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

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[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 the 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-
requiring 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 of 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.

*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.

The exemptions provided in this article for sales of tangible personal property and services rendered for use or consumption in connection with the conduct of the business of selling tangible personal property to consumers or dispensing a service subject to the tax under this article and, for sales of tangible personal property for the purpose of resale in the form of tangible personal property, shall not apply to persons or organizations licensed under authority of article seven of chapter sixty of this code, for the purchase of liquor or wines from the alcohol beverage control commissioner for resale.


The taxes levied by this article shall be due and payable in monthly installments, on or before the fifteenth day of the month next succeeding the month in which the tax accrued. The taxpayer shall, on or before the fifteenth day of each month, make out and mail to the tax commissioner a return for the preceding month, in the form prescribed by the tax commissioner, showing: (a) The total gross proceeds of his business for that month; (b) the gross proceeds of his business upon which the tax is based; (c) the amount of the tax for which he is liable; and (d) any further information necessary in the computation and collection of the tax which the tax commissioner may require. A remittance for the amount of the tax shall accompany the return: Provided, That notwithstanding the provisions of section thirty of this article any such tax collected by the alcohol beverage control commissioner from persons or organizations licensed under authority of article seven of chapter sixty of this code shall be paid into a revolving fund account in the state treasury, designated the drunk driving prevention fund, to be administered by the commission on drunk driving prevention, subject to appropriations by the Legislature.

A monthly return shall be signed by the taxpayer or his 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.

There is hereby created within the department of public safety the commission on drunk driving prevention which shall consist of seven members as follows: the superintendent of the department of public safety; the commissioner of the department of motor vehicles; the alcohol beverage control commissioner; a prosecuting attorney appointed by the governor from a list of three prosecuting attorneys submitted by the prosecuting attorney's association; a county sheriff appointed by the governor from a list of three county sheriffs submitted by the county sheriff's association; a municipal police officer appointed by the governor from a list of three officers submitted by the state fraternal order of police; a lay citizen of the state appointed by the governor, who has demonstrated an interest in the prevention of drunk driving.

The superintendent of the department of public safety shall be the chairman, ex officio, of the commission and shall provide the necessary staff and meeting facilities to the commission. The appointed members shall serve for a term of two years and may be reappointed. Any appointed member who ceases to occupy the position which qualifies him for the appointment shall immediately vacate his membership on the commission. Each member shall serve until the appointment of his successor.

No member shall receive any compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties.

A majority of the members of the commission shall constitute a quorum for the transaction of business. Meetings shall be held at the call of the chairman or of a majority of its members.

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

The commission shall have the following powers and duties:
(a) Develop and maintain a comprehensive program to prevent drunk driving and to enhance the enforcement of laws defining drunk driving offenses.

(b) Inquire and determine from state and local law-enforcement agencies the availability and need for equipment and additional personnel for the effective enforcement of laws defining drunk driving offenses.

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

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

(e) Monitor, review and evaluate the expenditure, use and effectiveness of the fund and report to the Legislature annually on the exercise of its power and duties under this section, including an annual accounting of expenditures and of the grants 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 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) Driving under the influence of alcohol, controlled substances or other drugs outside the state of West Virginia which conviction is under a municipal ordinance or statute of the United States or any other state of an offense which has the same elements as an offense described in section two, article five, chapter seventeen-c of this code; and

(7) 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 chapter 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.

(a) Except as otherwise provided in subsection (b) of this section any person who drives a motor vehicle on any public highway of this state at a time when his privilege so to do has
been lawfully suspended or revoked shall, for the first offense, be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for forty-eight hours and, in addition to such mandatory jail sentence, shall be fined not less than fifty dollars nor more than five hundred dollars; for the second offense, such person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for a period of ten days and, in addition to such mandatory jail sentence, shall be fined not less than one hundred dollars nor more than five hundred dollars; for the third or any subsequent offense, such person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for six months and, in addition to such mandatory jail sentence, shall be fined not less than one hundred fifty dollars nor more than five hundred dollars.

