WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994

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ENROLLED

Com. SUBL. For

HOUSE BILL No. H.R.20

(By Delegate Mr. Speaker, Mr. Chambers and Delegate Bark)

[By Request of the Executive]

Passed March 12, 1994

In Effect 90 Days From Passage

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HB 4020
AN ACT to repeal section two, article five, chapter seventeen-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three and seven, article two, chapter seventeen-b of said code; to further amend said article by adding thereto a new section, designated section three-a; to amend and reenact sections one, four, nine and twelve, article three, chapter seventeen-b of said code; to amend and reenact sections one and three, article four of said chapter; to amend and reenact section twenty-eight, article one, chapter seventeen-c of said code; to amend and reenact sections two, four and eight, article five of said chapter; to further amend said article by adding thereto a new section, designated section six-a; to amend and reenact sections one, one-a, two, three and three-a, article five-a of said chapter; to amend and reenact section seven, article two-a, chapter seventeen-d of said code; to amend and reenact section fifteen, article one, chapter seventeen-e of said code; to amend and reenact section eighteen, article seven, chapter twenty of said code; to amend and reenact section six, article seven, chapter twenty-four-a of said code; to amend and reenact section one, article six-a, chapter thirty-three of
said code; to amend and reenact section eight, article five, chapter forty-nine of said code; and to amend and reenact section nine, article six, chapter sixty of said code, all relating to the revision of criminal offenses and administrative sanctions for persons driving under the influence of alcohol, controlled substances or drugs; describing persons who shall not be licensed and providing exceptions thereto; providing for the issuance of junior driver's licenses to persons under the age of eighteen; establishing the examination requirements for applicants for a driver's license; requiring, before a license is issued, attendance at a class on the dangers and social consequences of driving under the influence; authorizing the division of motor vehicles to cancel licenses; requiring an abstract of judgment of conviction for violation of motor vehicle laws to be sent to the division of motor vehicles; providing that the surrender and return of license is not required; requiring a mandatory suspension for fraudulent use of driver's license; defining offenses relating to the unlawful use of license or nonoperator's identification, and providing penalties therefor; describing license and nonoperator's identification violations generally, and providing penalties therefor; operating a motor powered boat while under the influence of alcohol, controlled substances or while having a blood alcohol level of ten hundredths or more; defining offenses relating to driving while a license is suspended or revoked, driving while a license is 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, and providing penalties therefor; defining the offense of driving while a license is suspended for driving while under the age of twenty-one years with an alcoholic concentration in the blood of two hundredths of one percent or more, by weight; defining the term "division" to mean the division of motor vehicles; defining offenses relating to driving under influence of alcohol, controlled substances or drugs, and providing
penalties therefor; defining the offense of driving while under the age of twenty-one years with an alcoholic concentration in the blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, and providing penalties therefor; authorizing home detention as an alternative to mandatory sentences for offenses relating to driving under the influence of alcohol, controlled substances or drugs; redefining the term "law-enforcement officer" to include special police officers appointed by the governor; establishing procedures for taking a child into custody for driving a motor vehicle with any amount of blood alcohol; describing the interpretation and use of a secondary chemical test for blood alcohol; providing for implied consent to administrative procedure for suspension and revocation of a license for driving under the influence of alcohol, controlled substances or drugs; authorizing the revocation of a license for driving under the influence of alcohol, controlled substances or drugs or refusing to submit to secondary chemical test; providing for the suspension of a license for driving while under the age of twenty-one years with an alcoholic concentration in the blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight; providing for the revocation of a license upon a conviction for driving under the influence of alcohol, controlled substances or drugs; providing for the suspension of a license upon a conviction for driving while under the age of twenty-one years with an alcoholic concentration in the blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight; providing for an administrative hearing and judicial review of an order of revocation or suspension; establishing a safety and treatment program as a precondition to the reissuance of a license; establishing a motor vehicle alcohol test and lock program; providing for suspension or revocation of license, registration and reinstatement for failure to have adequate security; correcting an incorrect code citation relating to disqualification of a commercial driver for a refusal to submit to a secondary test or submitting to a test which
discloses an alcohol concentration of four hundredths or more; authorizing an inspector for the public service commission to detain a driver until a law-enforcement officer is summoned to investigate and determine whether the person should be arrested and a secondary test of blood, breath or urine should be administered; setting forth restrictions for the handling of watercraft; duty to render aid after a collision, accident or casualty; accident reports; providing that an automobile liability insurance policy may not be cancelled because a person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight; describing conditions under which a law-enforcement official may take a child into custody; and defining offenses relating to intoxication or drinking in public places and the illegal possession of alcoholic liquor and providing penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 17B.
MOTOR VEHICLE DRIVER LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-3. What persons shall not be licensed; exceptions.

1 The division shall not issue any license hereunder:

2 (1) To any person, as an operator, who is under the age of eighteen years: Provided, That the division may issue a junior driver's license to a person under the age of eighteen years in accordance with the provisions of section three-a of this article;

3 (2) To any person, as a Class A, B, C or D driver, who is under the age of eighteen years;

4 (3) To any person, whose license has been suspended, during such suspension, nor to any person whose license (other than a junior driver's license) has been revoked, except as provided in section eight, article three of this chapter;

5 (4) To any person who is an habitual drunkard or is addicted to the use of narcotic drugs;

6 (5) To any person, as an operator or chauffeur, who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to competency by judicial decree or released from a hospital for the mentally incompetent upon the certificate of the superintendent of the institution that the person is competent, and not then unless the commissioner is satisfied that the person is competent to operate a motor vehicle with a sufficient degree of care for the safety of persons or property;

7 (6) To any person who is required by this chapter to
take an examination, unless the person has successfully passed the examination;

(7) To any person when the commissioner has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to public safety or welfare.

§17B-2-3a. Junior driver's license.

(a) In accordance with rules and regulations established by the commissioner and with the provisions hereinafter set forth in this section, a junior driver's license may be issued to any person between the ages of sixteen and eighteen years, if the person is in compliance with section eleven, article eight, chapter eighteen of this code and is not otherwise disqualified by law. Application for a junior driver's license shall be on a form prescribed by the commissioner. A junior driver's license may be issued upon the applicant's successful completion of all examinations and driving tests required by law for the issuance of a driver's license to a person eighteen years of age or older. The commissioner may impose reasonable conditions or restrictions on the operation of a motor vehicle by a person holding a junior driver's license, and the conditions or restrictions shall be printed on the license.

(b) In addition to all other provisions of this chapter for which a driver's license may be revoked, suspended or cancelled, whenever a person holding a junior driver's license operates a motor vehicle in violation of the conditions or restrictions set forth on the license, or has a record of two convictions for moving violations of the traffic regulations and laws of the road, which convictions have become final, the junior driver's license of the person shall be permanently revoked, with like effect as if the person had never held a junior driver's license: Provided, That a junior driver's license shall be revoked upon one final conviction for any offense described in section five, article three of this chapter. Under no circumstances shall such a license be revoked for convictions of offenses in violation of any regulation or law governing the standing or parking of motor
vehicles.

(c) A junior driver's license shall be suspended for noncompliance with the provisions of section eleven, article eight, chapter eighteen of this code, and may be reinstated upon compliance.

