

SB 100

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

SENATE BILL NO. 166

(By Senators Tomblin, Mr. President, and Sprouse,
By Request of the Executive)

PASSED February 5, 2004

In Effect 90 days from Passage

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Senate Bill No. 166

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed February 5, 2004; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-11-1b; to amend and reenact §17B-4-3 of said code; to amend and reenact §17C-5-2, §17C-5-6a and §17C-5-8 of said code; to amend and reenact §17C-5A-1, §17C-5A-1a, §17C-5A-2 and §17C-5A-3a of said code; to amend and reenact §20-7-18 and §20-7-18b of said code; to amend and reenact §33-6A-1 of said code; to amend said code by adding thereto a new section, designated §50-3-2b; and to amend said code by adding thereto a new section, designated §59-1-11a, all relating to driving a motor vehicle or operating a motorized vessel while under the influence of alcohol, controlled substances or drugs; limiting the prior offenses that can be used to enhance sentences to those that occurred within the ten-year period next preceding the date of arrest in the current proceeding; and imposing additional costs on defendants convicted of offenses involving the driving of a

motor vehicle or operating a motorized vessel while under the influence of alcohol, controlled substances or drugs for the use of counties and municipalities.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §8-11-1b; that §17B-4-3 of said code be amended and reenacted; that §17C-5-2, §17C-5-6a and §17C-5-8 of said code be amended and reenacted; that §17C-5A-1, §17C-5A-1a, §17C-5A-2 and §17C-5A-3a of said code be amended and reenacted; that §20-7-18 and §20-7-18b of said code be amended and reenacted; that §33-6A-1 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §50-3-2b; and that said code be amended by adding thereto a new section, designated §59-1-11a, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.

§8-11-1b. Additional costs in certain criminal proceedings.

1 (a) In each criminal case before a mayor or in the
2 municipal court of a municipality in which the defendant
3 is convicted, whether by plea or at trial, under the provi-
4 sions of a municipal ordinance which has the same ele-
5 ments as an offense described in section two, article five,
6 chapter seventeen-c of this code or section eighteen-b,
7 article seven, chapter twenty of this code, there shall be
8 imposed, in addition to other costs, fines, forfeitures or
9 penalties as may be allowed by law, costs in the amount of
10 fifty-five dollars. The clerk of each municipal court, or
11 other person designated to receive fines and costs, shall,
12 for purposes of further defraying the cost to the munic-
13 ipality of enforcing the provisions of the ordinance or
14 ordinances described in this section and related provisions,
15 deposit these moneys in the general revenue fund of the

16 municipality. The provisions of this section shall be
17 effective after the thirtieth day of June, two thousand four.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 4. VIOLATIONS OF LICENSE PROVISIONS.

§17B-4-3. Driving while license suspended or revoked; driving while license revoked for driving under the influence of alcohol, controlled substances or drugs, or while having alcoholic concentration in the blood of eight hundredths of one percent or more, by weight, or for refusing to take secondary chemical test of blood alcohol contents.

1 (a) Except as otherwise provided in subsection (b) or (d)
2 of this section, any person who drives a motor vehicle on
3 any public highway of this state at a time when his or her
4 privilege to do so has been lawfully suspended or revoked
5 by this state or any other jurisdiction is, for the first
6 offense, guilty of a misdemeanor and, upon conviction
7 thereof, shall be fined not less than one hundred dollars
8 nor more than five hundred dollars; for the second offense,
9 the person is guilty of a misdemeanor and, upon conviction
10 thereof, shall be confined in a county or regional jail for a
11 period of ten days and, in addition to the mandatory jail
12 sentence, shall be fined not less than one hundred dollars
13 nor more than five hundred dollars; for the third or any
14 subsequent offense, the person is guilty of a misdemeanor
15 and, upon conviction thereof, shall be confined in a county
16 or regional jail for six months and, in addition to the
17 mandatory jail sentence, shall be fined not less than one
18 hundred fifty dollars nor more than five hundred dollars.

