

HB 4133

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

ENROLLED

Com. Sub. For

HOUSE BILL No. 4133

(By Delegates *Douglas, Jenkins, Hutchins,*
Kime, Trump and Smirl)

Passed March 9, 1996

In Effect Ninety Days From Passage

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STATE OF WEST VIRGINIA

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COMMITTEE SUBSTITUTE
FOR
H. B. 4133

(BY DELEGATES DOUGLAS, JENKINS, HUTCHINS,
KIME, TRUMP AND SMIRL)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact section two, article five, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article five-a of said chapter, all relating to driving a vehicle while under the influence of alcohol, controlled substances or drugs and while having a child under the age of sixteen years in the vehicle at the time of the offense; penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

- 1 (a) Any person who:
- 2 (1) Drives a vehicle in this state while:

3 (A) He is under the influence of alcohol; or

4 (B) He is under the influence of any controlled sub-
5 stance; or

6 (C) He is under the influence of any other drug; or

7 (D) He is under the combined influence of alcohol and
8 any controlled substance or any other drug; or

9 (E) He has an alcohol concentration in his or her blood
10 of ten hundredths of one percent or more, by weight; and

11 (2) When so driving does any act forbidden by law or
12 fails to perform any duty imposed by law in the driving of
13 such vehicle, which act or failure proximately causes the
14 death of any person within one year next following such
15 act or failure; and

16 (3) Commits such act or failure in reckless disregard of
17 the safety of others, and when the influence of alcohol,
18 controlled substances or drugs is shown to be a
19 contributing cause to such death, shall be guilty of a
20 felony, and, upon conviction thereof, shall be imprisoned
21 in the penitentiary for not less than one nor more than ten
22 years and shall be fined not less than one thousand dollars
23 nor more than three thousand dollars.

24 (b) Any person who:

25 (1) Drives a vehicle in this state while:

26 (A) He is under the influence of alcohol; or

27 (B) He is under the influence of any controlled sub-
28 stance; or

29 (C) He is under the influence of any other drug; or

30 (D) He is under the combined influence of alcohol and
31 any controlled substance or any other drug; or

32 (E) He has an alcohol concentration in his or her blood
33 of ten hundredths of one percent or more, by weight; and

34 (2) When so driving does any act forbidden by law or
35 fails to perform any duty imposed by law in the driving of

36 such vehicle, which act or failure proximately causes the
37 death of any person within one year next following such
38 act or failure, is guilty of a misdemeanor, and, upon
39 conviction thereof, shall be confined in jail for not less
40 than ninety days nor more than one year and shall be
41 fined not less than five hundred dollars nor more than one
42 thousand dollars.

43 (c) Any person who:

44 (1) Drives a vehicle in this state while:

45 (A) He is under the influence of alcohol; or

46 (B) He is under the influence of any controlled sub-
47 stance; or

48 (C) He is under the influence of any other drug; or

49 (D) He is under the combined influence of alcohol and
50 any controlled substance or any other drug; or

51 (E) He has an alcohol concentration in his or her blood
52 of ten hundredths of one percent or more, by weight; and

53 (2) When so driving does any act forbidden by law or
54 fails to perform any duty imposed by law in the driving of
55 such vehicle, which act or failure proximately causes
56 bodily injury to any person other than himself, is guilty of
57 a misdemeanor, and, upon conviction thereof, shall be
58 confined in jail for not less than one day nor more than
59 one year, which jail term shall include actual confinement
60 of not less than twenty-four hours, and shall be fined not
61 less than two hundred dollars nor more than one thousand
62 dollars.

63 (d) Any person who:

64 (1) Drives a vehicle in this state while:

65 (A) He is under the influence of alcohol; or

66 (B) He is under the influence of any controlled sub-
67 stance; or

68 (C) He is under the influence of any other drug; or

69 (D) He is under the combined influence of alcohol and
70 any controlled substance or any other drug; or

71 (E) He has an alcohol concentration in his or her blood
72 of ten hundredths of one percent or more, by weight;

73 (2) Is guilty of a misdemeanor, and, upon conviction
74 thereof, shall be confined in jail for not less than one day
75 nor more than six months, which jail term shall include
76 actual confinement of not less than twenty-four hours, and
77 shall be fined not less than one hundred dollars nor more
78 than five hundred dollars.