(d) A person whose junior driver's license has been revoked, or has been suspended without reinstatement, shall not thereafter receive a junior driver's license, but the person, upon attaining the age of eighteen, shall be eligible, unless otherwise disqualified by law, for examination and driver testing for a regular driver's license. If a person has had his or her junior driver's license revoked for a violation pursuant to section one or two, article five-a, chapter seventeen-c of this code or any offense specified in subsection (6), section five, article three of this chapter, or has been adjudicated delinquent upon a charge which would be crime under the provisions of section two, article five, chapter seventeen-c of this code if committed by an adult, the person shall be disqualified for examination and driver testing for a regular driver's license until that person (1) has attained the age of eighteen years, (2) has successfully completed the safety and treatment program provided for in section three, article five-a, chapter seventeen-c of this code, and (3) has had his or her junior driver's license revoked or suspended for the applicable statutory period of revocation or suspension or a period of time equal to the period of revocation or suspension which would have been imposed pursuant to section two, article five-a, chapter seventeen-c if the person had had a regular driver's license at the time of the violation.

(e) No person shall receive a junior driver's license unless the application therefor is accompanied by a writing, duly acknowledged, consenting to the issuance of the junior driver's license and executed by the parents of the applicant; or if only one parent is living, then by such parent; or if the parents be living separate and apart, by the one to whom the custody of the applicant was awarded; or if there is a guardian entitled to the custody of the applicant, then by the guardian.
(f) Upon attaining the age of eighteen years, a person holding an unrevoked, unsuspended or reinstated junior driver's license shall, upon payment of the prescribed fee, be entitled to receive a regular driver's license without further examination or driver testing.

§17B-2-7. Examination of applicants.

(a) Upon the presentment by the applicant under the age of eighteen years of the applicant's birth certificate, or a certified copy thereof, as evidence that the applicant is of lawful age, the division of public safety shall examine every applicant for a license to operate a motor vehicle in this state, except as otherwise provided in this section. The examination shall include a test of the applicant's eyesight, the applicant's ability to read and understand highway signs regulating, warning, and directing traffic, the applicant's knowledge of the traffic laws of this state, and the applicant's knowledge of the effects of alcohol upon persons and the dangers of driving a motor vehicle under the influence of alcohol, and shall include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle, and such further physical and mental examination as the division of motor vehicles and the division of public safety deems necessary to determine the applicant's fitness to operate a motor vehicle safely upon the highways.

(b) The commissioner and superintendent of public safety shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code concerning the examination of applicants for licenses and the qualifications required of applicants, and the examination of applicants by the division of public safety shall be in accordance with such rules. The rules shall provide for the viewing of educational material or films on the medical, biological, and psychological effects of alcohol upon persons, the dangers of driving a motor vehicle while under the influence of alcohol, and the criminal penalties and administrative sanctions for alcohol and drug related motor vehicle violations.

(c) After successful completion of the examination
required by this section or section seven-b of this article, and prior to the issuance of a license pursuant to the provisions of section eight of this article, every applicant for a driver's license, junior driver's license or motorcycle-only license shall attend a mandatory education class on the dangers and social consequences of driving a motor vehicle while under the influence of alcohol. To the extent practicable, the commissioner shall utilize as lecturers at such classes persons who can relate first-hand experiences as victims or family members of victims of alcohol-related accidents or drivers who have been involved in alcohol-related accidents which caused serious bodily injury or death.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-1. Authority of division to cancel license.

The division is hereby authorized to cancel any operator's or chauffeur's license in any of the following events:

1. When the division determines that the licensee was not entitled to the issuance thereof hereunder; or,
2. When said licensee failed to give the required or correct information in his application; or,
3. When said licensee committed any fraud in making such application; or,
4. When the division determines that the required fee has not been paid and the same is not paid upon reasonable notice or demand.

§17B-3-4. Abstract of judgment of conviction for violation of motor vehicle laws to be sent to division.

Whenever a conviction is had in any court of record, or in a justice's court, or in the police court or mayor's court of any incorporated municipality, for the violation of any law of this state governing or regulating the licensing or operation of any motor vehicle, or for the violation of any provision of a charter, or bylaw, or ordinance of such incorporated municipality governing
or regulating the operation of motor vehicles, except regulations governing standing or parking, the clerk of every such court, or the justice, or the clerk or recorder of such municipality, as the case may be, shall in each case transmit to the division within seventy-two hours after such conviction is had a certified abstract of the judgment on such conviction.

For the purposes of this chapter a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

Willful failure, refusal or neglect to comply with the provisions of this section shall subject the person who is guilty thereof to a fine of not less than ten dollars nor more than fifty dollars and may be the grounds for removal from office.

§17B-3-9. Surrender and return of license not required.

The division, upon suspending or revoking a license, shall not require that such license be surrendered to and be retained by the division. The surrender of a license shall not be a precondition to the commencement and tolling of any applicable period of suspension or revocation: 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 a special revolving fund to be appropriated to the department for use in the enforcement of the provisions of this section.

§17B-3-12. Mandatory suspension for fraudulent use of driver's license.

(a) The commissioner shall suspend for a period of ninety days the driver's license of any person upon receipt of a sworn affidavit from any law-enforcement officer, employee of the alcohol beverage control commission or employee of the division of motor vehicles stating that the person committed any one of the following acts:

(1) Displayed or caused or permitted to be displayed
to any law-enforcement officer or employee of the
division of motor vehicles or have in his or her possession
any fictitious or fraudulently altered driver's license;

(2) Loaned or gave his or her driver's license to any
other person or knowingly permitted the use thereof by
another for an unlawful or fraudulent purpose;

(3) Displayed or represented as one's own any driver's
license not issued to him or her; or

(4) Used a false or fictitious name or birth date on any
application for a driver's license or knowingly made a
false statement, knowingly concealed a material fact or
otherwise committed a fraud in making application for
a driver's license.

(b) For the purposes of this section, "driver's license"
means any permit, camera card, identification card or
driver's license issued by this state or any other state
to a person which authorizes the person to drive a motor
vehicle of a specific class or classes subject to any
restriction or endorsement contained thereon.

(c) No person shall have his or her driver's license
suspended under any provision of this section unless he
or she shall first be given written notice of such
suspension sent by certified mail, return receipt
requested, at least twenty days prior to the effective date
of the suspension. Within ten days of the receipt of the
notice of suspension, the person may submit a written
request by certified mail for a hearing and request a
stay of the suspension pending the results of the hearing.
Upon receipt of the request for a hearing and request
for a stay of the suspension, the commissioner shall
grant a stay of the suspension pending the results of the
hearing. If the commissioner shall after hearing make
and enter an order affirming the earlier order of
suspension, the person affected shall be entitled to
judicial review as set forth in chapter twenty-nine-a of
this code and, pending the appeal, the court may grant
a stay or supersedeas of such order. If the person does
not appeal the suspension or if the suspension is
affirmed by the court, the order of suspension shall be
effective and the period of suspension shall commence
(d) The suspended driver's license shall be reinstated following the period of suspension and upon compliance with the conditions set forth in this chapter.

ARTICLE 4. VIOLATION OF LICENSE PROVISIONS.

§17B-4-1. Unlawful use of license or nonoperator's identification; license and nonoperator's identification violations generally.

It is a misdemeanor for any person to commit any one of the following acts:

1. To display or cause or permit to be displayed or have in his possession any fictitious, or fraudulently altered operator's or chauffeur's license or nonoperator's identification;
2. To lend his operator's or chauffeur's license or nonoperator's identification to any other person or knowingly permit the use thereof by another;
3. To display or represent as one's own any operator's or chauffeur's license or nonoperator's identification not issued to him;
4. To use a false or fictitious name in any application for an operator's or chauffeur's license or nonoperator's identification or to knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application;
5. To permit any unlawful use of an operator's or chauffeur's license or nonoperator's identification issued to him; or
6. To do any act forbidden or fail to perform any act required by this chapter.