19 (b) Any person who drives a motor vehicle on any public
20 highway of this state at a time when his or her privilege to
21 do so has been lawfully revoked for driving under the
22 influence of alcohol, controlled substances or other drugs,
23 or for driving while having an alcoholic concentration in
24 his or her blood of eight hundredths of one percent or

25 more, by weight, or for refusing to take a secondary
26 chemical test of blood alcohol content, is, for the first
27 offense, guilty of a misdemeanor and, upon conviction
28 thereof, shall be confined in a county or regional jail for
29 six months and in addition to the mandatory jail sentence,
30 shall be fined not less than one hundred dollars nor more
31 than five hundred dollars; for the second offense, the
32 person is guilty of a misdemeanor and, upon conviction
33 thereof, shall be confined in a county or regional jail for a
34 period of one year and, in addition to the mandatory jail
35 sentence, shall be fined not less than one thousand dollars
36 nor more than three thousand dollars; for the third or any
37 subsequent offense, the person is guilty of a felony and,
38 upon conviction thereof, shall be imprisoned in a state
39 correctional facility for not less than one year nor more
40 than three years and, in addition to the mandatory prison
41 sentence, shall be fined not less than three thousand
42 dollars nor more than five thousand dollars.

43 (c) Upon receiving a record of the first or subsequent
44 conviction of any person under subsection (b) of this
45 section upon a charge of driving a vehicle while the license
46 of such person was lawfully suspended or revoked, the
47 division shall extend the period of such suspension or
48 revocation for an additional period of one year from and
49 after the date such person would otherwise have been
50 entitled to apply for a new license. Upon receiving a
51 record of the second or subsequent conviction of any
52 person under subsection (a) of this section upon a charge
53 of driving a vehicle while the license of such person was
54 lawfully suspended or revoked, the division shall extend
55 the period of such suspension or revocation for an addi-
56 tional period of one year from and after the date such
57 person would otherwise have been entitled to apply for a
58 new license.

59 (d) Any person who drives a motor vehicle on any public
60 highway of this state at a time when his or her privilege to
61 do so has been lawfully suspended for driving while under

62 the age of twenty-one years with an alcohol concentration
63 in his or her blood of two hundredths of one percent or
64 more, by weight, but less than eight hundredths of one
65 percent, by weight, is guilty of a misdemeanor and, upon
66 conviction thereof, shall be confined in a county or re-
67 gional jail for twenty-four hours or shall be fined not less
68 than fifty dollars nor more than five hundred dollars, or
69 both.

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

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

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

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

1 (a) Any person who:

2 (1) Drives a vehicle in this state while he or she:

3 (A) Is under the influence of alcohol; or

4 (B) Is under the influence of any controlled substance; or

5 (C) Is under the influence of any other drug; or

6 (D) Is under the combined influence of alcohol and any
7 controlled substance or any other drug; or

8 (E) Has an alcohol concentration in his or her blood of
9 eight hundredths of one percent or more, by weight; and

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

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

23 (b) Any person who:

24 (1) Drives a vehicle in this state while he or she:

25 (A) Is under the influence of alcohol; or

26 (B) Is under the influence of any controlled substance; or

27 (C) Is under the influence of any other drug; or

28 (D) Is under the combined influence of alcohol and any
29 controlled substance or any other drug; or

30 (E) Has an alcohol concentration in his or her blood of
31 eight hundredths of one percent or more, by weight; and

32 (2) When so driving does any act forbidden by law or
33 fails to perform any duty imposed by law in the driving of
34 the vehicle, which act or failure proximately causes the
35 death of any person within one year next following the act
36 or failure, is guilty of a misdemeanor and, upon conviction
37 thereof, shall be confined in the county or regional jail for
38 not less than ninety days nor more than one year and shall
39 be fined not less than five hundred dollars nor more than
40 one thousand dollars.

41 (c) Any person who:

42 (1) Drives a vehicle in this state while he or she:

43 (A) Is under the influence of alcohol; or

44 (B) Is under the influence of any controlled substance; or

45 (C) Is under the influence of any other drug; or

46 (D) Is under the combined influence of alcohol and any
47 controlled substance or any other drug; or

48 (E) Has an alcohol concentration in his or her blood of
49 eight hundredths of one percent or more, by weight; and

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

60 (d) Any person who:

61 (1) Drives a vehicle in this state while he or she:

62 (A) Is under the influence of alcohol; or

63 (B) Is under the influence of any controlled substance; or

64 (C) Is under the influence of any other drug; or

65 (D) Is under the combined influence of alcohol and any
66 controlled substance or any other drug; or

67 (E) Has an alcohol concentration in his or her blood of
68 eight hundredths of one percent or more, by weight;

69 (2) Is guilty of a misdemeanor and, upon conviction
70 thereof, shall be confined in the county or regional jail for
71 not less than one day nor more than six months, which jail
72 term is to include actual confinement of not less than
73 twenty-four hours, and shall be fined not less than one
74 hundred dollars nor more than five hundred dollars.

