WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4167

(By Delegates Miley, Wooton, Barker, Moore, Shook, Ferro, Ellem, Schoen and Sobonya)

Passed March 11, 2010
In Effect Ninety Days From Passage
AN ACT to amend and reenact §17C-5A-3 of the Code of West Virginia, 1931, as amended, relating to creation of a special revenue account, known as the Department of Health and Human Resources Safety and Treatment Fund; making a one-time transfer of monies into the fund; providing rule-making authority; and control and use of the fund by the agency.

Be it enacted by the Legislature of West Virginia:

That §17C-5A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5A. ADMINISTRATIVE PROCEDURE FOR SUSPENSION AND REVOCATION OF licenses for driving under the influence of alcohol, controlled substances or drugs.
§17C-5A-3. Safety and treatment program; reissuance of license.

(a) The Department of Health and Human Resources, Division of Alcoholism and Drug Abuse shall administer a comprehensive safety and treatment program for persons whose licenses have been revoked under the provisions of this article or section seven, article five of this chapter or subsection (6), section five, article three, chapter seventeen-b of this code and shall also establish the minimum qualifications for mental health facilities, day report centers, community correction centers or other public agencies or private entities conducting the safety and treatment program: Provided, That the Department of Health and Human Resources, Division of Alcoholism and Drug Abuse 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.

(b) 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.

(c) The Department of Health and Human Resources, Division of Alcoholism and Drug Abuse shall provide for the preparation of an educational and treatment the program for each person whose license has been revoked under the provisions of this article or section seven, article five of this chapter or subsection (6), section five, article three, chapter seventeen-b of this code which shall contain the following: (1) A listing and evaluation of the offender's prior traffic
record; (2) the characteristics and history of alcohol or drug
use, if any; (3) his or her amenability to rehabilitation through
the alcohol safety program; and (4) 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.

(d) There is hereby created a special revenue account
within the State Treasury known as the Department of Health
and Human Resources Safety and Treatment Fund. The
account shall be administered by the Secretary of the
Department of Health and Human Resources for the purpose
of administering the comprehensive safety and treatment
program established by subsection (a) of this section. The
account may be invested, and all earnings and interest
accruing shall be retained in the account. The Auditor shall
conduct an audit of the fund at least every three fiscal years.

Effective July 1, 2010, the State Treasurer shall make a
one-time transfer of $250,000 from the Motor Vehicle Fees
Fund into the Department of Health and Human Resources
Safety and Treatment Fund.

(e) The program provider shall collect the established fee
from each participant upon enrollment unless the department
has determined that the participant is an indigent based upon
criteria established pursuant to legislative rule authorized in
this section. Program providers shall remit to the Department
of Health and Human Resources a portion of the fee
collected, which shall be deposited by the Secretary of the
Department of Health and Human Resources into the
Department of Health and Human Resources Safety and
Treatment Fund. The Department of Health and Human
Resources shall reimburse enrollment fees to program
providers for each eligible indigent offender.
(f) On or before January 15 of each year, the Secretary of the Department of Health and Human Resources shall report to the Legislature on:

(1) The total number of offenders participating in the safety and treatment program during the prior year;

(2) The total number of indigent offenders participating in the safety and treatment program during the prior year;

(3) The total number of program providers during the prior year; and

(4) The total amount of reimbursements paid to program provider during the prior year.

(g) The Commissioner of the Division of Motor Vehicles, 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:

(1) When the period of revocation is six months, the license to operate a motor vehicle in this State may not be reissued until: (A) At least ninety days have elapsed from the date of the initial revocation, during which time the revocation was actually in effect; (B) the offender has successfully completed the program; (C) all costs of the program and administration have been paid; and (D) all costs assessed as a result of a revocation hearing have been paid.

(2) When the period of revocation is for a period of one year or for more than a year, the license to operate a motor
vehicle in this state may not be reissued until: (A) At least one-half of the time period has elapsed from the date of the initial revocation, during which time the revocation was actually in effect; (B) the offender has successfully completed the program; (C) all costs of the program and administration have been paid; and (D) all costs assessed as a result of a revocation hearing have been paid. Notwithstanding any provision in this code, a person whose license is revoked for refusing to take a chemical test as required by section seven, article five of this chapter for a first offense is not eligible to reduce the revocation period by completing the safety and treatment program.

(3) When the period of revocation is for life, the license to operate a motor vehicle in this State may not be reissued until: (A) At least ten years have elapsed from the date of the initial revocation, during which time the revocation was actually in effect; (B) the offender has successfully completed the program; (C) all costs of the program and administration have been paid; and (D) all costs assessed as a result of a revocation hearing have been paid.

(4) Notwithstanding any provision of this code or any rule, 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 the person has successfully completed the program.

(h) (1) 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 (n), 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 may 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; (C) all costs of the program and administration have been paid; and (D) all costs assessed as a result of a suspension hearing have been paid.

(i) A required component of the treatment program provided in subsection (b) of this section and the education program provided for in subsection (c) of this section 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 Department of Health and Human Resources, Division of Alcoholism and Drug Abuse shall propose and implement a plan for 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 the victims are not available 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 the offenses on victims and offenders. The plan 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 impact of alcohol and drug-related offenses upon victims or offenders.

The Department of Health and Human Resources, Division of Alcoholism and Drug Abuse shall ensure that any meetings between victims and offenders shall be nonconfrontational and ensure the physical safety of the persons involved.

(j)(1) The Secretary of the Department of Health and Human Resources shall promulgate a rule for legislative approval in accordance with article three, chapter twenty-nine-a of this code to administer the provisions of this section and establish a fee to be collected from each offender enrolled in the safety and treatment program. The rule shall include: (A) A reimbursement mechanism to program providers of required fees for the safety and treatment program for indigent offenders, criteria for determining eligibility of indigent offenders, and any necessary application forms; and (B) program standards that encompass provider criteria including minimum professional training requirements for providers, curriculum approval, minimum course length requirements and other items that may be necessary to properly implement the provisions of this section.

(2) The Legislature finds that an emergency exists and, therefore, the secretary shall file by July 1, 2010, an emergency rule to implement this section pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 19th day of __________, 2010.

Governor
PRESENTED TO THE
GOVERNOR

MAR 18 2010

Time 3:08 p.