§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.
13 [Enr. Com. Sub. for H.B. 4020]

(a) Except as otherwise provided in subsections (b) or (d) of this section, any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully suspended or revoked by this state or any other jurisdiction shall, for the first offense, be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in 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 is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in 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 is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in 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 or her privilege to do so has been lawfully revoked for driving under the influence of alcohol, controlled substances or other drugs, or for driving while having an alcoholic concentration in his or her 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 confined in 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 is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in 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 is 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 prison
sentence, shall be fined not less than three thousand dollars nor more than five thousand dollars.

(c) Upon receiving a record of the conviction of any person under subsection (a) or (b) of this section upon a charge of driving a vehicle while the license of such person was lawfully revoked, the division shall extend the period of such suspension 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.

(d) Any person who drives a motor vehicle on any public highway of this state at a time when his or her privilege to do so has been lawfully suspended for driving while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for twenty-four hours or shall be fined not less than fifty dollars nor more than five hundred dollars, or both.

(e) An order for home detention by the court pursuant to the provisions of article eleven-b, chapter sixty-two of this code may be used as an alternative sentence to any period of incarceration required by this section.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-28. Division.

“Division” means the division of motor vehicles of this state acting directly or through its duly authorized officers and agents. Wherever in this chapter reference is made to “the department of motor vehicles” or “the department”, unless a different meaning is clearly required, the reference shall be deemed to be a reference to the division of motor vehicles.

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 or her 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 or her 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
doing so of such vehicle, which act or failure proximately causes
the death of any person within one year next following
such act or failure, is guilty of a misdemeanor, and,
upon conviction thereof, shall be confined in 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 or her 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, is guilty
of a misdemeanor, and, upon conviction thereof, shall be
confined in jail for not less than one day nor more than
one year, which jail term shall include actual confine-
ment 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
(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 or her blood
of ten hundredths of one percent or more, by weight;
(2) Is guilty of a misdemeanor, and, upon conviction
thereof, shall be confined in jail for not less than one day
nor more than six months, which jail term shall include
actual confinement of not less than twenty-four hours,
and shall be fined not less than one hundred dollars nor
more than five hundred dollars.
(e) Any person who, being an habitual user of narcotic
drugs or amphetamine or any derivative thereof, drives
a vehicle in this state, is guilty of a misdemeanor, and,
upon conviction thereof, shall be confined in jail for not
less than one day nor more than six months, which jail
term shall include actual confinement of not less than
twenty-four hours, and shall be fined not less than one
hundred dollars nor more than five hundred dollars.
(f) Any person who:
(1) Knowingly permits his or her vehicle to be driven
in this state by any other person who is:
(A) Under the influence of alcohol, or
(B) Under the influence of any controlled substance,
or
(C) Under the influence of any other drug, or
(D) Under the combined influence of alcohol and any
controlled substance or any other drug, or
(E) Has an alcohol concentration in his or her blood
of ten hundredths of one percent or more, by weight;
(2) Is guilty of a misdemeanor, and, upon conviction
thereof, shall be confined in jail for not more than six
months and shall be fined not less than one hundred
dollars nor more than five hundred dollars.
(g) Any person who:
Knowingly permits his or her vehicle to be driven in
this state by any other person who is an habitual user
of narcotic drugs or amphetamine or any derivative
thereof, is guilty of a misdemeanor, and, upon conviction
thereof, shall be confined in jail for not more than six
months and shall be fined not less than one hundred
dollars nor more than five hundred dollars.

(h) Any person under the age of twenty-one years who
drives a vehicle in this state while he or she has an
alcohol concentration in his or her blood of two hun-
dredths of one percent or more, by weight, but less than
ten hundredths of one percent, by weight, shall, for a
first offense under this subsection, be guilty of a
misdemeanor, and, upon conviction thereof, shall be
fined not less than twenty-five dollars nor more than one
hundred dollars. For a second or subsequent offense
under this subsection, such person is guilty of a
misdemeanor, and, upon conviction thereof, shall be
confined in jail for twenty-four hours, and shall be fined
not less than one hundred dollars nor more than five
hundred dollars. A person who is charged with a first
offense under the provisions of this section may move for
a continuance of the proceedings from time to time to
allow the person to participate in the vehicle alcohol test
and lock program as provided for in section three-a,
article five-a of this chapter. Upon successful completion
of the program, the court shall dismiss the charge
against the person and expunge the person's record as
it relates to the alleged offense. In the event the person
fails to successfully complete the program, the court
shall proceed to an adjudication of the alleged offense.
A motion for a continuance under this section shall not
be construed as an admission or be used as evidence.

(i) A person violating any provision of subsection (b),
(c), (d), (e), (f) or (g) of this section shall, for the second
offense under this section, be guilty of a misdemeanor,
and, upon conviction thereof, shall be confined in jail for
a period of not less than six months nor more than one
year, and the court may, in its discretion, impose a fine
of not less than one thousand dollars nor more than three thousand dollars.

(j) A person violating any provision of subsection (b), (c), (d), (e), (f) or (g) of this section shall, for the third or any subsequent offense under this section, be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than three years, and the court may, in its discretion, impose a fine of not less than three thousand dollars nor more than five thousand dollars.

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

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

(2) Any conviction under the provisions of 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; and

(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 subsections (a), (b), (c), (d), (e), (f) or (g) of this section, which offense occurred after June tenth, one thousand nine hundred eighty-three.

(l) 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.

(m) 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.

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

(o) 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. An order for home detention by the court pursuant to the provisions of article eleven-b, chapter sixty-two of this code may be used as an alternative sentence to any period of incarceration required by this section.

§17C-5-4. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

Any person who drives a motor vehicle in this state shall be deemed to have given his consent by the operation thereof, subject to the provisions of this article, to a preliminary breath analysis and a secondary chemical test of either his blood, breath or urine for the purposes of determining the alcoholic content of his blood. A preliminary breath analysis may be administered in accordance with the provisions of section five of this article whenever a law-enforcement officer has reasonable cause to believe a person to have committed an offense prohibited by section two of this article or by
an ordinance of a municipality of this state which has
the same elements as an offense described in said section
two of this article. A secondary test of blood, breath or
urine shall be incidental to a lawful arrest and shall be
administered at the direction of the arresting law-
forcement officer having reasonable grounds to
believe the person to have committed an offense
prohibited by section two of this article or by an
ordinance of a municipality of this state which has the
same elements as an offense described in said section
two of this article. The law-enforcement agency by
which such law-enforcement officer is employed shall
designate which one of the aforesaid secondary tests
shall be administered: Provided, That if the test so
designated is a blood test and the person so arrested
refuses to submit to such blood test, then the law-
enforcement officer making such arrest shall designate
in lieu thereof, either a breath or urine test to be
administered, and notwithstanding the provisions of
section seven of this article, such refusal to submit to
a blood test only shall not result in the revocation of the
arrested person's license to operate a motor vehicle in
this state. Any person to whom a preliminary breath test
is administered who is then arrested shall be given a
written statement advising him that his refusal to
submit to the secondary chemical test finally designated
as provided in this section, will result in the revocation
of his license to operate a motor vehicle in this state for
a period of at least one year and up to life.

For the purpose of this article the term "law-
enforcement officer" or "police officer" shall mean and
be limited to (1) any member of the department of
public safety of this state, (2) any sheriff and any deputy
sheriff of any county, (3) any member of a police
department in any municipality as defined in section
two, article one, chapter eight of this code, (4) any
conservation officer of the department of natural
resources, and (5) any special police officer appointed by
the governor pursuant to the provisions of section forty-
one, article three, chapter sixty-one of this code who has
completed the course of instruction at a law-enforcement
training academy as provided for under the provisions

of section nine, article twenty-nine, chapter thirty of this code. If any municipality or the department of natural resources does not have available to its law-enforcement officers the testing equipment or facilities necessary to conduct any secondary test which a law-enforcement officer may administer under this article, or if the person to be tested is arrested by a special police officer, then any member of the department of public safety, the sheriff of the county wherein the arrest is made or any deputy of such sheriff or any municipal law-enforcement officer of another municipality within the county wherein the arrest is made may, upon the request of such arresting law-enforcement officer and in his presence, conduct such secondary test and the results of such test may be used in evidence to the same extent and in the same manner as if such test had been conducted by such arresting law-enforcement officer. Only the person actually administering or conducting such test shall be competent to testify as to the results and the veracity of such test.