79 (e) Any person who, being an habitual user of narcotic
80 drugs or amphetamine or any derivative thereof, drives a
81 vehicle in this state, is guilty of a misdemeanor, and, upon
82 conviction thereof, shall be confined in jail for not less
83 than one day nor more than six months, which jail term
84 shall include actual confinement of not less than
85 twenty-four hours, and shall be fined not less than one
86 hundred dollars nor more than five hundred dollars.

87 (f) Any person who:

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

90 (A) Under the influence of alcohol; or

91 (B) Under the influence of any controlled substance;
92 or

93 (C) Under the influence of any other drug; or

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

96 (E) Has an alcohol concentration in his or her blood of
97 ten hundredths of one percent or more, by weight;

98 (2) Is guilty of a misdemeanor, and, upon conviction
99 thereof, shall be confined in jail for not more than six
100 months and shall be fined not less than one hundred
101 dollars nor more than five hundred dollars.

102 (g) Any person who:

103 Knowingly permits his or her vehicle to be driven in
104 this state by any other person who is an habitual user of
105 narcotic drugs or amphetamine or any derivative thereof,
106 is guilty of a misdemeanor, and, upon conviction thereof,
107 shall be confined in jail for not more than six months and
108 shall be fined not less than one hundred dollars nor more
109 than five hundred dollars.

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

136 A person arrested and charged with an offense under
137 the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or
138 (i) of this section may not also be charged with an offense
139 under this subsection arising out of the same transaction
140 or occurrence.

141 (i) Any person who:

142 (1) Drives a vehicle in this state while:

143 (A) He is under the influence of alcohol; or

144 (B) He is under the influence of any controlled sub-
145 stance; or

146 (C) He is under the influence of any other drug; or

147 (D) He is under the combined influence of alcohol and
148 any controlled substance or any other drug; or

149 (E) He has an alcohol concentration in his or her blood
150 of ten hundredths of one percent or more, by weight; and

151 (2) The person when so driving has on or within the
152 motor vehicle one or more other persons who are
153 unemancipated minors who have not reached their
154 sixteenth birthday, shall be guilty of a misdemeanor, and,
155 upon conviction thereof, shall be confined in jail for not
156 less than two days nor more than twelve months, which jail
157 term shall include actual confinement of not less than
158 forty-eight hours, and shall be fined not less than two
159 hundred dollars nor more than one thousand dollars.

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

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

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

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

185 (2) Any conviction under the provisions of subsection
 186 (a) or (b) of the prior enactment of this section for an
 187 offense which occurred within a period of five years
 188 immediately preceding the first day of September, one
 189 thousand nine hundred eighty-one; and

190 (3) Any conviction under a municipal ordinance of
 191 this state or any other state or a statute of the United States
 192 or of any other state of an offense which has the same
 193 elements as an offense described in subsection (a), (b), (c),
 194 (d), (e), (f) or (g) of this section, which offense occurred
 195 after the tenth day of June, one thousand nine hundred
 196 eighty-three.

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

210 (n) The fact that any person charged with a violation of
 211 subsection (a), (b), (c), (d) or (e) of this section, or any
 212 person permitted to drive as described under subsection

213 (f) or (g) of this section, is or has been legally entitled to
214 use alcohol, a controlled substance or a drug shall not
215 constitute a defense against any charge of violating
216 subsection (a), (b), (c), (d), (e), (f) or (g) of this section.

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

220 (p) The sentences provided herein upon conviction for
221 a violation of this article are mandatory and shall not be
222 subject to suspension or probation: *Provided*, That the
223 court may apply the provisions of article eleven-a, chapter
224 sixty-two of this code to a person sentenced or committed
225 to a term of one year or less. An order for home
226 detention by the court pursuant to the provisions of article
227 eleven-b, chapter sixty-two of this code may be used as an
228 alternative sentence to any period of incarceration
229 required by this section.