(b) Any person who drives a motor vehicle on any public highway of this state at a time when his privilege so to do has been lawfully revoked for driving under the influence of alcohol, controlled substances or other drugs, or while having an alcoholic concentration in his blood of ten hundredths of one percent or more, by weight, or for refusing to take a secondary chemical test of blood alcohol content shall, for the first offense, be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for not less than forty-eight hours nor more than six months and, in addition to such mandatory jail sentence, shall be fined not less than one hundred dollars nor more than five hundred dollars; for the second offense, such person shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment in the county jail for a period of not less than six months nor more than one year and, in addition to such mandatory jail sentence, shall be fined not less than one thousand dollars nor more than three thousand dollars; for the third or any subsequent offense, such person shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one year nor more than three years and, in addition to such mandatory jail sentence, shall be fined not less than three thousand dollars nor more than five thousand dollars.
(c) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the license of such person was lawfully revoked shall extend the period of such suspension for an additional like period and if the conviction was upon a charge of driving while a license was revoked lawfully the department shall not issue a new license for an additional period of one year from and after the date such person would otherwise have been 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.

(a) Any person who:

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

(A) Under the influence of alcohol, or

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

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

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

(2) 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, and

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

(4) Shall 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 and shall be fined not less than one thousand dollars nor more than three thousand dollars.

(b) Any person who:
(1) Drives a vehicle in this state while he is:
   (A) Under the influence of alcohol, or
   (B) Under the influence of any controlled substance, or
   (C) Under the influence of any other drug, or
   (D) Under the combined influence of alcohol and any controlled substance or any other drug, and

(2) 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,

(3) Shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned 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 thousand dollars.

(c) Any person who:

(1) Drives a vehicle in this state while he is:
   (A) Under the influence of alcohol, or
   (B) Under the influence of any controlled substance, or
   (C) Under the influence of any other drug, or
   (D) Under the combined influence of alcohol and any controlled substance or any other drug, and

(2) 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 bodily injury to any person other than himself,

(3) Shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for 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:

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

(A) Under the influence of alcohol, or

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

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

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

(2) Shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for 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 imprisoned in the county jail for 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.

(f) Any person who:

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

(A) Under the influence of alcohol, or

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

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

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

(2) Shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned 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 who:

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

(2) Shall be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned 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.

(h) Any person violating any provision of subsection (b), (c), (d), (e), (f) or (g) 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, and the court may, in its discretion, impose a fine of not less than one thousand dollars nor more than three thousand dollars.

(i) A person violating any provision of subsection (b), (c), (d), (e), (f) or (g) 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, and the court may, in its discretion, impose a fine of not less than three thousand dollars nor more than five thousand dollars.

(j) For purposes of subsections (h) and (i) of this section relating to second, third and subsequent offenses, the following types of convictions shall be regarded as convictions under this section:

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

(2) Any conviction under the provisions of subsections (a) or (b) of the prior enactment of this sec-
tion for an offense which occurred within a period of five years immediately preceding the first day of September, one thousand nine hundred eighty-one;

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

(k) The fact that any person charged with a violation of subsection (a), (b), (c), (d) or (e) of this section, or any person permitted to drive as described under subsections (f) or (g) 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), (e), (f) or (g) of this section.

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

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

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

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

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

7 (b) When used in this code, the terms or phrases "driving
under the influence of intoxicating liquor," "driving or operat-
ing 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.

15 (c) From and after the effective date of this section, a war-
rant or indictment which charges or alleges an offense, pro-
hibited 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 (b) 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.

1 Any person who drives a motor vehicle in 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 ad-
ministered in accordance with the provisions of section five of
this article whenever a law-enforcement officer has reasonable
cause to believe a person to have committed an offense pro-
hibited by section two of this article or by an ordinance of a
municipality of this state which has the same elements as an
offense described in said 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 committed an offense prohibited by section
two of this article or by an ordinance of a municipality of this
state which has the same elements as an offense described in
said section two of this article. The law-enforcement agency by
which such law-enforcement officer is employed shall design-
nate which one of the aforesaid secondary tests shall be ad-
ministered: 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 to be ad-
ministered, and notwithstanding the provisions of section seven
of this article, such refusal to submit to a blood test only shall
not result in the revocation 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 given a written statement advising him that his refusal
to submit to the secondary chemical test finally designated as
provided in this section, will result in the revocation of his
license to operate a motor vehicle in this state for a period of at
least one year and up to life.

For the purpose of this article the term "law-enforcement of-
fer" or "police 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 police department in any municipality as defined
in section two, article one, chapter eight of this code. If any
municipality does not have available to its law-enforcement of-
ficers the testing equipment or facilities necessary to conduct
any secondary test which a law-enforcement officer may ad-
minister 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 or any municipal law-
forcement officer of another municipality within the county
wherein the arrest is made 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-enforce-
ment officer. Only the person actually administering or con-
ducting 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 law-enforcement officer has reason to believe a person has committed an offense prohibited by section two of this article or by an ordinance of a municipality of this state which has the same elements as an offense described in said section two of this article, the law-enforcement 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 law-enforcement 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-5-7. Refusal to submit to tests; revocation of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing.