§17C-5-6a. Taking a child into custody; driving a motor vehicle with any amount of blood alcohol.

(a) A preliminary breath analysis may be administered to a child whenever a law-enforcement official has reasonable cause to believe the child to have been driving a motor vehicle with any amount of alcohol in his or her blood, for the purpose of determining the child's blood alcohol content. Such breath analysis must be administered as soon as possible after the law-enforcement officer arrives at a reasonable belief that the child has been driving a motor vehicle with any amount of alcohol in his or her blood. Any preliminary breath analysis administered pursuant to this subsection must be administered with a device and in a manner approved by the division of health for that purpose. If a preliminary breath analysis is administered, the results shall be used solely for the purpose of guiding the officer in deciding whether the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, and should therefore be taken into
custody to administer a secondary test in accordance with the provisions of this section.

(b) A child may be taken into custody by a law-enforcement official without a warrant or court order if the official has reasonable grounds to believe the child to have been driving a motor vehicle with any amount of alcohol in his or her blood. If a preliminary breath analysis is administered and the results of the analysis indicate that the child has an alcohol concentration in his or her blood of less than two hundredths of one percent, by weight, the child may not be taken into custody unless other grounds exist under subsection (b), section eight, article five, chapter forty-nine of this code. Upon taking a child into custody pursuant to the provisions of this section, the official shall take all reasonable steps to cause notification to be made to the child's parent or custodian or, if the parent or custodian cannot be located, to a close relative.

(c) Upon taking a child into custody pursuant to this section, the official shall take the child to a facility where a secondary test of the child's blood or urine may be administered at the direction of the official or a test of the child's breath may be administered by the official. The law-enforcement agency by which such law-enforcement official is employed shall designate whether the secondary test is a test of either blood, breath or urine: Provided, That if the test so designated is a blood test and the child refuses to submit to the blood test, then the law-enforcement official taking the child into custody shall designate in lieu thereof a breath test to be administered. Notwithstanding the provisions of section seven of this article, a refusal to submit to a blood test only shall not result in the revocation of the child's license to operate a motor vehicle in this state. Any child taken into custody pursuant to this section shall be given a written statement advising him or her that a refusal to submit to a secondary test of either blood, breath or urine, as finally designated by the law-enforcement agency or official in accordance with this subsection, will result in the suspension of his or her license to operate a motor vehicle in this state for a
period of at least thirty days or a revocation of the license for a period up to life.

(d) If the law-enforcement official taking the child into custody is employed by a law-enforcement agency which does not have available the testing equipment or facilities necessary to conduct any secondary breath test which may be administered pursuant to the provisions of this section, then the official who took the child into custody may request another qualified person to administer a secondary breath test: Provided, That the breath test shall be administered in the presence of the official who took the child into custody. The results of such breath test may be used in evidence to the same extent and in the same manner as if such test had been conducted by the law-enforcement official who took the child into custody. The qualified person administering the breath test must be a member of the division of public safety, the sheriff of the county wherein the child was taken into custody or any deputy of such sheriff, or a law-enforcement official of another municipality within the county wherein the child was taken into custody. Only the person actually administering the secondary breath test is competent to testify as to the results and the veracity of the test. If the secondary test is a blood test, the test shall be conducted in accordance with the provisions of section six of this article.

(e) After taking the child into custody, if the law-enforcement official has reasonable cause to believe that the act of the child in driving the motor vehicle is such that it would provide grounds for arrest for an offense defined under the provisions of section two of this article if the child were an adult, then the official shall proceed to treat the child in the same manner as any other child taken into custody without a warrant or court order, in accordance with the provisions of section eight of this article.

(f) If the results of any secondary test administered pursuant to this section indicate that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of ten hundredths of one percent or less, by weight, and if the law-enforce-
ment official does not have reasonable cause to believe that the act of the child in driving the motor vehicle is such that it would provide grounds for arrest for an offense defined under the provisions of section two of this article if the child were an adult, then the official shall release the child: Provided, That if the results of any secondary test administered pursuant to this section indicate that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, the child shall only be released to a parent or custodian, or to some other responsible adult.

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

Upon trial for the offense of driving a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs, or upon the trial of any civil or criminal action arising out of acts alleged to have been committed by any person driving a motor vehicle while under the influence of alcohol, controlled substances or drugs, evidence of the amount of alcohol in the person's blood at the time of the arrest or of the acts alleged, as shown by a chemical analysis of his or her blood, breath or urine, is admissible, if the sample or specimen was taken within two hours from and after the time of arrest or of the acts alleged, and shall give rise to the following presumptions or have the following effect:

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

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

(c) Evidence that there was, at that time, ten hundredths of one percent or more, by weight, of alcohol in his or her blood, shall be admitted as prima facie
A determination of the percent, by weight, of alcohol in the blood shall be based upon a formula of (1) the number of grams of alcohol per one hundred cubic centimeters of blood, (2) the number of grams of alcohol per two hundred ten liters of breath, or (3) the number of grams of alcohol per sixty-seven milliliters of urine.

A chemical analysis of a person’s blood, breath or urine, in order to give rise to the presumptions or to have the effect provided for in subdivisions (a),(b) and (c) of this section, must be performed in accordance with methods and standards approved by the state division of health. A chemical analysis of blood or urine to determine the alcoholic content of blood shall be conducted by a qualified laboratory or by the state police scientific laboratory of the criminal identification bureau of the division of public safety.

The provisions of this article shall not limit the introduction in any administrative or judicial proceeding of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, controlled substances or drugs.

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 or her 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 or her license to operate a motor vehicle in this state should be revoked because he or she did drive a motor vehicle while under the influence of alcohol, controlled substan-
(b) Any law-enforcement officer arresting a person for an offense described in section two, article five of this chapter or for an offense described in a municipal ordinance which has the same elements as an offense described in said section two of article five shall report to the commissioner of the division of motor vehicles by written statement within forty-eight hours the name and address of the person so arrested. The 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 the statement that the statements contained therein are true and that any copy filed is a true copy. The 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 any secondary test or tests indicate that at the time the test or tests were administered the person had, in his or her blood, an alcohol concentration of ten hundredths of one percent or more, by weight, or did refuse to submit to any designated secondary chemical test, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight.
51 or more, by weight, or at the time the person was arrested he or she was under the influence of alcohol, controlled substances or drugs, the commissioner shall make and enter an order revoking the person's license to operate a motor vehicle in this state. If the results of the tests indicate that at the time the test or tests were administered the person was under the age of twenty-one years and had an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, the commissioner shall make and enter an order suspending the person's license to operate a motor vehicle in this state. A copy of the order shall be forwarded to the person by registered or certified mail, return receipt requested, and shall contain the reasons for the revocation or suspension and describe the applicable revocation or suspension periods provided for in section two of this article. No revocation or suspension shall become effective until ten days after receipt of a copy of the order.

(d) Any law-enforcement officer taking a child into custody under the provisions of section six-a, article five of this chapter who has reasonable cause to believe that the child, at the time of driving the motor vehicle, had an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, or that the act of the child in driving the motor vehicle was such that it would provide grounds for arrest for an offense defined under the provisions of section two, article five, of this chapter if the child were an adult, shall report to the commissioner of the division of motor vehicles by written statement within forty-eight hours the name and address of the child.