75 (e) Any person who, being an habitual user of narcotic
76 drugs or amphetamine or any derivative thereof, drives a
77 vehicle in this state, is guilty of a misdemeanor and, upon

78 conviction thereof, shall be confined in the county or
79 regional jail for not less than one day nor more than six
80 months, which jail term is to include actual confinement
81 of not less than twenty-four hours, and shall be fined not
82 less than one hundred dollars nor more than five hundred
83 dollars.

84 (f) Any person who:

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

87 (A) Is under the influence of alcohol; or

88 (B) Is under the influence of any controlled substance; or

89 (C) Is under the influence of any other drug; or

90 (D) Is under the combined influence of alcohol and any
91 controlled substance or any other drug; or

92 (E) Has an alcohol concentration in his or her blood of
93 eight hundredths of one percent or more, by weight;

94 (2) Is guilty of a misdemeanor and, upon conviction
95 thereof, shall be confined in the county or regional jail for
96 not more than six months and shall be fined not less than
97 one hundred dollars nor more than five hundred dollars.

98 (g) Any person who knowingly permits his or her vehicle
99 to be driven in this state by any other person who is an
100 habitual user of narcotic drugs or amphetamine or any
101 derivative thereof, is guilty of a misdemeanor and, upon
102 conviction thereof, shall be confined in the county or
103 regional jail for not more than six months and shall be
104 fined not less than one hundred dollars nor more than five
105 hundred dollars.

106 (h) Any person under the age of twenty-one years who
107 drives a vehicle in this state while he or she has an alcohol
108 concentration in his or her blood of two hundredths of one
109 percent or more, by weight, but less than eight hundredths

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

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

137 (i) Any person who:

138 (1) Drives a vehicle in this state while he or she:

139 (A) Is under the influence of alcohol; or

140 (B) Is under the influence of any controlled substance; or

141 (C) Is under the influence of any other drug; or

142 (D) Is under the combined influence of alcohol and any
143 controlled substance or any other drug; or

144 (E) Has an alcohol concentration in his or her blood of
145 eight hundredths of one percent or more, by weight; and

146 (2) The person when so driving has on or within the
147 motor vehicle one or more other persons who are
148 unemancipated minors who have not reached their six-
149 teenth birthday, is guilty of a misdemeanor and, upon
150 conviction thereof, shall be confined in the county or
151 regional jail for not less than two days nor more than
152 twelve months, which jail term is to include actual con-
153 finement of not less than forty-eight hours, and shall be
154 fined not less than two hundred dollars nor more than one
155 thousand dollars.

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

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

172 (l) For purposes of subsections (j) and (k) of this section
173 relating to second, third and subsequent offenses, the
174 following types of convictions are to be regarded as
175 convictions under this section:

176 (1) Any conviction under the provisions of subsection (a),
177 (b), (c), (d), (e) or (f) of this section or under a prior enact-
178 ment of this section for an offense which occurred within

179 the ten-year period immediately preceding the date of
180 arrest in the current proceeding;

181 (2) Any conviction under a municipal ordinance of this
182 state or any other state or a statute of the United States or
183 of any other state of an offense which has the same
184 elements as an offense described in subsection (a), (b), (c),
185 (d), (e), (f) or (g) of this section, which offense occurred
186 within the ten-year period immediately preceding the date
187 of arrest in the current proceeding.

188 (m) A person may be charged in a warrant or indictment
189 or information for a second or subsequent offense under
190 this section if the person has been previously arrested for
191 or charged with a violation of this section which is alleged
192 to have occurred within the applicable time period for
193 prior offenses, notwithstanding the fact that there has not
194 been a final adjudication of the charges for the alleged
195 previous offense. In that case, the warrant or indictment
196 or information must set forth the date, location and
197 particulars of the previous offense or offenses. No person
198 may be convicted of a second or subsequent offense under
199 this section unless the conviction for the previous offense
200 has become final.

201 (n) The fact that any person charged with a violation of
202 subsection (a), (b), (c), (d) or (e) of this section, or any
203 person permitted to drive as described under subsection (f)
204 or (g) of this section, is or has been legally entitled to use
205 alcohol, a controlled substance or a drug does not consti-
206 tute a defense against any charge of violating subsection
207 (a), (b), (c), (d), (e), (f) or (g) of this section.

