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
ENROLLED
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:
(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 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 sub-
stance; 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 confinement
of not less than twenty-four hours, and shall be fined not
less than two hundred dollars nor more than one thousand
dollars.

(d) Any person who:
(1) Drives a vehicle in this state while:
(A) He is under the influence of alcohol; or
(B) He is under the influence of any controlled sub-
stance; 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 hundredths 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 subsection 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 subsection shall not be construed as an admission or be used as evidence.

A person arrested and charged with an offense under the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.
(i) 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) The person when so driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their sixteenth birthday, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for not less than two days nor more than twelve months, which jail term shall include actual confinement of not less than forty-eight hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(j) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) 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.

(k) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) 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.
For purposes of subsections (j) and (k) of this section relating to second, third and subsequent offenses, the following types of convictions shall be regarded as convictions under this section:

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

2. Any conviction under the provisions of subsection (a) or (b) of the prior enactment of this section for an offense which occurred within a period of five years immediately preceding the first day of September, one thousand nine hundred eighty-one; 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 subsection (a), (b), (c), (d), (e), (f) or (g) of this section, which offense occurred after the tenth day of June, one thousand nine hundred eighty-three.

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.

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.

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

(p) 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.

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.

(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 com-
mmissioner 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 alcoholic 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 pre-
ponderance 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 com-
missioner 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, controlled 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 immediately 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) 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 have on or within the motor vehicle another person who has not reached his or her sixteenth birthday, the commissioner shall revoke the person's license for a period of one year: 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.

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

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

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

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

(o) 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
two of this chapter.

(p) 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 substances 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.

(q) 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.

(r) 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 revocation or suspension
prescribed by this section, whichever is longer.

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

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

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

[Signature]
Governor
PRESENTED TO THE
GOVERNOR
Date 3/28
Time 9:56 AM