(a) If any person under arrest as specified in section four of this article refuses to submit to any secondary chemical test, the test shall not be given: Provided, That prior to such refusal, the person is given a written statement advising him that his refusal to submit to the secondary test finally designated will result in the revocation of his license to operate a motor vehicle in this state for a period of at least one year and up to life. The officer shall within forty-eight hours of such refusal, sign and submit to the commissioner of motor vehicles a written statement of the officer that (1) he had reasonable grounds to believe such person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, (2) such person was lawfully placed under arrest for an offense relating to driving a motor vehicle...
in this state while under the influence of alcohol, controlled sub-
stances or drugs, (3) such person refused to submit to the
secondary chemical test finally designated in the manner pro-
vided in section four of this article and (4) such person was
given a written statement advising him that his license to oper-
ate a motor vehicle in this state would be revoked for a period
of at least one year and up to life if he refused to submit to the
secondary chemical test finally designated in the manner pro-
vided in section four of this article. The signing of the state-
ment required to be signed by this section shall constitute an
oath or affirmation by the person signing such statement that
the statements contained therein are true and that any copy filed
is a true copy. Such statement shall contain upon its face a
warning to the officer signing that to willfully sign a statement
containing false information concerning any matter or thing,
material, or not material, is false swearing and is a misdemean-
or. Upon receiving the statement the commissioner shall make
and enter an order revoking such person's license to operate a
motor vehicle in this state for the period prescribed by this sec-
tion.

For the first refusal to submit to the designated secondary
chemical test, the commissioner shall make and enter an order
revoking such person's license to operate a motor vehicle in
this state for a period of one year. If the commissioner has
previously revoked the person's license under the provisions of
this section, the commissioner shall, for the refusal to submit to
the designated secondary chemical test, make and enter an
order revoking such person's license to operate a motor vehicle
in this state for a period of ten years: Provided, That the license
may be reissued in five years in accordance with the provisions
of section three, article five-a of this chapter. If the commis-
sioner has previously revoked the person's license more than
once under the provisions of this section, the commissioner
shall, for the refusal to submit to the designated secondary
chemical test, make and enter an order revoking such person's
license to operate a motor vehicle in this state for a period of
life: Provided, That the license may be reissued in ten years in
accordance with the provisions of section three, article five-a,
of this chapter. A copy of each such order shall be forwarded
to such person by registered or certified mail, return receipt requested, and shall contain the reasons for the revocation and shall specify the revocation period imposed pursuant to this section. No such revocation 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 four of this article and the test may be administered although such person is not informed that his failure to submit to the test will result in the revocation of his license to operate a motor vehicle in this state for the period provided for in this section.

A revocation 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) For the purposes of this section, where reference is made to previous suspensions or revocations under this section, the following types of suspension or revocations shall also be regarded as suspensions or revocations under this section.

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

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

(c) A person whose license to operate a motor vehicle in this state has been revoked shall be afforded an opportunity to be heard, in accordance with the provisions of section two, article five-a of this chapter.
§17C-5-8. Interpretation and use of chemical test.

Upon trial for the offense of driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, 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 alcohol;

(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 alcohol;

(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 alcohol.

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 in this state while under the influence of alcohol, controlled substances or drugs shall have the right to demand that a sample or specimen of his 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 section two of this article, 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.
§17C-5-11. Municipal ordinances to contain same elements as offenses under this article; penalties in municipal ordinances required to conform to state penalties.

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

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

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

(a) Any person who is licensed to operate a motor vehicle in this state and who drives a motor vehicle in this state shall be deemed to have given his consent by the operation thereof, subject to the provisions of this article, to the procedure set forth in this article for the determination of whether his license to operate a motor vehicle in this state should be revoked because he did drive a motor vehicle while under the influence of alcohol,
controlled substances, or drugs, or combined influence of alcohol or controlled substances or drugs, or did drive a motor vehicle while having an alcoholic concentration in his blood of ten hundredths of one percent or more, by weight, or did refuse to submit to any designated secondary chemical test.