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

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

1 (a) Upon the written request of a person whose license
2 to operate a motor vehicle in this state has been revoked or
3 suspended under the provisions of section one of this
4 article or section seven, article five of this chapter, the
5 commissioner of motor vehicles shall stay the imposition
6 of the period of revocation or suspension and afford the
7 person an opportunity to be heard. The written request
8 must be filed with the commissioner in person or by
9 registered or certified mail, return receipt requested, within
10 ten days after receipt of a copy of the order of revocation
11 or suspension. The hearing shall be before the com-
12 missioner or a hearing examiner retained by the
13 commissioner who shall rule on evidentiary issues and
14 submit proposed findings of fact and conclusions of law

15 for the consideration of said commissioner and all of the
16 pertinent provisions of article five, chapter twenty-nine-a
17 of this code shall apply: *Provided*, That in the case of a
18 resident of this state the hearing shall be held in the
19 county wherein the arrest was made in this state unless the
20 commissioner or the commissioner's authorized deputy or
21 agent and the person agree that the hearing may be held
22 in some other county.

23 (b) Any such hearing shall be held within twenty days
24 after the date upon which the commissioner received the
25 timely written request therefor, unless there is a
26 postponement or continuance. The commissioner may
27 postpone or continue any hearing on the commissioner's
28 own motion, or upon application for each person for good
29 cause shown. The commissioner shall adopt and
30 implement by a procedural rule written policies governing
31 the postponement or continuance of any such hearing on
32 the commissioner's own motion or for the benefit of any
33 law-enforcement officer or any person requesting the
34 hearing, and such policies shall be enforced and applied to
35 all parties equally. For the purpose of conducting the
36 hearing, the commissioner shall have the power and
37 authority to issue subpoenas and subpoenas duces tecum
38 in accordance with the provisions of section one, article
39 five, chapter twenty-nine-a of this code: *Provided*, That the
40 notice of hearing to the appropriate law-enforcement
41 officers by registered or certified mail, return receipt
42 requested, shall constitute a subpoena to appear at the
43 hearing without the necessity of payment of fees by the
44 division of motor vehicles. All subpoenas and subpoenas
45 duces tecum shall be issued and served within the time and
46 for the fees and shall be enforced, as specified in section
47 one, article five of said chapter twenty-nine-a, and all of
48 the said section one provisions dealing with subpoenas and
49 subpoenas duces tecum shall apply to subpoenas and
50 subpoenas duces tecum issued for the purpose of a
51 hearing hereunder.

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

54 before the commissioner by the law-enforcement agency
55 by whom they are employed at their regular rate if they
56 are scheduled to be on duty during said time or at their
57 regular overtime rate if they are scheduled to be off duty
58 during said time.

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

70 The commissioner may propose a legislative rule in
71 compliance with the provisions of article three, chapter
72 twenty-nine-a of this code, which rule may provide that if
73 a person accused of driving a motor vehicle while under
74 the influence of alcohol, controlled substances or drugs, or
75 accused of driving a motor vehicle while having an
76 alcohol concentration in the person's blood of ten
77 hundredths of one percent or more, by weight, or accused
78 of driving a motor vehicle while under the age of
79 twenty-one years with an alcohol concentration in his
80 blood of two hundredths of one percent or more, by
81 weight, but less than ten hundredths of one percent, by
82 weight, intends to challenge the results of any secondary
83 chemical test of blood, breath or urine, or intends to
84 cross-examine the individual or individuals who
85 administered the test or performed the chemical analysis,
86 the person shall, within an appropriate period of time prior
87 to the hearing, notify the commissioner in writing of such
88 intention. The rule may provide that when there is a
89 failure to comply with the notice requirement, the results
90 of the secondary test, if any, shall be admissible as though
91 the person and the commissioner had stipulated the
92 admissibility of such evidence. Any such rule shall

93 provide that the rule shall not be invoked in the case of a
 94 person who is not represented by counsel unless the
 95 communication from the commissioner to the person
 96 establishing a time and place for the hearing also
 97 informed the person of the consequences of the person's
 98 failure to timely notify the commissioner of the person's
 99 intention to challenge the results of the secondary
 100 chemical test or cross-examine the individual or
 101 individuals who administered the test or performed the
 102 chemical analysis.

