WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986

ENROLLED
SENATE BILL NO. 524
(By Senator)

PASSED March 8, 1986
In Effect_90 days from Passage
AN ACT to amend article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-two; to amend and reenact sections five and nine, article three, chapter seventeen-b of said code; to amend and reenact section three, article four of said chapter; to amend and reenact sections two and seven, article five, chapter seventeen-c of said code; and to amend and reenact sections one, two and three, article five-a of said chapter, all relating to drunk driving enforcement program; purpose; grounds for mandatory revocation of license by department; officers entitled to secure license; where fees to be deposited; increase of pickup fee; increased period of suspension for persons age sixteen through eighteen; driving while license suspended or revoked; increased criminal penalties for driving while license suspended or revoked for driving under the influence of alcohol or drugs or refusal to take secondary chemical tests or with an elevated blood alcohol level; driving under influence of alcohol, controlled substances or drugs; penalties; adding to the alternative forms of driving under the influence the offense of driving with an alcohol
blood level of ten hundredeths of one percent or more, by weight; criminal penalties; permitting a second driving under the influence to be charged when charges of a prior offense are pending; refusal to submit to tests; revocation of license; consent not withdrawn if person arrested is incapable; hearing; hearing examiner; funding for hearing process; clarifying that an initial refusal to take a secondary test shall be deemed to be a final refusal; implied consent to administrative procedure; revocation for driving under the influence; refusal to submit to secondary chemical test; authorizing the confiscation of a driver's license by an arresting officer and the issuance and renewal upon hearing request of a temporary license; safety and treatment program; reissuance of license; certification of completion; limit on judicial stay of suspension.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-42. Drunk driving enforcement program established; purpose.

1 The superintendent of the department shall establish and maintain a drunk driving enforcement program for the purpose of enforcing drunk driving laws in the state, especially the investigation and apprehension of persons driving illegally on previously revoked or suspended operators' licenses for drunk driving related offenses. The superintendent shall develop a program in cooperation with local law-enforcement agencies to accomplish this purpose;
CHAPTER 17B. MOTOR VEHICLE OPERATORS' AND CHAUFFEURS' LICENSES.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

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

1 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: Provided, That if the convicted driver had not reached his or her nineteenth birthday at the time of the conduct for which the license is revoked under this section, the license shall be revoked until the driver's nineteenth birthday, or the applicable statutory period of revocation, whichever is longer:

   (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.
§17B-3-9. Surrender and return of license; willful refusal to return; additional fee for reinstatement.

The department, upon suspending or revoking a license shall require that such license shall be surrendered to and be retained by the department: Provided, That before such license may be reinstated, the licensee shall pay a fee of fifteen dollars, in addition to all other fees and charges, which fee shall be collected by the department and deposited in the state road fund to be appropriated to the department for use in the enforcement of the provisions of this section. If any person shall willfully fail to return to the department such suspended or revoked license, the commissioner shall secure possession thereof through the department of public safety, a local law-enforcement agency, or other lawful means and return same to the department. Said superintendent of the department of public safety or local law-enforcement agency shall make a report in writing to the commissioner as to the result of his efforts to secure the possession and return of such license. For each license which shall have been suspended or revoked and which the holder thereof shall have willfully failed to return to the department within ten days from the time that such suspension or revocation becomes effective and which shall have been certified to the superintendent of the department of public safety as aforesaid, the holder thereof, before the same may be reinstated, in addition to all other fees and charges, shall pay a fee of fifty dollars, which shall be collected by the department of motor vehicles and paid into the state treasury and credited to the general fund to be appropriated to the department of public safety for application in the enforcement of road laws.

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 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 contents.

