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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992

— ● —

# ENROLLED

*Com. Sub. For*

HOUSE BILL No. *H.131*

(By Delegate *Kessel* )

— ● —

Passed *March 7,* 1992

In Effect *Ninety Days From* Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 4131**  
(By DELEGATE KESSEL)

[Passed March 7, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact section two, article five-a, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article five-a by adding thereto a new section, designated section three-a, all relating to revocation of driver's licenses for conduct related to alcohol or drugs; enhancement of periods of revocation for prior suspensions or revocations occurring within the ten years preceding the arrest date; revocation periods for persons under twenty-one years of age; establishment of motor vehicle alcohol test and lock program; users fee; legislative rules; definition of motor vehicle alcohol test and lock system; eligibility to participate in program; minimum revocation periods; restricted driver's licenses; restoration of driver's licenses; and criminal penalties.

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

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

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

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

1 (a) Upon the written request of a person whose license  
2 to operate a motor vehicle in this state has been revoked  
3 under the provisions of section one of this article or  
4 section seven, article five of this chapter, the commis-  
5 sioner of motor vehicles shall extend the temporary  
6 license issued under section one of this article, if  
7 applicable, and afford the person an opportunity to be  
8 heard. Such written request must be filed with the  
9 commissioner in person or by registered or certified  
10 mail, return receipt requested, within ten days after  
11 receipt of a copy of the order of revocation. The hearing  
12 shall be before said commissioner or a hearing examiner  
13 retained by the commissioner who shall rule on eviden-  
14 tiary issues and submit proposed findings of fact and  
15 conclusions of law for the consideration of said commis-  
16 sioner and all of the pertinent provisions of article five,  
17 chapter twenty-nine-a of this code shall apply: *Provided,*  
18 That in the case of a resident of this state the hearing  
19 shall be held in the county wherein the arrest was made  
20 in this state unless the commissioner or the commission-  
21 er's authorized deputy or agent and such person agree  
22 that the hearing may be held in some other county.

23 (b) Any such hearing shall be held within twenty days  
24 after the date upon which the commissioner received the  
25 timely written request therefor, unless there is a  
26 postponement or continuance. The commissioner may  
27 postpone or continue any hearing on the commissioner's  
28 own motion, or upon application for each person for good  
29 cause shown. The commissioner shall adopt and imple-  
30 ment by a procedural rule written policies governing the  
31 postponement or continuance of any such hearing on the  
32 commissioner's own motion or for the benefit of any law-  
33 enforcement officer or any person requesting such  
34 hearing, and such policies shall be enforced and applied  
35 to all parties equally. For the purpose of conducting  
36 such hearing, the commissioner shall have the power  
37 and authority to issue subpoenas and subpoenas duces

38 tecum in accordance with the provisions of section one,  
39 article five, chapter twenty-nine-a of this code: *Provided*,  
40 That the notice of hearing to the appropriate law-  
41 enforcement officers by registered or certified mail,  
42 return receipt requested, shall constitute a subpoena to  
43 appear at such hearing without the necessity of payment  
44 of fees by the division of motor vehicles. All subpoenas  
45 and subpoenas duces tecum shall be issued and served  
46 within the time and for the fees and shall be enforced,  
47 as specified in section one, article five of said chapter  
48 twenty-nine-a, and all of the said section one provisions  
49 dealing with subpoenas and subpoenas duces tecum  
50 shall apply to subpoenas and subpoenas duces tecum  
51 issued for the purpose of a hearing hereunder.

52 (c) Law-enforcement officers shall be compensated for  
53 the time expended in their travel and appearance before  
54 the commissioner by the law-enforcement agency by  
55 whom they are employed at their regular rate if they  
56 are scheduled to be on duty during said time or at their  
57 regular overtime rate if they are scheduled to be off  
58 duty during said time.