(b) Any law-enforcement officer arresting a person for an offense described in section two, article five of this chapter or for an offense described in a municipal ordinance which has the same elements as an offense described in said section two of article five, shall report to the commissioner of the department of motor vehicles by written statement within forty-eight 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 chemical test of blood, breath or urine. The signing of the statement required to be signed by this subsection shall constitute an oath or affirmation by the person signing such statement that the statements contained therein are true and that any copy filed is a true copy. Such statement shall contain upon its face a warning to the officer signing that to willfully sign a statement containing false information concerning any matter or thing, material or not material, is false swearing and is a misdemeanor.

(c) If, upon examination of the written statement of the officer and the test 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 or for an offense described in a municipal ordinance which has the same elements as an offense described in said section two of article five, 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 or more, by weight, or at the time the person was arrested he was under the influence of alcohol, controlled substances or drugs, the commissioner shall make and enter an order revoking 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, and shall contain the reasons
for the revocation and the revocation periods provided for in section two of this article. No revocation shall become effective until ten days after receipt of a copy of such order.

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

(a) Upon the written request of a person whose license to operate a motor vehicle in this state has been revoked under the provisions of section one of this article or section seven, article five of this chapter, 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 revocation. 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: Provided, That in the case of a resident of this state the hearing shall be held in the county wherein the arrest was made in this state unless the commissioner or his authorized deputy or agent and such person agree that the hearing may be held in some other county.

(b) 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. The commissioner shall adopt and implement by a procedural rule written policies governing the postponement or continuance of any such hearing on his own motion or for the benefit of any law-enforcement officer and any person requesting such hearing, and such policies shall be enforced and applied to all parties equally.

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:

Provided, That the notice of hearing to the appropriate law-enforcement officer by registered or certified mail, return 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
time expended in their travel and the appearance before the
commissioner by the law-enforcement agency by whom they
are employed at their regular rate if they are scheduled to be on
duty during said time or at their regular overtime rate if they
are scheduled to be off-duty during said time.

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

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

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

(e) In the case of a hearing wherein a person is accused of driving a motor vehicle while under the influence of alcohol, controlled substances, or drugs, or accused of driving a motor vehicle while having an alcoholic concentration in his blood of ten hundredths of one percent 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, or while having an alcoholic concentration in his blood of ten hundredths of one percent or more, by weight, (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, if any, were administered in accordance with the provisions of this article and article five of this chapter.

(f) If, in addition to a finding that the person 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 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 or revoked the person's license under the provisions of
this section or section one of this article, the period of revocation shall be for the life of such person.

(g) If, in addition to a finding that the person 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 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 or revoked the person's license under the provisions of this section or section one of this article, the period of revocation shall be for the life of such person.

(h) If, in addition to a finding that the person 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 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 or revoked the person's license under the provisions of this section or section one of this article, the period of revocation shall be ten years: Provided, however, That if the commissioner has previously suspended or revoked the person's license more than once under the provisions of this section or section one of this article, the period of revocation shall be for the life of such person.

(i) If the commissioner finds by a preponderance of the evidence that the person 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 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, controlled substances, or
drugs, or knowingly permitted his vehicle to be driven by
a person who had an alcoholic concentration in his blood of
ten hundredths of one percent or more, by weight, the com-
mmissioner shall revoke the person’s license for a period of
six months: Provided, That if the commissioner has pre-
viously suspended or revoked the person’s license under the
provisions of this section or section one of this article, the
period of revocation shall be ten years: Provided, however,
That if the commissioner has previously suspended or revoked
the person’s license more than once under the provisions of
this section or section one of this article, the period of revoca-
tion shall be for the life of such person.

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

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

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

(3) Any suspension or revocation on the basis of a con-
viction under a municipal ordinance of another state or a statute
of the United States or of any other state of an offense which
has the same elements as an offense described in section two,
article five of this chapter, for conduct which occurred on or
after the effective date of this section;
(4) Any suspension or revocation on the basis of a conviction under a statute of the United States or of any other state of an offense which has the same elements as an offense described in section two, article five of this chapter, or a prior enactment of said section, for conduct which occurred within a period of five years immediately preceding the first day of September, one thousand nine hundred eighty-one;

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

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

(l) If the commissioner finds by a preponderance of the evidence that (1) the arresting law-enforcement officer had reasonable grounds to believe such person had been driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, (2) such person was lawfully placed under arrest for an offense relating to driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, (3) such person refused to submit to the secondary chemical test finally designated, and (4) such person had been given a written statement
advising him that his license to operate a motor vehicle in this
state would be revoked for a period of at least one year and up
to life if he refused to submit to the test finally designated,
the commissioner shall revoke the person's license to operate
a motor vehicle in this state for the periods specified in
section seven, article five of this chapter.