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

211 (p) The sentences provided herein upon conviction for a
212 violation of this article are mandatory and may not be
213 subject to suspension or probation: *Provided*, That the

214 court may apply the provisions of article eleven-a, chapter
215 sixty-two of this code to a person sentenced or committed
216 to a term of one year or less. An order for home detention
217 by the court pursuant to the provisions of article eleven-b
218 of said chapter may be used as an alternative sentence to
219 any period of incarceration required by this section. An
220 order for supervision or participation in a community
221 corrections program created pursuant to article eleven-c,
222 chapter sixty-two of this code may be used as an alterna-
223 tive sentence to any period of incarceration required by
224 this section.

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

1 (a) A preliminary breath analysis may be administered
2 to a child whenever a law-enforcement official has reason-
3 able cause to believe the child to have been driving a
4 motor vehicle with any amount of alcohol in his or her
5 blood for the purpose of determining the child's blood
6 alcohol content. Such breath analysis must be adminis-
7 tered as soon as possible after the law-enforcement officer
8 arrives at a reasonable belief that the child has been
9 driving a motor vehicle with any amount of alcohol in his
10 or her blood. Any preliminary breath analysis adminis-
11 tered pursuant to this subsection must be administered
12 with a device and in a manner approved by the division of
13 health for that purpose. If a preliminary breath analysis
14 is administered, the results shall be used solely for the
15 purpose of guiding the officer in deciding whether the
16 child, at the time of driving the motor vehicle, had an
17 alcohol concentration in his or her blood of two hun-
18 dredths of one percent or more, by weight, and should,
19 therefore, be taken into custody to administer a secondary
20 test in accordance with the provisions of this section.

21 (b) A child may be taken into custody by a
22 law-enforcement official without a warrant or court order
23 if the official has reasonable grounds to believe the child
24 to have been driving a motor vehicle with any amount of

25 alcohol in his or her blood. If a preliminary breath
26 analysis is administered and the results of the analysis
27 indicate that the child has an alcohol concentration in his
28 or her blood of less than two hundredths of one percent, by
29 weight, the child may not be taken into custody unless
30 other grounds exist under subsection (b), section eight,
31 article five, chapter forty-nine of this code. Upon taking
32 a child into custody pursuant to the provisions of this
33 section, the official shall take all reasonable steps to cause
34 notification to be made to the child's parent or custodian
35 or, if the parent or custodian cannot be located, to a close
36 relative.

37 (c) Upon taking a child into custody pursuant to this
38 section, the official shall take the child to a facility where
39 a secondary test of the child's blood or urine may be
40 administered at the direction of the official or a test of the
41 child's breath may be administered by the official. The
42 law-enforcement agency by which such law-enforcement
43 official is employed shall designate whether the secondary
44 test is a test of either blood, breath or urine: *Provided,*
45 That if the test so designated is a blood test and the child
46 refuses to submit to the blood test, then the law-enforce-
47 ment official taking the child into custody shall designate
48 in lieu thereof a breath test to be administered. Notwith-
49 standing the provisions of section seven of this article, a
50 refusal to submit to a blood test only shall not result in the
51 revocation of the child's license to operate a motor vehicle
52 in this state. Any child taken into custody pursuant to this
53 section shall be given a written statement advising him or
54 her that a refusal to submit to a secondary test of either
55 blood, breath or urine, as finally designated by the
56 law-enforcement agency or official in accordance with this
57 subsection, will result in the suspension of his or her
58 license to operate a motor vehicle in this state for a period
59 of at least thirty days or a revocation of the license for a
60 period up to life.

61 (d) If the law-enforcement official taking the child into
62 custody is employed by a law-enforcement agency which
63 does not have available the testing equipment or facilities
64 necessary to conduct any secondary breath test which may
65 be administered pursuant to the provisions of this section,
66 then the official who took the child into custody may
67 request another qualified person to administer a secondary
68 breath test: *Provided*, That the breath test shall be admin-
69 istered in the presence of the official who took the child
70 into custody. The results of such breath test may be used
71 in evidence to the same extent and in the same manner as
72 if such test had been conducted by the law-enforcement
73 official who took the child into custody. The qualified
74 person administering the breath test must be a member of
75 the West Virginia state police, the sheriff of the county
76 wherein the child was taken into custody or any deputy of
77 such sheriff or a law-enforcement official of another
78 municipality within the county wherein the child was
79 taken into custody. Only the person actually administer-
80 ing the secondary breath test is competent to testify as to
81 the results and the veracity of the test. If the secondary
82 test is a blood test, the test shall be conducted in accor-
83 dance with the provisions of section six of this article.