(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 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
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.
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:

(A) He is under the influence of alcohol, or
(B) He is under the influence of any controlled substance, or
(C) He is under the influence of any other drug, or
(D) He is under the combined influence of alcohol and any controlled substance or any other drug, or
(E) He has an alcohol concentration in his blood of ten hundredths of one percent or more, by weight; 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, shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than ten 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:

(A) He is under the influence of alcohol, or
(B) He is under the influence of any controlled substance, or
(C) He is under the influence of any other drug, or
(D) He is under the combined influence of alcohol and any controlled substance or any other drug, or
(E) He has an alcohol concentration in his blood of ten hundredths of one percent or more, by weight; 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, 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:
(A) He is under the influence of alcohol, or
(B) He is under the influence of any controlled substance, or
(C) He is under the influence of any other drug, or
(D) He is under the combined influence of alcohol and any controlled substance or any other drug, or
(E) He has an alcohol concentration in his blood of ten hundredths of one percent or more, by weight; 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, 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:
(A) He is under the influence of alcohol, or
(B) He is under the influence of any controlled substance, or
(C) He is under the influence of any other drug, or
69  (D) He is under the combined influence of alcohol and
70  any controlled substance or any other drug, or
71  (E) He has an alcohol concentration in his blood of ten
72  hundredths of one percent or more, by weight; and
73  (2) Shall be guilty of a misdemeanor, and, upon
74  conviction thereof, shall be imprisoned in the county jail for
75  not less than one day nor more than six months, which jail
76  term shall include actual confinement of not less than
77  twenty-four hours, and shall be fined not less than one
78  hundred dollars nor more than five hundred dollars.
79  (e) Any person who, being an habitual user of narcotic
80  drugs or amphetamine or any derivative thereof, drives a
81  vehicle in this state, shall be guilty of a misdemeanor, and,
82  upon conviction thereof, shall be imprisoned in the county
83  jail for not less than one day nor more than six months,
84  which jail term shall include actual confinement of not less
85  than twenty-four hours, and shall be fined not less than one
86  hundred dollars nor more than five hundred dollars.
87  (f) Any person who:
88  (1) Knowingly permits his vehicle to be driven in this
89  state by any other person who is:
90  (A) Under the influence of alcohol, or
91  (B) Under the influence of any controlled substance, or
92  (C) Under the influence of any other drug, or
93  (D) Under the combined influence of alcohol and any
94  controlled substance or any other drug, or
95  (E) Has an alcohol concentration in his blood of ten
96  hundredths of one percent or more, by weight; and
97  (2) Shall be guilty of a misdemeanor, and, upon
98  conviction thereof, shall be imprisoned in the county jail for
99  not more than six months and shall be fined not less than
100  one hundred dollars nor more than five hundred dollars.
101  (g) Any person who:
102  Knowingly permits his vehicle to be driven in this state by
103  any other person who is an habitual user of narcotic drugs
104  or amphetamine or any derivative thereof, shall be guilty of
105  a misdemeanor, and, upon conviction thereof, shall be
106  imprisoned in the county jail for not more than six months
107  and shall be fined not less than one hundred dollars nor
108  more than five hundred dollars.
109  (h) A person violating any provision of subsection (b),
110  (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
dozen 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
dozen 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 subsection
(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 subsection
(a) or (b) of the prior enactment of this section 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 June tenth, one thousand nine hundred eighty-
three; and

(4) A person may be charged in a warrant or indictment
or information for a second or subsequent offense under
this section, if the person has been previously arrested for or
charged with a violation of this section which is alleged to
have occurred within the applicable time periods for prior
offenses, notwithstanding the fact that there has not been a
final adjudication of the charges for the alleged previous
offense. In such case, the warrant or indictment or
information must set forth the date, location and
particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final.

(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 subsection (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.

(l) 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 eight 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-5-7. 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 tests 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. If a person initially refuses to submit to the designated secondary chemical test after being informed in writing of the consequences of such refusal, he shall be informed orally and in writing that after fifteen minutes said refusal shall be deemed to be final and the arresting officer shall after said period of time expires have
no further duty to provide the person with an opportunity to
take the secondary test. 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 substances or drugs; (3)
such person refused to submit to the secondary chemical
test finally designated in the manner provided in section
four of this article; and (4) such person was 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
secondary test finally designated in the manner provided in
section four of this article. The signing of the statement
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 misdemeanor. 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 section.

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
commissioner 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 suspensions 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 June tenth, one thousand nine hundred eighty-
three; and
(2) Any revocation under the provisions of section one
or two, article five-a of this chapter, for conduct which occurred on or after June tenth, one thousand nine hundred eighty-three.