103 (e) In the case of a hearing wherein a person is
 104 accused of driving a motor vehicle while under the
 105 influence of alcohol, controlled substances or drugs, or
 106 accused of driving a motor vehicle while having an
 107 alcoholic concentration in the person's blood of ten
 108 hundredths of one percent or more, by weight, or accused
 109 of driving a motor vehicle while under the age of
 110 twenty-one years with an alcohol concentration in his or
 111 her blood of two hundredths of one percent or more, by
 112 weight, but less than ten hundredths of one percent, by
 113 weight, the commissioner shall make specific findings as
 114 to: (1) Whether the arresting law-enforcement officer had
 115 reasonable grounds to believe the person to have been
 116 driving while under the influence of alcohol, controlled
 117 substances or drugs, or while having an alcoholic
 118 concentration in the person's blood of ten hundredths of
 119 one percent or more, by weight, or to have been driving a
 120 motor vehicle while under the age of twenty-one years
 121 with an alcohol concentration in his or her blood of two
 122 hundredths of one percent or more, by weight, but less
 123 than ten hundredths of one percent, by weight; (2)
 124 whether the person was lawfully placed under arrest for an
 125 offense involving driving under the influence of alcohol,
 126 controlled substances or drugs, or was lawfully taken into
 127 custody for the purpose of administering a secondary test;
 128 and (3) whether the tests, if any, were administered in
 129 accordance with the provisions of this article and article
 130 five of this chapter.

131 (f) If, in addition to a finding that the person did drive

132 a motor vehicle while under the influence of alcohol,
133 controlled substances or drugs, or did drive a motor
134 vehicle while having an alcoholic concentration in the
135 person's blood of ten hundredths of one percent or more,
136 by weight, or did drive a motor vehicle while under the
137 age of twenty-one years with an alcohol concentration in
138 his blood of two hundredths of one percent or more, by
139 weight, but less than ten hundredths of one percent, by
140 weight, the commissioner also finds by a preponderance
141 of the evidence that the person when so driving did an act
142 forbidden by law or failed to perform a duty imposed by
143 law, which act or failure proximately caused the death of a
144 person and was committed in reckless disregard of the
145 safety of others, and if the commissioner further finds that
146 the influence of alcohol, controlled substances or drugs or
147 the alcoholic concentration in the blood was a
148 contributing cause to the death, the commissioner shall
149 revoke the person's license for a period of ten years:
150 *Provided*, That if the commissioner has previously
151 suspended or revoked the person's license under the
152 provisions of this section or section one of this article
153 within the ten years immediately preceding the date of
154 arrest, the period of revocation shall be for the life of the
155 person.

156 (g) If, in addition to a finding that the person did
157 drive a motor vehicle while under the influence of alcohol,
158 controlled substances or drugs, or did drive a motor
159 vehicle while having an alcoholic concentration in the
160 person's blood of ten hundredths of one percent or more,
161 by weight, the commissioner also finds by a
162 preponderance of the evidence that the person when so
163 driving did an act forbidden by law or failed to perform a
164 duty imposed by law, which act or failure proximately
165 caused the death of a person, the commissioner shall
166 revoke the person's license for a period of five years:
167 *Provided*, That if the commissioner has previously
168 suspended or revoked the person's license under the
169 provisions of this section or section one of this article
170 within the ten years immediately preceding the date of

171 arrest, the period of revocation shall be for the life of the
172 person.

173 (h) If, in addition to a finding that the person did
174 drive a motor vehicle while under the influence of alcohol,
175 controlled substances or drugs, or did drive a motor
176 vehicle while having an alcoholic concentration in the
177 person's blood of ten hundredths of one percent or more,
178 by weight, the commissioner also finds by a pre-
179 ponderance of the evidence that the person when so
180 driving did an act forbidden by law or failed to perform a
181 duty imposed by law, which act or failure proximately
182 caused bodily injury to a person other than himself or
183 herself, the commissioner shall revoke the person's license
184 for a period of two years: *Provided*, That if the com-
185 missioner has previously suspended or revoked the
186 person's license under the provisions of this section or
187 section one of this article within the ten years immediately
188 preceding the date of arrest, the period of revocation shall
189 be ten years: *Provided, however*, That if the commissioner
190 has previously suspended or revoked the person's license
191 more than once under the provisions of this section or
192 section one of this article within the ten years immediately
193 preceding the date of arrest, the period of revocation shall
194 be for the life of the person.