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

67 The commissioner may propose a legislative rule in  
68 compliance with the provisions of article three, chapter  
69 twenty-nine-a of this code, which rule may provide that  
70 if a person accused of driving a motor vehicle while  
71 under the influence of alcohol, controlled substances or  
72 drugs, or accused of driving a motor vehicle while  
73 having an alcohol concentration in the person's blood of  
74 ten hundredths of one percent or more, by weight,  
75 intends to challenge the results of any secondary  
76 chemical test of blood, breath or urine, or intends to  
77 cross-examine the individual or individuals who admin-  
78 istered the test or performed the chemical analysis, the  
79 person shall, within an appropriate period of time prior

80 to the hearing, notify the commissioner in writing of  
81 such intention. Such rule may provide that when there  
82 is a failure to comply with the notice requirement, the  
83 results of the secondary test, if any, shall be admissible  
84 as though the person and the commissioner had stipu-  
85 lated the admissibility of such evidence. Any such rule  
86 shall provide that the rule shall not be invoked in the  
87 case of a person who is not represented by counsel unless  
88 the communication from the commissioner to the person  
89 establishing a time and place for the hearing also  
90 informed the person of the consequences of the person's  
91 failure to timely notify the commissioner of the person's  
92 intention to challenge the results of the secondary  
93 chemical test or cross-examine the individual or  
94 individuals who administered the test or performed the  
95 chemical analysis.

96 (e) In the case of a hearing wherein a person is  
97 accused of driving a motor vehicle while under the  
98 influence of alcohol, controlled substances or drugs, or  
99 accused of driving a motor vehicle while having an  
100 alcoholic concentration in the person's blood of ten  
101 hundredths of one percent or more, by weight, the  
102 commissioner shall make specific findings as to (1)  
103 whether the arresting law-enforcement officer had  
104 reasonable grounds to believe such person to have been  
105 driving while under the influence of alcohol, controlled  
106 substances or drugs, or while having an alcoholic  
107 concentration in the person's blood of ten hundredths of  
108 one percent or more, by weight, (2) whether such person  
109 was lawfully placed under arrest for an offense involv-  
110 ing driving under the influence of alcohol, controlled  
111 substances or drugs, and (3) whether the tests, if any,  
112 were administered in accordance with the provisions of  
113 this article and article five of this chapter.

114 (f) If, in addition to a finding that the person did drive  
115 a motor vehicle while under the influence of alcohol,  
116 controlled substances or drugs, or did drive a motor  
117 vehicle while having an alcoholic concentration in the  
118 person's blood of ten hundredths of one percent or more,  
119 by weight, the commissioner also finds by a preponder-  
120 ance of the evidence that the person when so driving did  
121 an act forbidden by law or failed to perform a duty

122 imposed by law, which act or failure proximately caused  
123 the death of a person and was committed in reckless  
124 disregard of the safety of others, and if the commis-  
125 sioner further finds that the influence of alcohol,  
126 controlled substances or drugs or the alcoholic concen-  
127 tration in the blood was a contributing cause to the  
128 death, the commissioner shall revoke the person's license  
129 for a period of ten years: *Provided*, That if the commis-  
130 sioner has previously suspended or revoked the person's  
131 license under the provisions of this section or section one  
132 of this article within the ten years immediately preced-  
133 ing the date of arrest, the period of revocation shall be  
134 for the life of such person.

135 (g) If, in addition to a finding that the person did drive  
136 a motor vehicle while under the influence of alcohol,  
137 controlled substances or drugs, or did drive a motor  
138 vehicle while having an alcoholic concentration in the  
139 person's blood of ten hundredths of one percent or more,  
140 by weight, the commissioner also finds by a preponder-  
141 ance of the evidence that the person when so driving did  
142 an act forbidden by law or failed to perform a duty  
143 imposed by law, which act or failure proximately caused  
144 the death of a person, the commissioner shall revoke the  
145 person's license for a period of five years: *Provided*, That  
146 if the commissioner has previously suspended or revoked  
147 the person's license under the provisions of this section  
148 or section one of this article within the ten years  
149 immediately preceding the date of arrest, the period of  
150 revocation shall be for the life of such person.

151 (h) If, in addition to a finding that the person did drive  
152 a motor vehicle while under the influence of alcohol,  
153 controlled substances or drugs, or did drive a motor  
154 vehicle while having an alcoholic concentration in the  
155 person's blood of ten hundredths of one percent or more,  
156 by weight, the commissioner also finds by a preponder-  
157 ance of the evidence that the person when so driving did  
158 an act forbidden by law or failed to perform a duty  
159 imposed by law, which act or failure proximately caused  
160 bodily injury to a person other than himself or herself,  
161 the commissioner shall revoke the person's license for a  
162 period of two years: *Provided*, That if the commissioner  
163 has previously suspended or revoked the person's license

164 under the provisions of this section or section one of this  
165 article within the ten years immediately preceding the  
166 date of arrest, the period of revocation shall be ten years:  
167 *Provided, however,* That if the commissioner has  
168 previously suspended or revoked the person's license  
169 more than once under the provisions of this section or  
170 section one of this article within the ten years imme-  
171 diately preceding the date of arrest, the period of  
172 revocation shall be for the life of such person.