(e) If applicable, the report shall include a description of the specific offense with which the child could have been charged if the child were an adult, and 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.

(f) Upon examination of the written statement of the officer and any test results described in subsection (d) of this section, if the commissioner determines that the results of the tests indicate that at the time the test or tests were administered the child had, in his or her blood, an alcohol concentration of two hundredths of one percent or more, by weight, but also determines that the act of the child in driving the motor vehicle was not such that it would provide grounds for arrest for an offense defined under the provisions of subsections (a), (b), (c), (d), (e), (f) or (g), section two, article five of this chapter if the child were an adult, the commissioner shall make and enter an order suspending the child's license to operate a motor vehicle in this state. If the commissioner determines that the act of the child in driving the motor vehicle was such that it would provide grounds for arrest for an offense defined under the provisions of subsections (a), (b), (c), (d), (e), (f) or (g), section two, article five of this chapter if the child were an adult, the commissioner shall make and enter an order revoking the child's license to operate a motor vehicle in this state. A copy of such order shall be forwarded to the child by registered or certified mail, return receipt requested, and shall contain the reasons for the suspension or revocation and describe the applicable suspension or revocation periods provided for in section two of this article. No suspension or revocation shall become effective until ten days after receipt of a copy of such order.

§17C-5A-1a. Revocation upon conviction for driving under the influence of alcohol, controlled substances or drugs.

(a) If a person is convicted for an offense defined 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, because the person did drive a motor vehicle
while under the influence of alcohol, controlled substan-
ces or drugs, or the combined influence of alcohol or
controlled substances or drugs, or did drive a motor
vehicle while having an alcoholic concentration in his or
her blood of ten hundredths of one percent or more, by
weight, or did drive a motor vehicle while under the age
of twenty-one years with an alcohol concentration in his
blood of two hundredths of one percent or more, by
weight, but less than ten hundredths of one percent, by
weight, and if the person does not act to appeal the
conviction within the time periods described in subsec-
tion (b) of this section, the person's license to operate a
motor vehicle in this state shall be revoked or suspended
in accordance with the provisions of this section.

(b) The clerk of the court in which a person is
convicted 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
forward to the commissioner a transcript of the
judgment of conviction. If the conviction is the judgment
of a magistrate court, the magistrate court clerk shall
forward the transcript when the person convicted has
not requested an appeal within twenty days of the
sentencing for such conviction. If the conviction is the
judgment of a mayor or police court judge or municipal
court judge, the clerk or recorder shall forward the
transcript when the person convicted has not perfected
an appeal within ten days from and after the date upon
which the sentence is imposed. If the conviction is the
judgment of a circuit court, the circuit clerk shall
forward the transcript when the person convicted has
not filed a notice of intent to file a petition for appeal
or writ of error within thirty days after the judgment
was entered.

(c) If, upon examination of the transcript of the
judgment of conviction, the commissioner shall deter-
mine that the person was convicted 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, because the person did drive
a motor vehicle while under the influence of alcohol,
controlled substances or drugs, or the combined influence of alcohol or controlled substances or drugs, or did
drive a motor vehicle while having an alcoholic concentra-
tion in his or her blood of ten hundredths of one percent or more, by weight, the commissioner shall
make and enter an order revoking the person's license
to operate a motor vehicle in this state. If the commis-
sioner determines that the person was convicted of
driving a motor vehicle while under the age of twenty-
one years with an alcohol concentration in his blood of
two hundredths of one percent or more, by weight, but
less than ten hundredths of one percent, by weight, the
commissioner shall make and enter an order suspending
the person's license to operate a motor vehicle in this
state. The order shall contain the reasons for the
revocation or suspension and the revocation or suspen-
sion periods provided for in section two of this article.
Further, the order shall give the procedures for
requesting a hearing which is to be held in accordance
with the provisions of section two of this article. The
person shall be advised in the order that because of the
receipt of a transcript of the judgment of conviction by
the commissioner a presumption exists that the person
named in the transcript of the judgment of conviction
is the person named in the commissioner's order and
such constitutes sufficient evidence to support revoca-
tion or suspension and that the sole purpose for the
hearing held under this section is for the person
requesting the hearing to present evidence that he or she
is not the person named in the transcript of the
judgment of conviction. A copy of the order shall be
forwarded to the person by registered or certified mail,
return receipt requested. No revocation or suspension
shall become effective until ten days after receipt of a
copy of the order.

(d) The provisions of this section shall not apply if an
order reinstating the operator's license of the person has
been entered by the commissioner prior to the receipt
of the transcript of the judgment of conviction.

(e) For the purposes of this section, a person is convicted when the person enters a plea of guilty or is found guilty by a court or jury.

§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 or suspended under the provisions of section one of this article or section seven, article five of this chapter, the commissioner of motor vehicles shall stay the imposition of the period of revocation or suspension and afford the person an opportunity to be heard. The 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 or suspension. The hearing shall be before the 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 the 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 the hearing, and such policies shall be enforced and applied to all parties equally. For the purpose of conducting the 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 the
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 the 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, or did drive a motor vehicle while under the age
of twenty-one years with an alcohol concentration in his
blood of two hundredths of one percent or more, by
weight, but less than ten hundredths of one percent, by
weight.

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, or
accused of driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, 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. The 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, or accused of driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two 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 the 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, or to have
been driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, (2) whether the person was lawfully placed under arrest for an offense involving driving under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of administering a secondary test, 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, or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, 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 within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the 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 preponderance of the evidence that the person when so driving did an act forbidden by law or failed to perform a duty imposed by law, which act or failure proximately caused the death of a person, the commissioner shall revoke the person's license for a period of five years: Provided, That if the commissioner has previously suspended or revoked the person's license under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life of the 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 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 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 immediately preceding the date of arrest, the period of revocation shall be for the life of the 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 the person.

(j) If, in addition to a finding that the person did drive
a motor vehicle while under the age of twenty-one years
with an alcohol concentration in his blood of two
hundredths of one percent or more, by weight, but less
than ten hundredths of one percent, 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 if the commissioner further finds
that 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 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
the person.

(k) If, in addition to a finding that the person did drive
a motor vehicle while under the age of twenty-one years
with an alcohol concentration in his blood of two
hundredths of one percent or more, by weight, but less than ten hundredths of one percent, 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 or herself, and if the commissioner further finds that the alcoholic concentration in the blood was a contributing cause to the bodily injury, 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 immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

(l) If the commissioner finds by a preponderance of the evidence that the person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, the commissioner shall suspend the person's license for a period of sixty days.

(m) 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 immedi-
diately 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.

(n) 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 the person had been
driving a motor vehicle in this state while under the
influence of alcohol, controlled substances or drugs, (2)
whether the 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 the person refused to
submit to the secondary test finally designated in the
manner provided in section four, article five of this
chapter, and (4) whether the 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.

(o) If the commissioner finds by a preponderance of
the evidence that (1) the arresting law-enforcement
officer had reasonable grounds to believe the person had
been driving a motor vehicle in this state while under
the influence of alcohol, controlled substances or drugs,
(2) the 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 substan-
ces or drugs, (3) the person refused to submit to the
secondary chemical test finally designated, and (4) the
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.

(p) If the commissioner finds to the contrary with
respect to the above issues, the commissioner shall
rescind his or her 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 the 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, the 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 the appeal, the
court may grant a stay or supersedeas of the 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 the order is not stayed: Provided, That in no event
shall the stay or supersedeas of the order exceed thirty
days.