195 (i) If the commissioner finds by a preponderance of
196 the evidence that the person did drive a motor vehicle
197 while under the influence of alcohol, controlled substances
198 or drugs, or did drive a motor vehicle while having an
199 alcoholic concentration in the person's blood of ten
200 hundredths of one percent or more, by weight, or finds
201 that the person, being an habitual user of narcotic drugs or
202 amphetamine or any derivative thereof, did drive a motor
203 vehicle, or finds that the person knowingly permitted the
204 person's vehicle to be driven by another person who was
205 under the influence of alcohol, controlled substances or
206 drugs, or knowingly permitted the person's vehicle to be
207 driven by another person who had an alcoholic
208 concentration in his or her blood of ten hundredths of one
209 percent or more, by weight, the commissioner shall revoke

210 the person's license for a period of six months: *Provided*,
211 That if the commissioner has previously suspended or
212 revoked the person's license under the provisions of this
213 section or section one of this article within the ten years
214 immediately preceding the date of arrest, the period of
215 revocation shall be ten years: *Provided, however*, That if
216 the commissioner has previously suspended or revoked
217 the person's license more than once under the provisions
218 of this section or section one of this article within the ten
219 years immediately preceding the date of arrest, the period
220 of revocation shall be for the life of the person.

221 (j) If, in addition to a finding that the person did drive
222 a motor vehicle while under the age of twenty-one years
223 with an alcohol concentration in his blood of two
224 hundredths of one percent or more, by weight, but less
225 than ten hundredths of one percent, by weight, the
226 commissioner also finds by a preponderance of the
227 evidence that the person when so driving did an act
228 forbidden by law or failed to perform a duty imposed by
229 law, which act or failure proximately caused the death of a
230 person, and if the commissioner further finds that the
231 alcoholic concentration in the blood was a contributing
232 cause to the death, the commissioner shall revoke the
233 person's license for a period of five years: *Provided*, That
234 if the commissioner has previously suspended or revoked
235 the person's license under the provisions of this section or
236 section one of this article within the ten years immediately
237 preceding the date of arrest, the period of revocation shall
238 be for the life of the person.

239 (k) If, in addition to a finding that the person did
240 drive a motor vehicle while under the age of twenty-one
241 years with an alcohol concentration in his blood of two
242 hundredths of one percent or more, by weight, but less
243 than ten hundredths of one percent, by weight, the
244 commissioner also finds by a preponderance of the
245 evidence that the person when so driving did an act
246 forbidden by law or failed to perform a duty imposed by
247 law, which act or failure proximately caused bodily injury
248 to a person other than himself or herself, and if the

249 commissioner further finds that the alcoholic con-
 250 centration in the blood was a contributing cause to the
 251 bodily injury, the commissioner shall revoke the person's
 252 license for a period of two years: *Provided*, That if the
 253 commissioner has previously suspended or revoked the
 254 person's license under the provisions of this section or
 255 section one of this article within the ten years immediately
 256 preceding the date of arrest, the period of revocation shall
 257 be ten years: *Provided, however*, That if the commissioner
 258 has previously suspended or revoked the person's license
 259 more than once under the provisions of this section or
 260 section one of this article within the ten years immediately
 261 preceding the date of arrest, the period of revocation shall
 262 be for the life of the person.

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

270 (m) If, in addition to a finding that the person did
 271 drive a motor vehicle while under the influence of alcohol,
 272 controlled substances or drugs, or did drive a motor
 273 vehicle while having an alcoholic concentration in the
 274 person's blood of ten hundredths of one percent or more,
 275 by weight, the commissioner also finds by a
 276 preponderance of the evidence that the person when so
 277 driving did have on or within the motor vehicle another
 278 person who has not reached his or her sixteenth birthday,
 279 the commissioner shall revoke the person's license for a
 280 period of one year: *Provided*, That if the commissioner
 281 has previously suspended or revoked the person's license
 282 under the provisions of this section or section one of this
 283 article within the ten years immediately preceding the date
 284 of arrest, the period of revocation shall be ten years:
 285 *Provided, however*, That if the commissioner has
 286 previously suspended or revoked the person's license more
 287 than once under the provisions of this section or section

288 one of this article within the ten years immediately
289 preceding the date of arrest, the period of revocation shall
290 be for the life of the person.

291 (n) For purposes of this section, where reference is
292 made to previous suspensions or revocations under this
293 section, the following types of criminal convictions or
294 administrative suspensions or revocations shall also be
295 regarded as suspensions or revocations under this section
296 or section one of this article:

297 (1) Any administrative revocation under the
298 provisions of the prior enactment of this section for
299 conduct which occurred within the ten years immediately
300 preceding the date of arrest.