173 (i) If the commissioner finds by a preponderance of the  
174 evidence that the person did drive a motor vehicle while  
175 under the influence of alcohol, controlled substances or  
176 drugs, or did drive a motor vehicle while having an  
177 alcoholic concentration in the person's blood of ten  
178 hundredths of one percent or more, by weight, or finds  
179 that the person, being an habitual user of narcotic drugs  
180 or amphetamine or any derivative thereof, did drive a  
181 motor vehicle, or finds that the person knowingly  
182 permitted the person's vehicle to be driven by another  
183 person who was under the influence of alcohol, con-  
184 trolled substances or drugs, or knowingly permitted the  
185 person's vehicle to be driven by another person who had  
186 an alcoholic concentration in his or her blood of ten  
187 hundredths of one percent or more, by weight, the  
188 commissioner shall revoke the person's license for a  
189 period of six months: *Provided,* That if the commissioner  
190 has previously suspended or revoked the person's license  
191 under the provisions of this section or section one of this  
192 article within the ten years immediately preceding the  
193 date of arrest, the period of revocation shall be ten years:  
194 *Provided, however,* That if the commissioner has  
195 previously suspended or revoked the person's license  
196 more than once under the provisions of this section or  
197 section one of this article within the ten years imme-  
198 diately preceding the date of arrest, the period of  
199 revocation shall be for the life of such person.

200 (j) For purposes of this section, where reference is  
201 made to previous suspensions or revocations under this  
202 section, the following types of criminal convictions or  
203 administrative suspensions or revocations shall also be  
204 regarded as suspensions or revocations under this  
205 section or section one of this article:

206 (1) Any administrative revocation under the provi-  
207 sions of the prior enactment of this section for conduct  
208 which occurred within the ten years immediately  
209 preceding the date of arrest.

210 (2) Any suspension or revocation on the basis of a  
211 conviction under a municipal ordinance of another state  
212 or a statute of the United States or of any other state  
213 of an offense which has the same elements as an offense  
214 described in section two, article five of this chapter, for  
215 conduct which occurred within the ten years imme-  
216 diately preceding the date of arrest.

217 (3) Any revocation under the provisions of section  
218 seven, article five of this chapter, for conduct which  
219 occurred within the ten years immediately preceding  
220 the date of arrest.

221 (k) In the case of a hearing wherein a person is  
222 accused of refusing to submit to a designated secondary  
223 test, the commissioner shall make specific findings as to  
224 (1) whether the arresting law-enforcement officer had  
225 reasonable grounds to believe such person had been  
226 driving a motor vehicle in this state while under the  
227 influence of alcohol, controlled substances or drugs, (2)  
228 whether such person was lawfully placed under arrest  
229 for an offense relating to driving a motor vehicle in this  
230 state while under the influence of alcohol, controlled  
231 substances or drugs, (3) whether such person refused to  
232 submit to the secondary test finally designated in the  
233 manner provided in section four, article five of this  
234 chapter, and (4) whether such person had been given a  
235 written statement advising the person that the person's  
236 license to operate a motor vehicle in this state would be  
237 revoked for at least one year and up to life if the person  
238 refused to submit to the test finally designated in the  
239 manner provided in section four, article five of this  
240 chapter.

241 (l) If the commissioner finds by a preponderance of the  
242 evidence that (1) the arresting law-enforcement officer  
243 had reasonable grounds to believe such person had been  
244 driving a motor vehicle in this state while under the  
245 influence of alcohol, controlled substances or drugs, (2)  
246 such person was lawfully placed under arrest for an



247 offense relating to driving a motor vehicle in this state  
248 while under the influence of alcohol, controlled substan-  
249 ces or drugs, (3) such person refused to submit to the  
250 secondary chemical test finally designated, and (4) such  
251 person had been given a written statement advising the  
252 person that the person's license to operate a motor  
253 vehicle in this state would be revoked for a period of at  
254 least one year and up to life if the person refused to  
255 submit to the test finally designated, the commissioner  
256 shall revoke the person's license to operate a motor  
257 vehicle in this state for the periods specified in section  
258 seven, article five of this chapter.