(q) In any revocation or suspension pursuant to this
section, if the driver whose license is revoked or
suspended had not reached the driver's eighteenth
birthday at the time of the conduct for which the license
is revoked or suspended, the driver's license shall be
revoked or suspended until the driver's eighteenth
birthday, or the applicable statutory period of revoca-
(r) 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 division of motor vehicles, in cooperation with the department of health and human resources, the division of alcoholism and drug abuse, shall propose a legislative rule or rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code, establishing a comprehensive safety and treatment program for persons whose licenses have been revoked under the provisions of this article, or section seven, article five of this chapter, or subsection (6), section three, article five, chapter seventeen-b of this code, and shall likewise establish the minimum qualifications for mental health facilities or other public agencies or private entities conducting the safety and treatment program: Provided, That the commissioner may establish standards whereby the division will accept or approve participation by violators in another treatment program which provides the same or substantially similar benefits as the safety and treatment program established pursuant to this section. 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 division of motor vehicles, in cooperation with the department of health and human resources, 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, 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 or her amenability to rehabilitation through the alcohol safety program; and (D) a recommendation as to treatment or rehabilitation, and the terms and conditions of the 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 and human resources, 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, any mental health facilities or other
public agencies or private entities conducting the safety
and treatment program 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.

(c) (1) The division of motor vehicles, in cooperation
with the department of health and human resources,
division of alcoholism and drug abuse, shall provide for
the preparation of an educational program for each
person whose license has been suspended for sixty days
pursuant to the provisions of subsection (l), section two,
article five-a of this chapter. The educational program
shall consist of not less than twelve nor more than
eighteen hours of actual classroom time.

(2) When a sixty day period of suspension has been
ordered, the license to operate a motor vehicle shall not
be reinstated until (A) at least sixty days have elapsed
from the date of the initial suspension, during which
time the suspension was actually in effect, (B) the
offender has successfully completed the educational
program, and (C) all costs of the program and admin-
istration have been paid, and (D) all costs assessed as
a result of a suspension hearing have been paid.

(d) A required component of the rehabilitation
program provided for in subsection (b) and the educa-
tion program provided for in subsection (c) shall be participation by the violator with a victim impact panel program providing a forum for victims of alcohol and drug related offenses and offenders to share first-hand experiences on the impact of alcohol and drug related offenses in their lives. The commissioner shall propose legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code to implement victim impact panels where appropriate numbers of victims are available and willing to participate, and shall establish guidelines for other innovative programs which may be substituted where such victims are not available, so as to assist persons whose licenses have been suspended or revoked for alcohol and drug related offenses to gain a full understanding of the severity of their offenses in terms of the impact of such offenses on victims and offenders. The legislative rules proposed for promulgation by the commissioner shall require, at a minimum, discussion and consideration of the following:

(A) Economic losses suffered by victims or offenders;

(B) Death or physical injuries suffered by victims or offenders;

(C) Psychological injuries suffered by victims or offenders;

(D) Changes in the personal welfare or familial relationships of victims or offenders; and

(E) Other information relating to the the impact of alcohol and drug related offenses upon victims or offenders.

Any rules promulgated pursuant to this subsection shall contain provisions which ensure that any meetings between victims and offenders shall be non-confrontational and ensure the physical safety of the persons involved.

§17C-5A-3a. Establishment of and participation in the motor vehicle alcohol test and lock program.
(a) The division of motor vehicles shall control and regulate 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 propose legislative rules for promulgation 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 or presents proof to the commissioner within sixty days of receiving approval to participate by the commissioner that he or she is enrolled in a 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
(2) Any person whose license has been suspended pursuant to the provisions of subsection (1), section two of this article for driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than ten hundredths of one percent, by weight, is eligible to participate in the program after thirty days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect: Provided, That in the case of a person under the age of eighteen, the person shall be eligible to participate in the program after thirty days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect, or after the person’s eighteenth birthday, whichever is later. Before the commissioner approves a person to operate a motor vehicle equipped with a motor vehicle alcohol test and lock system, the person must agree to thereafter comply with the following conditions:

(A) If not already enrolled, the person will enroll in and complete the educational program provided for in subsection (c), section three of this article at the earliest time that placement in the educational program is available, unless good cause is demonstrated to the commissioner as to why placement should be postponed;

(B) The person will pay all costs of the educational program, any administrative costs, and all costs assessed for any suspension hearing.

(3) 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.

(e) 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.

(f) 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 partici-
pation 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 commis-
ioner for a person described in subdivision (2), subsec-
tion (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;

(g) A person whose license has been suspended
pursuant to the provisions of subsection (l), section two
of this article, who has completed the educational
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 reinstatement of his or her driver's license
six months from the date the person is permitted to
operate a motor vehicle by the commissioner. When a
license has been reinstated pursuant this subsection, the
records ordering the suspension, records of any admin-
istrative hearing, records of any blood alcohol test
results and all other records pertaining to the suspen-
sion shall be expunged by operation of law: Provided,
That a person shall be entitled to expungement under
the provisions of this subsection only once. The expun-
gement shall be accomplished by physically marking the
records to show that such records have been expunged,
and by securely sealing and filing the records. Expun-
gement shall have the legal effect as if the suspension
never occurred. The records shall not be disclosed or
made available for inspection, and in response to a
request for record information, the commissioner shall
reply that no information is available. Information from
the file may be used by the commissioner for research
and statistical purposes so long as the use of such
information does not divulge the identity of the person.

(h) 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.
CHAPTER 17D. MOTOR VEHICLE
SAFETY RESPONSIBILITY ACT.

ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.

§17D-2A-7. Suspension or revocation of license, registration; reinstatement.

(a) Any owner of a motor vehicle, subject to the provisions of this article, who fails to have the required security in effect at the time such vehicle is being operated upon the roads or highways of this state, shall have his or her driver license suspended by the commissioner of the division of motor vehicles for a period of thirty days and shall have his or her motor vehicle registration revoked until such time as he or she shall present to the division of motor vehicles the proof of security required by this article: Provided, That if a motor vehicle is registered in more than one name, the driver license of only one of the owners shall be suspended by the commissioner.

(b) Any person who knowingly operates a motor vehicle upon the roads or highways of this state, which does not have the security required by the provisions of this article, shall have his or her driver license suspended by the commissioner for a period of thirty days.

(c) A person's driver license shall be suspended for a period of thirty days, if the person is operating a motor vehicle designated for off highway use upon the roads and highways of this state without the required security in effect, if the motor vehicle is not properly registered and licensed, or if the required security was cancelled.

(d) The commissioner may withdraw a suspension of a driver license provided that the commissioner is satisfied that there was not a violation of the provisions of required security related to operation of a motor vehicle upon the roads or highways of this state by such person. The commissioner may request additional information as needed in order to make such determination.

(e) No person shall have his or her driver license or
motor vehicle registration suspended or revoked under any provisions of this section unless he or she shall first be given written notice of such suspension or revocation sent by certified mail, at least twenty days prior to the effective date of such suspension or revocation, and upon such person's written request, sent by certified mail, he or she shall be afforded an opportunity for a hearing thereupon as well as a stay of the commissioner's order of suspension or revocation and an opportunity for judicial review of such hearing. Upon affirmation of the commissioner's order, the period of suspension or revocation shall commence to run.

(f) Such suspended driver license shall be reinstated following the period of suspension upon compliance with the conditions set forth in this article and such revoked motor vehicle registration shall be reissued only upon lawful compliance with the provisions of this article.

(e) If the commissioner has previously suspended the person's driver license under the provisions of this section or section five of this article, the period of suspension shall be for a period of ninety days.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-15. Implied consent requirements for commercial motor vehicles drivers.

(a) A person who drives a commercial motor vehicle within this state is deemed to have given consent, subject to provisions of section four, article five, chapter seventeen-c of this code, to take a test or tests of that person's blood, breath or urine for the purpose of determining that person's alcohol concentration, or the presence of other drugs.