301 (2) Any suspension or revocation on the basis of a
302 conviction under a municipal ordinance of another state
303 or a statute of the United States or of any other state of an
304 offense which has the same elements as an offense
305 described in section two, article five of this chapter, for
306 conduct which occurred within the ten years immediately
307 preceding the date of arrest.

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

312 (o) In the case of a hearing wherein a person is
313 accused of refusing to submit to a designated secondary
314 test, the commissioner shall make specific findings as to:
315 (1) Whether the arresting law-enforcement officer had
316 reasonable grounds to believe the person had been driving
317 a motor vehicle in this state while under the influence of
318 alcohol, controlled substances or drugs; (2) whether the
319 person was lawfully placed under arrest for an offense
320 relating to driving a motor vehicle in this state while under
321 the influence of alcohol, controlled substances or drugs;
322 (3) whether the person refused to submit to the secondary
323 test finally designated in the manner provided in section
324 four, article five of this chapter; and (4) whether the

325 person had been given a written statement advising the
326 person that the person's license to operate a motor vehicle
327 in this state would be revoked for at least one year and up
328 to life if the person refused to submit to the test finally
329 designated in the manner provided in section four, article
330 five of this chapter.

331 (p) If the commissioner finds by a preponderance of
332 the evidence that: (1) The arresting law-enforcement
333 officer had reasonable grounds to believe the person had
334 been driving a motor vehicle in this state while under the
335 influence of alcohol, controlled substances or drugs; (2)
336 the person was lawfully placed under arrest for an offense
337 relating to driving a motor vehicle in this state while under
338 the influence of alcohol, controlled substances or drugs;
339 (3) the person refused to submit to the secondary
340 chemical test finally designated; and (4) the person had
341 been given a written statement advising the person that the
342 person's license to operate a motor vehicle in this state
343 would be revoked for a period of at least one year and up
344 to life if the person refused to submit to the test finally
345 designated, the commissioner shall revoke the person's
346 license to operate a motor vehicle in this state for the
347 periods specified in section seven, article five of this
348 chapter.

349 (q) If the commissioner finds to the contrary with
350 respect to the above issues, the commissioner shall rescind
351 his or her earlier order of revocation or shall reduce the
352 order of revocation to the appropriate period of
353 revocation under this section, or section seven, article five
354 of this chapter.

355 A copy of the commissioner's order made and entered
356 following the hearing shall be served upon the person by
357 registered or certified mail, return receipt requested.
358 During the pendency of any such hearing, the revocation
359 of the person's license to operate a motor vehicle in this
360 state shall be stayed.

361 If the commissioner shall after hearing make and
362 enter an order affirming the commissioner's earlier order

363 of revocation, the person shall be entitled to judicial review
364 as set forth in chapter twenty-nine-a of this code, except
365 that the commissioner shall not stay enforcement of the
366 order; and, pending the appeal, the court may grant a stay
367 or supersedeas of the order only upon motion and
368 hearing, and a finding by the court upon the evidence
369 presented, that there is a substantial probability that the
370 appellant shall prevail upon the merits, and the appellant
371 will suffer irreparable harm if the order is not stayed:
372 *Provided*, That in no event shall the stay or supersedeas of
373 the order exceed thirty days.

374 (r) In any revocation or suspension pursuant to this
375 section, if the driver whose license is revoked or suspended
376 had not reached the driver's eighteenth birthday at the
377 time of the conduct for which the license is revoked or
378 suspended, the driver's license shall be revoked or
379 suspended until the driver's eighteenth birthday, or the
380 applicable statutory period of revocation or suspension
381 prescribed by this section, whichever is longer.

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

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

Randy Schomover
Chairman Senate Committee

Randy Seacrest
Chairman House Committee

Originating in the House,

Takes effect ninety days from passage.

Carroll E. Bales
Clerk of the Senate

Bryan M. Gray
Clerk of the House of Delegates

Carl Ray Tomlin
President of the Senate

Robert Chabers
Speaker of the House of Delegates

The within is approved this the 29th
day of March, 1996.

Gaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/28

Time 9:56 am