WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

ENROLLED

Com. Sub. For

HOUSE BILL No. H131

(By Delegate Kessel)

Passed March 2, 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.

(a) Upon the written request of a person whose license to operate a motor vehicle in this state has been revoked under the provisions of section one of this article or section seven, article five of this chapter, the commissioner of motor vehicles shall extend the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 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 the commissioner's 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 the commissioner's 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 the commissioner's 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
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 division 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 the person's 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 the person's 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, the person 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 the person’s failure to timely notify the commissioner of the person’s 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 the person’s 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 the person’s 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 the person’s 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 commis-
sioner further finds that the influence of alcohol,
controlled substances or drugs or the alcoholic concen-
tration 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 commis-
sioner has previously suspended or revoked the person's
license under the provisions of this section or section one
of this article within the ten years immediately preced-
ing the date of arrest, 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 the
person's blood of ten hundredths of one percent or more,
by weight, the commissioner also finds by a preponder-
ance 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 within the ten years
immediately preceding the date of arrest, 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 the
person's blood of ten hundredths of one percent or more,
by weight, the commissioner also finds by a preponder-
ance 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 or herself,
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 within the ten years immediately preceding the
date of arrest, 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 within the ten years imme-
diately preceding the date of arrest, 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 the person's 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 the person's vehicle to be driven by another
person who was under the influence of alcohol, con-
trolled substances or drugs, or knowingly permitted the
person's vehicle to be driven by another person who had
an alcoholic concentration in his or her 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 within the ten years immediately preceding the
date of arrest, 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 within the ten years imme-
diately preceding the date of arrest, 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 within the ten years immediately preceding the date of arrest.

(2) 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 within the ten years immediately preceding the date of arrest.

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

(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, article five of this chapter,
4. whether such person had been given a written statement advising the person that the person's license to operate a motor vehicle in this state would be revoked for at least one year and up to life if the person 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 the person that the person's 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 the person 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, the commissioner shall rescind the commissioner's 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 the commissioner's 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 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.

(n) In any revocation pursuant to this section, if the driver whose license is revoked had not reached the driver's twenty-first birthday at the time of the conduct
for which the license is revoked, the driver's license shall be revoked until the driver's twenty-first 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-3a. Establishment of and participation in the motor vehicle alcohol test and lock program.

(a) On or before the first day of January, one thousand nine hundred ninety-three, the division of motor vehicles shall establish a motor vehicle alcohol test and lock program for persons whose licenses have been revoked pursuant to this article or the provisions of article five of this chapter. Such program shall include the establishment of a users fee for persons participating in the program which shall be paid in advance and deposited into the driver's rehabilitation fund. Except where specified otherwise, the use of the term “program” in this section refers to the motor vehicle alcohol test and lock program. The commissioner of the division of motor vehicles shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section. Such rules shall also prescribe those requirements which, in addition to the requirements specified by this section for eligibility to participate in the program, the commissioner determines must be met to obtain the commissioner's approval to operate a motor vehicle equipped with a motor vehicle alcohol test and lock system. For purposes of this section, a “motor vehicle alcohol test and lock system” means a mechanical or computerized system which, in the opinion of the commissioner, prevents the operation of a motor vehicle when, through the system's assessment of the blood alcohol content of the person operating or attempting to operate the vehicle, such person is determined to be under the influence of alcohol.
(b) (1) Any person whose license has been revoked pursuant to this article or the provisions of article five of this chapter is eligible to participate in the program when such person's minimum revocation period as specified by subsection (c) of this section has expired and such person is enrolled in or has successfully completed the safety and treatment program: Provided, That no person whose license has been revoked pursuant to the provisions of subsection (f) or (g), section two of this article shall be eligible for participation in the program: Provided, however, That any person whose license is revoked pursuant to this article or pursuant to article five of this chapter for an act which occurred either while participating in or after successfully completing the program shall not again be eligible to participate in such program.

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

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

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

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

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

(d) Upon permitting an eligible person to participate in the program, the commissioner shall issue to such person, and such person shall be required to exhibit on demand, a driver's license which shall reflect that such
person is restricted to the operation of a motor vehicle which is equipped with an approved motor vehicle alcohol test and lock system.

(e) Any person who has completed the safety and treatment program and who has not violated the terms required by the commissioner of such person's participation in the motor vehicle alcohol test and lock program shall be entitled to the restoration of such person's driver's license upon the expiration of:

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

(2) The full revocation period imposed by the commissioner for a person described in subdivision (2), subsection (c) of this section;

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

(f) In addition to any other penalty imposed by this code, any person who operates a motor vehicle not equipped with an approved motor vehicle alcohol test and lock system during such person's participation in the motor vehicle alcohol test and lock program is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail for a period not less than one month nor more than six months and fined not less than one hundred dollars nor more than five hundred dollars.

Any person who assists another person required by the terms of such other person's participation in the motor vehicle alcohol test and lock program to use a motor vehicle alcohol test and lock system in any effort to bypass the system, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than six months and fined not less than one hundred dollars nor more than one thousand dollars.

(g) No person shall be eligible to participate in the motor vehicle alcohol test and lock program prior to the first day of July, one thousand nine hundred ninety-three.
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 1st day of April, 1992.

Governor
PRESENTED TO THE
GOVERNOR

Date 3/26/92
Time 11:40 a.m.