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

A copy of the commission's order made and entered follow-
ing the hearing shall be served upon such person by registered
or certified mail, return receipt requested. During the pendency
of any such hearing, the revocation 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 revocation 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 the appellant
will suffer irreparable harm if such order is not stayed.

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

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

All fees and costs collected hereunder shall be paid into a
special revenue account in the state treasury. The funds in
said account shall be used to pay or reimburse the various
law-enforcement agencies at the same rate as witnesses in circuit court for the travel and appearance of its officers before the commissioner or authorized deputy or agent pursuant to a hearing request under the provisions of this article. The department shall authorize payment to the law-enforcement agencies from said account as the fees for a particular hearing request are received from the person against whom the costs were assessed. The department shall authorize transfer to an appropriate agency account from the special account to pay costs of registered and certified mailings and other expenses associated with the conduct of hearings under this article as the docket fee for a particular hearing request is received from the person against whom the costs were assessed.

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

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

(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 whose license has been revoked under the provisions of this article, or section seven, article five of this chapter, or subsection (6), section three, article five, chapter seventeen-b of this code, and shall likewise establish the minimum qualifications for persons conducting the safety and treatment program. 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) (1) 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 whose license has been revoked under the provisions of this article or section seven, article five of this chapter, or subsection (6), section five,
article three, chapter seventeen-b of this code, which shall con-
tain the following: (A) A listing and evaluation of the of-
fender's prior traffic record; (B) characteristics and history of
alcohol or drug use, if any; (C) his amenability to rehabilita-
tion through the alcohol safety program; and (D) a recom-
mendation 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 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 de-
posited in a special account administering the program, to be
designated the "driver's rehabilitation fund."

(2) 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 revoked under this
article, or section seven, article five of this chapter, or sub-
section (6), section five, article three, chapter seventeen-b of
this code, which shall include successful completion of the
educational, treatment, or rehabilitation program, subject to
the following:

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

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

(c) Notwithstanding any provisions of this section to the contrary, when the necessary terms and conditions for the successful completion of the safety and treatment program for the reissuance of the person's license to operate a motor vehicle includes or requires full-time commitment to a treatment facility for a period of one day or more, the person shall be forthwith entitled to judicial review, pursuant to chapter twenty-nine-a of this code, of the requirement of and necessity for full-time commitment to a treatment facility as a condition for successful completion of the person's safety and treatment program.

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

The commissioner shall immediately upon receipt of the statements 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 statements 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 statement an abstract showing any such prior offense, the date thereof, the identity of any court in which any proceedings in regard thereto were instituted and the disposition thereof.

Any law-enforcement officer who fails to file the statements required by this chapter within forty-eight hours of the arrest of any person charged for any violation of section two, article five of this chapter or for any offense described in a municipal ordinance which has the same elements as an offense described in said section two 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 com-
missioner shall willfully fail to post by United States mail or
other adequate means of communication a written report ad-
dressed to the law-enforcement officer of any such offense,
as required by this section, within a period of forty-eight hours
after the receipt of the statement, 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.

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.

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

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

Any person who is to conduct a blood test under the pro-
visions of this section is hereby expressly authorized to with-
draw blood from the dead body in the quantity necessary to
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conduct such blood test. Any person withdrawing blood from
the dead body and testing such blood and any hospital or clinic
in which such blood is withdrawn and tested under the provi-
sions of this section shall be immune from all civil and criminal
liability which might otherwise be imposed.

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

Nothing contained in this section shall be construed to pre­
clude the taking of a blood test by any other person having
the right to take such test or cause such test to be taken
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.

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

The department of public safety shall compile the data from
all such reports submitted to it on a monthly basis. The depart-
ment shall forward such compilations to the governor’s high-
way safety administration and the department of motor ve-
hicles. Such compilations shall be only for statistical purposes
and highway safety information and shall not disclose or re-
veal in any manner the identity of any dead person whose
blood was tested under the provisions of section one of this
article.
The department of public safety, the governor's highway safety administration and department of motor vehicles shall make use of such compilations in a manner to provide accurate and useful statistical information to government and the public relative to achieving a reduction in motor vehicle accidents arising in whole or in part from the imbibing of alcohol by motor vehicle drivers and adult pedestrians.
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 29th day of March, 1983.

Governor