259 (m) If the commissioner finds to the contrary with  
260 respect to the above issues, the commissioner shall  
261 rescind the commissioner's earlier order of revocation or  
262 shall reduce the order of revocation to the appropriate  
263 period of revocation under this section, or section seven,  
264 article five of this chapter.

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

271 If the commissioner shall after hearing make and  
272 enter an order affirming the commissioner's earlier  
273 order of revocation, such person shall be entitled to  
274 judicial review as set forth in chapter twenty-nine-a of  
275 this code, except that the commissioner shall not stay  
276 enforcement of the order; and, pending such appeal, the  
277 court may grant a stay or supersedeas of such order only  
278 upon motion and hearing, and a finding by the court  
279 upon the evidence presented, that there is a substantial  
280 probability that the appellant shall prevail upon the  
281 merits, and the appellant will suffer irreparable harm  
282 if such order is not stayed: *Provided*, That in no event  
283 shall the stay or supersedeas of such order exceed thirty  
284 days.

285 (n) In any revocation pursuant to this section, if the  
286 driver whose license is revoked had not reached the  
287 driver's twenty-first birthday at the time of the conduct

288 for which the license is revoked, the driver's license shall  
 289 be revoked until the driver's twenty-first birthday, or  
 290 the applicable statutory period of revocation prescribed  
 291 by this section, whichever is longer.

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

**§17C-5A-3a. Establishment of and participation in the  
 motor vehicle alcohol test and lock  
 program.**

1 (a) On or before the first day of January, one thousand  
 2 nine hundred ninety-three, the division of motor vehicles  
 3 shall establish a motor vehicle alcohol test and lock  
 4 program for persons whose licenses have been revoked  
 5 pursuant to this article or the provisions of article five  
 6 of this chapter. Such program shall include the estab-  
 7 lishment of a users fee for persons participating in the  
 8 program which shall be paid in advance and deposited  
 9 into the driver's rehabilitation fund. Except where  
 10 specified otherwise, the use of the term "program" in  
 11 this section refers to the motor vehicle alcohol test and  
 12 lock program. The commissioner of the division of motor  
 13 vehicles shall promulgate legislative rules in accordance  
 14 with the provisions of chapter twenty-nine-a of this code  
 15 for the purpose of implementing the provisions of this  
 16 section. Such rules shall also prescribe those require-  
 17 ments which, in addition to the requirements specified  
 18 by this section for eligibility to participate in the  
 19 program, the commissioner determines must be met to  
 20 obtain the commissioner's approval to operate a motor  
 21 vehicle equipped with a motor vehicle alcohol test and  
 22 lock system. For purposes of this section, a "motor  
 23 vehicle alcohol test and lock system" means a mechan-  
 24 ical or computerized system which, in the opinion of the  
 25 commissioner, prevents the operation of a motor vehicle  
 26 when, through the system's assessment of the blood  
 27 alcohol content of the person operating or attempting to  
 28 operate the vehicle, such person is determined to be  
 29 under the influence of alcohol.

30 (b) (1) Any person whose license has been revoked  
31 pursuant to this article or the provisions of article five  
32 of this chapter is eligible to participate in the program  
33 when such person's minimum revocation period as  
34 specified by subsection (c) of this section has expired and  
35 such person is enrolled in or has successfully completed  
36 the safety and treatment program: *Provided*, That no  
37 person whose license has been revoked pursuant to the  
38 provisions of subsection (f) or (g), section two of this  
39 article shall be eligible for participation in the program:  
40 *Provided, however*, That any person whose license is  
41 revoked pursuant to this article or pursuant to article  
42 five of this chapter for an act which occurred either  
43 while participating in or after successfully completing  
44 the program shall not again be eligible to participate in  
45 such program.

46 (2) Notwithstanding the provisions of this section to  
47 the contrary, no person eligible to participate in the  
48 program shall operate a motor vehicle unless approved  
49 to do so by the commissioner.