(b) A test or tests may be administered at the direction of a law-enforcement officer, who after stopping or detaining the commercial motor vehicle driver, has reasonable cause to believe that driver was driving a commercial motor vehicle while having alcohol in his or her system.
(c) A person requested to submit to a test as provided in subsection (a) of this section must be warned by the law-enforcement officer requesting the test that a refusal to submit to the test will result in that person being disqualified from operating a commercial motor vehicle under section fifteen of this article.

(d) If the person refuses testing, or submits to a test which discloses an alcohol concentration of four hundredths or more, that law-enforcement officer must submit a sworn report to the department of motor vehicles certifying that the test was requested pursuant to subsection (a) of this section and that the person refused to submit to testing, or submitted to a test which disclosed an alcohol concentration of four hundredths or more.

(e) Upon receipt of the sworn report of a law-enforcement officer submitted under subsection (d) of this section, the commissioner must disqualify the driver from driving a commercial motor vehicle under section thirteen of this article.

CHAPTER 20. NATURAL RESOURCES.
ARTICLE 7. LAW ENFORCEMENT; MOTORBOATING; LITTER CONTROL.

§20-7-18. Care in handling watercraft; duty to render aid after a collision, accident or casualty; accident reports.

(a) No person shall operate a motorboat or other vessel or manipulate any water skis, surfboard or similar device in a reckless or negligent manner so as to endanger the life, limb or property of any person.

(b) No person shall operate any motorboat or vessel, or manipulate any water skis, surfboard or similar device while under the influence of alcohol or a controlled substance or drug, under the combined influence of alcohol and any controlled substance or any other drug, or while having an alcohol concentration in his blood of ten hundredths of one percent or more, by weight.

(c) It shall be the duty of the operator of a vessel

involved in a collision, accident or other casualty, so far as he can do so without serious danger to his own vessel, crew and passengers (if any), to render to other persons affected by the collision, accident or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident or other casualty, and also to give his name, address and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident or other casualty.

(d) The operator of a vessel involved in a collision, accident or other casualty shall file an accident report with the director if the incident results in a loss of life, in a personal injury that requires medical treatment beyond first aid or in excess of five hundred dollars damage to a vessel or other property. The report shall be made on such forms and contain such information as prescribed by the director. Upon a request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the director pursuant to this subsection shall be transmitted to the official or agency.

CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS AND PROPERTY FOR HIRE.

ARTICLE 7. COMPLAINTS, DAMAGES AND VIOLATIONS.

§24A-7-6. Duty of prosecuting attorneys and peace officers to enforce chapter; police powers of inspectors.

It shall be the duty of the department of public safety and the sheriffs of the counties in West Virginia to make arrests and the duty of the prosecuting attorneys of the several counties to prosecute all violations of this chapter, and the commission employees designated by it as inspectors shall have all the lawful powers of peace officers to enforce this chapter in any county or city of this state. If, in the course of enforcing the provisions of this chapter, a commission employee designated by it as an inspector shall have reasonable cause to believe that a driver has been operating a vehicle regulated by
this chapter in violation of section two, article five, chapter seventeen-c of this code or section fourteen, article one, chapter seventeen-e of this code, the inspector may detain the driver until a member of the division of public safety, a sheriff or deputy sheriff, or a member of a municipal law-enforcement agency is summoned to investigate the suspected violation and determine whether the person should be arrested and a secondary test of blood, breath or urine should be administered.

§33-6A-1. Cancellation prohibited except for specified reasons; notice.

No insurer once having issued or delivered a policy providing automobile liability insurance in this state insuring a private passenger automobile shall, after the policy has been in effect for sixty days, or in case of renewal effective immediately, issue or cause to issue a notice of cancellation during the term of the policy except for one or more of the following specified reasons:

(a) The named insured fails to discharge when due any of his obligations in connection with the payment of premium for such policy or any installment thereof;

(b) The policy was obtained through material misrepresentation;

(c) The insured violates any of the material terms and conditions of the policy;

(d) The named insured or any other operator, either resident in the same household or who customarily operates an automobile insured under such policy:

(1) Has had his operator's license suspended or revoked during the policy period including suspension or revocation for failure to comply with the provisions of article five-a, chapter seventeen-c of this code, regarding consent for chemical test for intoxication: Provided, That when a license is suspended for sixty days by the commissioner of motor vehicles because a person did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his blood of two hundredths of one percent or more, by
weight, but less than ten hundredths of one percent, by
weight, pursuant to subsection (1), section two, article
five-a, chapter seventeen-c of this code, such suspension
shall not be grounds for cancellation; or

(2) Is or becomes subject to epilepsy or heart attacks,
and such individual cannot produce a certificate from
a physician testifying to his ability to operate a motor
vehicle.

(e) The named insured or any other operator, either
resident in the same household or who customarily
operates an automobile insured under such policy is
convicted of or forfeits bail during the policy period for
any of the following:

(1) Any felony or assault involving the use of a motor
vehicle;

(2) Negligent homicide arising out of the operation of
a motor vehicle;

(3) Operating a motor vehicle while under the
influence of alcohol or of any controlled substance or
while having an alcohol concentration in his blood of ten
one hundredths of one percent (.10) or more by weight;

(4) Leaving the scene of a motor vehicle accident in
which the insured is involved without reporting as
required by law;

(5) Theft of a motor vehicle or the unlawful taking of
a motor vehicle;

(6) Making false statements in an application for a
motor vehicle operator's license;

(7) A third violation, committed within a period of
twelve months, of any moving traffic violation which
constitutes a misdemeanor, whether or not the violations
were repetitious of the same offense or were different
offenses. Notwithstanding any of the provisions of this
section to the contrary, no insurance company may
cancel a policy of automobile liability insurance without
first giving the insured thirty days' notice of its
intention to cancel: Provided, That cancellation of the
insurance policy by the insurance carrier for failure of
CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-8. Taking a child into custody; detention hearing; counsel.

(a) In proceedings instituted by the filing of a juvenile petition the circuit court may enter an order directing that a child be taken into custody only if one of the following conditions exist: (1) The petition shows that grounds exist for the arrest of an adult in identical circumstances; (2) the health, safety and welfare of the child demand such custody; (3) the child is a fugitive from a lawful custody or commitment order of a juvenile court; or (4) the child has a record of willful failure to appear at juvenile proceedings, and custody is necessary to assure his or her presence before the court. A detention hearing shall be held without delay by the judge, juvenile referee or magistrate authorized to conduct such hearing, and in no event shall the delay exceed the next succeeding judicial day, excluding Saturday, and such child shall be released on recognizance to his or her parent, guardian or custodian unless findings are made as specified in subsection (d) of this section.

(b) Absent a warrant or court order, a child may be taken into custody by a law-enforcement official only if one of the following conditions exist: (1) Grounds exist for the arrest of an adult in identical circumstances; (2) emergency conditions exist which in the judgment of the officer pose imminent danger to the health, safety and welfare of the child; (3) the official has reasonable grounds to believe that the child is a runaway without just cause from the child’s parents or legal custodian and the health, safety and welfare of the child is endangered; (4) the child is a fugitive from a lawful custody or commitment order of a juvenile court; or (5) the official has reasonable grounds to believe the child
to have been driving a motor vehicle with any amount of alcohol in his or her blood. Except as is otherwise provided in section six-a, article five, chapter seventeen-c of this code, upon taking a child into custody, with or without a warrant or court order, the official shall: (i) Immediately notify the child's parent, custodian or, if the parent or custodian cannot be located, a close relative; (ii) release the child into the custody of his or her parent or custodian unless the circumstances warrant otherwise; (iii) refer the matter to the prosecuting attorney, state division or probation officer for proceedings under this article; and (iv) if a child is being held in custody absent a warrant or court order, cause a warrant, petition or order, as the case may be, to be immediately issued authorizing the detention of such child.

