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OFFICE OF THE CLERK
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

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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

HB 4167

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H. B. 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.

1 (a) The Department of Health and Human Resources,
2 Division of Alcoholism and Drug Abuse shall administer a
3 comprehensive safety and treatment program for persons
4 whose licenses have been revoked under the provisions of
5 this article or section seven, article five of this chapter or
6 subsection (6), section five, article three, chapter seventeen-b
7 of this code and shall also establish the minimum
8 qualifications for mental health facilities, day report centers,
9 community correction centers or other public agencies or
10 private entities conducting the safety and treatment program:
11 *Provided*, That the Department of Health and Human
12 Resources, Division of Alcoholism and Drug Abuse may
13 establish standards whereby the division will accept or
14 approve participation by violators in another treatment
15 program which provides the same or substantially similar
16 benefits as the safety and treatment program established
17 pursuant to this section.

18 (b) The program shall include, but not be limited to,
19 treatment of alcoholism, alcohol and drug abuse, psychological
20 counseling, educational courses on the dangers of alcohol and
21 drugs as they relate to driving, defensive driving or other
22 safety driving instruction and other programs designed to
23 properly educate, train and rehabilitate the offender.

24 (c) The Department of Health and Human Resources,
25 Division of Alcoholism and Drug Abuse shall provide for the
26 preparation of an educational and treatment the program for
27 each person whose license has been revoked under the
28 provisions of this article or section seven, article five of this
29 chapter or subsection (6), section five, article three, chapter
30 seventeen-b of this code which shall contain the following:
31 (1) A listing and evaluation of the offender's prior traffic

32 record; (2) the characteristics and history of alcohol or drug
33 use, if any; (3) his or her amenability to rehabilitation through
34 the alcohol safety program; and (4) a recommendation as to
35 treatment or rehabilitation and the terms and conditions of the
36 treatment or rehabilitation. The program shall be prepared by
37 persons knowledgeable in the diagnosis of alcohol or drug
38 abuse and treatment.

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

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

53 (e) The program provider shall collect the established fee
54 from each participant upon enrollment unless the department
55 has determined that the participant is an indigent based upon
56 criteria established pursuant to legislative rule authorized in
57 this section. Program providers shall remit to the Department
58 of Health and Human Resources a portion of the fee
59 collected, which shall be deposited by the Secretary of the
60 Department of Health and Human Resources into the
61 Department of Health and Human Resources Safety and
62 Treatment Fund. The Department of Health and Human
63 Resources shall reimburse enrollment fees to program
64 providers for each eligible indigent offender.

65 (f) On or before January 15 of each year, the Secretary of
66 the Department of Health and Human Resources shall report
67 to the Legislature on:

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

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

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

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

76 (g) The Commissioner of the Division of Motor Vehicles,
77 after giving due consideration to the program developed for
78 the offender, shall prescribe the necessary terms and
79 conditions for the reissuance of the license to operate a motor
80 vehicle in this state revoked under this article or section
81 seven, article five of this chapter or subsection (6), section
82 five, article three, chapter seventeen-b of this code which
83 shall include successful completion of the educational,
84 treatment or rehabilitation program, subject to the following:

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

93 (2) When the period of revocation is for a period of one
94 year or for more than a year, the license to operate a motor

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

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

115 (4) Notwithstanding any provision of this code or any
116 rule, any mental health facilities or other public agencies or
117 private entities conducting the safety and treatment program
118 when certifying that a person has successfully completed a
119 safety and treatment program shall only have to certify that
120 the person has successfully completed the program.

121 (h) (1) The Department of Health and Human Resources,
122 Division of Alcoholism and Drug Abuse shall provide for the
123 preparation of an educational program for each person whose
124 license has been suspended for sixty days pursuant to the
125 provisions of subsection (n), section two, article five-a of this
126 chapter. The educational program shall consist of not less
127 than twelve nor more than eighteen hours of actual classroom
128 time.

129 (2) When a sixty-day period of suspension has been
130 ordered, the license to operate a motor vehicle may not be
131 reinstated until: (A) At least sixty days have elapsed from
132 the date of the initial suspension, during which time the
133 suspension was actually in effect; (B) the offender has
134 successfully completed the educational program; (C) all costs
135 of the program and administration have been paid; and (D) all
136 costs assessed as a result of a suspension hearing have been
137 paid.

138 (i) A required component of the treatment program
139 provided in subsection (b) of this section and the education
140 program provided for in subsection (c) of this section shall be
141 participation by the violator with a victim impact panel
142 program providing a forum for victims of alcohol and drug-
143 related offenses and offenders to share first-hand experiences
144 on the impact of alcohol and drug-related offenses in their
145 lives. The Department of Health and Human Resources,
146 Division of Alcoholism and Drug Abuse shall propose and
147 implement a plan for victim impact panels where appropriate
148 numbers of victims are available and willing to participate
149 and shall establish guidelines for other innovative programs
150 which may be substituted where the victims are not available
151 to assist persons whose licenses have been suspended or
152 revoked for alcohol and drug-related offenses to gain a full
153 understanding of the severity of their offenses in terms of the
154 impact of the offenses on victims and offenders. The plan
155 shall require, at a minimum, discussion and consideration of
156 the following:

157 (A) Economic losses suffered by victims or offenders;

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

160 (C) Psychological injuries suffered by victims or
161 offenders;

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

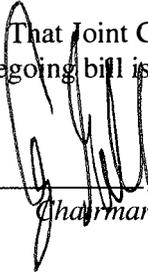
164 (E) Other information relating to the impact of alcohol
165 and drug-related offenses upon victims or offenders.

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

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

187 (2) The Legislature finds that an emergency exists and,
188 therefore, the secretary shall file by July 1, 2010, an
189 emergency rule to implement this section pursuant to the
190 provisions of section fifteen, article three, chapter twenty-
191 nine-a of this code.

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



Chairman Senate Committee



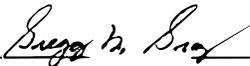
Chairman House Committee

Originating in the House.

In effect ninety days from passage.



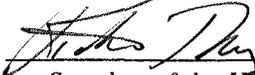
Clerk of the Senate



Clerk of the House of Delegates

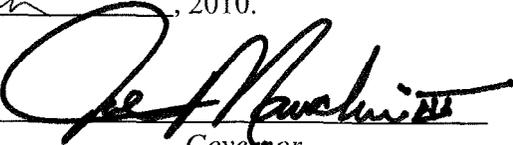


President of the Senate



Speaker of the House of Delegates

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



Governor

PRESENTED TO THE
GOVERNOR

MAR 18 2010

Time 3:08 p