50 (c) For purposes of this section, "minimum revocation  
51 period" means the portion which has actually expired of  
52 the period of revocation imposed by the commissioner  
53 pursuant to this article or the provisions of article five  
54 of this chapter upon a person eligible for participation  
55 in the program as follows:

56 (1) For a person whose license has been revoked for  
57 six months pursuant to subsection (i), section two of this  
58 article, the minimum period of revocation is thirty days;

59 (2) For a person whose license has been revoked for  
60 one year pursuant to section seven, article five of this  
61 chapter, the minimum period of revocation is ninety  
62 days;

63 (3) For a person whose license has been revoked for  
64 any other period of time pursuant to section two of this  
65 article or pursuant to section seven, article five of this  
66 chapter, the minimum period of revocation is one year.

67 (d) Upon permitting an eligible person to participate  
68 in the program, the commissioner shall issue to such  
69 person, and such person shall be required to exhibit on  
70 demand, a driver's license which shall reflect that such

71 person is restricted to the operation of a motor vehicle  
72 which is equipped with an approved motor vehicle  
73 alcohol test and lock system.

74 (e) Any person who has completed the safety and  
75 treatment program and who has not violated the terms  
76 required by the commissioner of such person's partici-  
77 pation in the motor vehicle alcohol test and lock  
78 program shall be entitled to the restoration of such  
79 person's driver's license upon the expiration of:

80 (1) One hundred eighty days of the full revocation  
81 period imposed by the commissioner for a person  
82 described in subdivision (1), subsection (c) of this section;

83 (2) The full revocation period imposed by the commis-  
84 sioner for a person described in subdivision (2), subsec-  
85 tion (c) of this section;

86 (3) One year from the date a person described in  
87 subdivision (3), subsection (c) of this section is permitted  
88 to operate a motor vehicle by the commissioner.

89 (f) In addition to any other penalty imposed by this  
90 code, any person who operates a motor vehicle not  
91 equipped with an approved motor vehicle alcohol test  
92 and lock system during such person's participation in  
93 the motor vehicle alcohol test and lock program is guilty  
94 of a misdemeanor, and, upon conviction thereof, shall be  
95 confined in the county jail for a period not less than one  
96 month nor more than six months and fined not less than  
97 one hundred dollars nor more than five hundred dollars.  
98 Any person who assists another person required by the  
99 terms of such other person's participation in the motor  
100 vehicle alcohol test and lock program to use a motor  
101 vehicle alcohol test and lock system in any effort to  
102 bypass the system, is guilty of a misdemeanor, and, upon  
103 conviction thereof, shall be confined in the county jail  
104 not more than six months and fined not less than one  
105 hundred dollars nor more than one thousand dollars.

106 <sup>g</sup>  
107 (h) No person shall be eligible to participate in the  
108 motor vehicle alcohol test and lock program prior to the  
109 first day of July, one thousand nine hundred ninety-  
three.

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Enr. Com. Sub. for H. B. 4131] 12

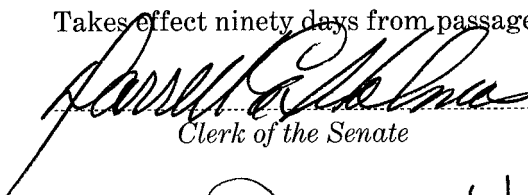
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

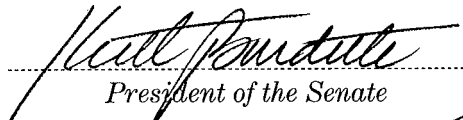
  
Chairman House Committee

Originating in the House.

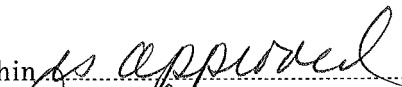
Takes effect ninety days from passage.

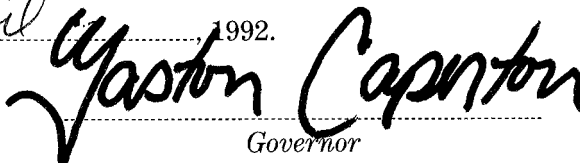
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within  is approved this the 15<sup>th</sup>  
day of April 1992.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/92

Time 11:40 am