(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.

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 take the person's license at the time of arrest and issue a temporary license, to be prescribed by the department of motor vehicles, pending a request for an administrative hearing, and 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 tests 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 tests results described in subsection (b) of
this section, the commissioner shall determine that a person
was arrested for an offense described in section two, article
five of this chapter 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 extend the temporary license issued
under section one of this article, if applicable, and 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 a hearing
examiner retained by the commissioner who shall rule on
evidentiary issues and submit proposed findings of fact and
conclusions of law for the consideration of said
commissioner and all of the pertinent provisions of article
eight, 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 or 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 officers by registered or certified mail,
return receipt requested, shall constitute a subpoena to
appear at such hearing without the necessity of payment of
fees by the department of motor vehicles. All subpoenas and
subpoenas duces tecum shall be issued and served within
the time and for the fees and shall be enforced, as specified
in section one, article five of said chapter twenty-nine-a,
and all of the said section one provisions dealing with
subpoenas and subpoenas duces tecum shall apply to
subpoenas and subpoenas duces tecum issued for the
purpose of a hearing hereunder.

(c) Law-enforcement officers shall be compensated for
the time expended in their travel and 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.

(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 chemical 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 represented by counsel unless the communication from the commissioner to the person establishing a time and place for the 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 a 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 commissioner shall revoke the person’s license for a period of six months: 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.
(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 suspensions 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
enactment of section two, article five of this chapter for
conduct which occurred within a period of five years
immediately preceding the first day of September, one
thousand nine hundred eighty-one;
(3) 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, article five of this chapter, for conduct which
occurred on or after June tenth, one thousand nine hundred
eighty-three;
(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
decimal eighty-one;
(5) Any revocation under the provisions of section
seven, article five of this chapter, for conduct which
occurred on or after June tenth, one thousand nine hundred
eighty-three.
(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 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.

(1) 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 commissioner's order made and entered following the hearing shall be served upon such person by registered or certified mail, return receipt requested. During the pendency of any such hearing, the 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 evidence presented, that there is a substantial probability that the appellant shall prevail upon the merits, and the appellant will suffer irreparable harm if such order is not stayed: Provided, That in no event shall the stay or supersedeas of such order exceed thirty days.

(2) In any revocation pursuant to this section, if the driver whose license is revoked had not reached his or her nineteenth birthday at the time of the conduct for which the license is revoked, the driver's license shall be revoked until the driver's nineteenth birthday, or the applicable statutory period of revocation prescribed by this section, whichever is longer.

(o) Funds for this section's hearing and appeal process may be provided from the drunk driving prevention fund, as created by section sixteen, article fifteen, chapter eleven of this code, upon application for such funds to the commission on drunk driving prevention.

§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 licenses have been revoked under the provision 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 contain the following:
(A) A listing and evaluation of the offender's prior traffic
record; (B) characteristics and history of alcohol or drug
use, if any; (C) his amenability to rehabilitation through the
alcohol safety program; and (D) a recommendation as to
treatment or rehabilitation, and the terms and conditions of
such treatment or rehabilitation. The program shall be
prepared by persons knowledgeable in the diagnosis of
alcohol or drug abuse and treatment. The cost of the
program shall be paid out of fees established by the
commissioner of motor vehicles in cooperation with the
department of health, division of alcohol and drug abuse.
These fees shall be deposited in a special account
administering the program, to be designated the "driver's
rehabilitation fund."
(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 subsection (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 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.
(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 program 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.

(D) Notwithstanding any provision of this code or any rule or regulation, the department of health, division of alcohol and drug abuse, when certifying that a person has successfully completed a safety and treatment program, shall only have to certify that such person has successfully completed the program.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bud O. Wilson
Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Elliot C. Hill
Clerk of the Senate

Donald L. Henshaw
Clerk of the House of Delegates

Dan Tomlin
President of the Senate

Joseph P. Albritt
Speaker House of Delegates

The within bill approved this the 26th day of March, 1986.

Governor
PRESENTED TO THE
GOVERNOR

Date 3/24/86

Time 5:30 p.m.