If a child is taken into custody pursuant to subdivision (2) or (3) hereunder the state division shall be immediately notified. Any child taken into custody as a runaway shall not be held in custody more than forty-eight hours without a court order, or more than seven days in any event. Such child shall not be confined in any facility wherein persons are being detained for an offense which would be a crime if committed by an adult.

(c) In the event that a child is delivered into the custody of a sheriff or director of a detention facility, such sheriff or director shall immediately notify the court or referee. Said sheriff or director shall immediately provide to every child who is delivered into his or her custody, a written statement explaining the child's right to a prompt detention hearing, his or her right to counsel including appointed counsel if he cannot afford counsel and his or her privilege against self-incrimination. In all cases when a child is delivered into custody, the child shall be released to his or her parent, guardian or custodian by the end of the next succeeding judicial day, excluding Saturday, after being delivered into such custody, unless the child has been placed in detention pursuant to subsection (d) of this section.

(d) A child in custody must immediately be taken
before a referee or judge of the circuit court and in no event shall a delay exceed the next succeeding judicial day: Provided, That if there be no judge or referee then available in the county, then such child shall be taken immediately before any magistrate in the county for the sole purpose of holding a detention hearing. The judge, referee or magistrate shall inform the child of his or her right to remain silent, that any statement may be used against him or her and of his or her right to counsel, and no interrogation shall be made without the presence of a parent or counsel. If the child or his or her parent, guardian or custodian has not retained counsel, counsel shall be appointed as soon as practicable. The referee, judge or magistrate shall hear testimony concerning the circumstances for taking the child into custody and the possible need for detention in accordance with section two, article five-a of this chapter. The sole mandatory issue at the detention hearing shall be whether the child shall be detained pending further court proceedings. The court shall, if advisable, and if the health, safety and welfare of the child will not be endangered thereby, release the child on recognizance to his or her parents, custodians or an appropriate agency; however, if warranted, the court may require bail, except that bail may be denied in any case where bail could be denied if the accused were an adult.

The judge of the circuit court or referee may, in conjunction with the detention hearing, conduct a preliminary hearing pursuant to section nine, article five of this chapter: Provided, That all parties are prepared to proceed and the child has counsel during such hearing.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-9. Intoxication or drinking in public places; illegal possession of alcoholic liquor; arrests by sheriffs or their deputies for violation in their presence.

(a) A person shall not:
(1) Appear in a public place in an intoxicated condition;
(2) Drink alcoholic liquor in a public place;
(3) Drink alcoholic liquor in a motor vehicle on any highway, street, alley or in a public garage;
(4) Tender a drink of alcoholic liquor to another person in a public place;
(5) Possess alcoholic liquor in the amount in excess of ten gallons, in containers not bearing stamps or seals of the commission, without having first obtained written authority from the said commission therefor; or
(6) Possess any alcoholic liquor which was manufactured or acquired in violation of the provisions of this chapter.

(b) Any law-enforcement officer may arrest without a warrant and take the following actions against a person who, in his or her presence, violates subdivision (1) of subsection (a) of this section: (1) If there is some nonintoxicated person who will accept responsibility for the intoxicated person, the officer may issue the intoxicated person a citation specifying a date for appearance before a judicial officer and release him to the custody of the individual accepting responsibility: Provided, That the issuance of a citation shall be used whenever feasible; (2) if it does not impose an undue burden on the officer he may, after issuance of such a citation transport the individual to the individual’s present residence or arrange for such transportation; (3) if the individual is incapacitated or the alternatives provided in subdivisions (1) and (2) of this subsection are not possible, the officer shall transport or arrange for transportation to the appropriate judicial officer as defined by section seventeen, article eleven, chapter twenty-seven of the code; or (4) if the individual is incapacitated and, in the law-enforcement officer’s judgment, is in need of acute medical attention, that officer shall arrange for transportation by ambulance or otherwise to a hospital emergency room. The officer shall accompany the individual until he is discharged
from the emergency room or admitted to the hospital. If the individual is released from the emergency room, the officer may proceed as described in subdivisions (1), (2) and (3) of this subsection. If the individual is admitted to the hospital, the officer shall issue a citation to the individual specifying a date for appearance before a judicial officer.

(c) Upon presentment before the proper judicial officer the law-enforcement officer shall serve as the chief complaining witness. The judicial officer must make a finding that there is probative evidence that the individual may be guilty of the charge of public intoxication. If such evidence is not presented, the charge shall be dismissed and the individual released. If sufficient evidence is presented, the judicial officer shall issue a warrant and establish bail or issue a summons to the individual. Once a warrant or summons has been issued, the following actions may be taken: (1) If the individual is no longer incapacitated, he may be released; (2) if the individual is still incapacitated but a nonintoxicated person is available to accept responsibility for him, he may be released to the responsible person; or (3) if the individual is still incapacitated and no responsible person is available, the judicial officer shall proceed under the provisions of article five or six-a, chapter twenty-seven of this code.

(d) Any law-enforcement officer is hereby authorized and empowered to arrest and hold in custody, without a warrant, until complaint may be made before a judicial officer and a warrant or summons issued, any person who in the presence of the law-enforcement officer violates any one or more of subdivisions (1) through (6), subsection (a) of this section: Provided, That the law-enforcement officer may use reasonable force to prevent harm to himself, the individual arrested or others in carrying out the provisions of this section.

(e) Any person who violates subdivision (1), subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced by a judicial officer in accordance with the following options: (1) Upon first offense, a fine of not less than five dollars nor
more than one hundred dollars and not more than sixty
days in jail or completion of an alcohol education
program of not more than six hours' duration at the
nearest community mental health — mental retardation
center. If the individual, prior to conviction, agrees to
voluntarily attend the alcohol education program, the
judicial officer may delay sentencing until the program
is completed and upon completion may dismiss the
charges; (2) upon conviction for a second offense, a fine
of not less than five dollars nor more than one hundred
dollars and not more than sixty days in jail or comple-
tion of not less than five hours of alcoholism counseling
at the nearest community mental health — mental
retardation center; (3) upon third and subsequent
convictions, a fine of not less than five dollars nor more
than one hundred dollars and not less than five nor more
than sixty days in jail or a fine of not less than five
dollars nor more than one hundred dollars and comple-
tion of not less than five hours of alcoholism counseling
at the nearest community mental health — mental
retardation center: Provided, That three convictions for
public intoxication within the preceding six months
shall be considered evidence of alcoholism: Provided,
however, That for the educational counseling programs
described in this subsection the community mental
health — mental retardation center may charge each
participant its usual and customary fee and shall certify
in writing to the referring judicial officer the comple-
tion or failure to complete the prescribed program for
each individual.

(f) A person charged with a violation of subdivision
(1), subsection (a) of this section who is an alcoholic shall
be found not guilty by reason of addiction and proper
disposition made pursuant to articles five and six-a,
chapter twenty-seven of this code.

(g) Any person who violates subdivision (2), or (3),
subsection (a) of this section shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be
fined not less than five nor more than one hundred
dollars, or confined in jail not more than sixty days, or
both such fine and imprisonment. Any person who
violates subdivision (4) or (5), subsection (a) of this
section shall be guilty of a misdemeanor, and, upon
conviction, shall be fined not less than one hundred
dollars nor more than five hundred dollars, or confined
in jail not less than sixty days nor more than twelve
months, or both such fine and imprisonment, and, upon
conviction of second or subsequent offense, he shall be
guilty of a felony and shall be confined in the peniten-
tiary of this state for a period of not less than one year
nor more than three years.
PRESENTED TO THE
GOVERNOR
Date 3/30/94
Time 12:55 p.m.