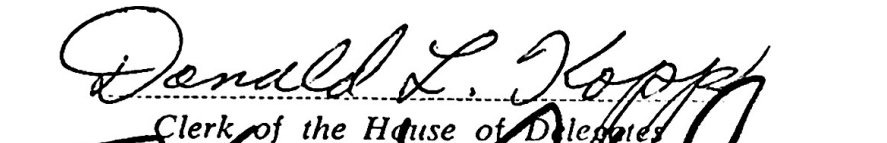


Chairman Senate Committee

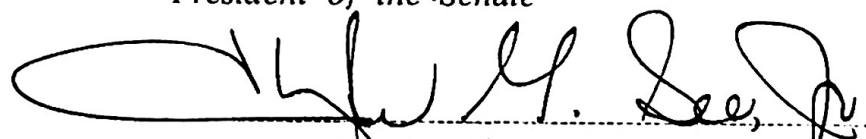

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates

President of the Senate


Speaker House of Delegates

The within is approved this the 29
day of March, 1983.


Governor

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