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

94 (f) If the results of any secondary test administered
95 pursuant to this section indicate that the child, at the time
96 of driving the motor vehicle, had an alcohol concentration
97 in his or her blood of eight hundredths of one percent or

98 less, by weight, and if the law-enforcement official does
99 not have reasonable cause to believe that the act of the
100 child in driving the motor vehicle is such that it would
101 provide grounds for arrest for an offense defined under the
102 provisions of section two of this article if the child were an
103 adult, then the official shall release the child: *Provided,*
104 That if the results of any secondary test administered
105 pursuant to this section indicate that the child, at the time
106 of driving the motor vehicle, had an alcohol concentration
107 in his or her blood of two hundredths of one percent or
108 more, by weight, the child shall only be released to a
109 parent or custodian, or to some other responsible adult.

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

1 (a) Upon trial for the offense of driving a motor vehicle
2 in this state while under the influence of alcohol, con-
3 trolled substances or drugs, or upon the trial of any civil or
4 criminal action arising out of acts alleged to have been
5 committed by any person driving a motor vehicle while
6 under the influence of alcohol, controlled substances or
7 drugs, evidence of the amount of alcohol in the person's
8 blood at the time of the arrest or of the acts alleged, as
9 shown by a chemical analysis of his or her blood, breath or
10 urine, is admissible, if the sample or specimen was taken
11 within two hours from and after the time of arrest or of the
12 acts alleged. The evidence gives rise to the following
13 presumptions or has the following effect:

14 (1) Evidence that there was, at that time, five hundredths
15 of one percent or less, by weight, of alcohol in his or her
16 blood, is prima facie evidence that the person was not
17 under the influence of alcohol;

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

24 (3) Evidence that there was, at that time, eight hun-
25 dredths of one percent or more, by weight, of alcohol in his
26 or her blood, shall be admitted as prima facie evidence
27 that the person was under the influence of alcohol.

28 (b) A determination of the percent, by weight, of alcohol
29 in the blood shall be based upon a formula of:

30 (1) The number of grams of alcohol per one hundred
31 cubic centimeters of blood;

32 (2) The number of grams of alcohol per two hundred ten
33 liters of breath;

34 (3) The number of grams of alcohol per sixty-seven
35 milliliters of urine; or

36 (4) The number of grams of alcohol per eighty-six
37 milliliters of serum.

38 (c) A chemical analysis of a person's blood, breath or
39 urine, in order to give rise to the presumptions or to have
40 the effect provided for in subsection (a) of this section,
41 must be performed in accordance with methods and
42 standards approved by the state division of health. A
43 chemical analysis of blood or urine to determine the
44 alcoholic content of blood shall be conducted by a quali-
45 fied laboratory or by the state police scientific laboratory
46 of the criminal identification bureau of the West Virginia
47 state police.

48 (d) The provisions of this article do not limit the intro-
49 duction in any administrative or judicial proceeding of any
50 other competent evidence bearing on the question of
51 whether the person was under the influence of alcohol,
52 controlled substances or drugs.

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

§17C-5A-1. Implied consent to administrative procedure; revocation for driving under the influence of alcohol, controlled substances or refusal to submit to secondary chemical test.

1 (a) Any person who is licensed to operate a motor vehicle
2 in this state and who drives a motor vehicle in this state
3 shall be deemed to have given his or her consent by the
4 operation thereof, subject to the provisions of this article,
5 to the procedure set forth in this article for the determina-
6 tion of whether his or her license to operate a motor
7 vehicle in this state should be revoked because he or she
8 did drive a motor vehicle while under the influence of
9 alcohol, controlled substances or drugs, or combined
10 influence of alcohol or controlled substances or drugs, or
11 did drive a motor vehicle while having an alcoholic
12 concentration in his or her blood of eight hundredths of
13 one percent or more, by weight, or did refuse to submit to
14 any designated secondary chemical test, or did drive a
15 motor vehicle while under the age of twenty-one years
16 with an alcohol concentration in his or her blood of two
17 hundredths of one percent or more, by weight, but less
18 than eight hundredths of one percent, by weight.

19 (b) Any law-enforcement officer arresting a person for
20 an offense described in section two, article five of this
21 chapter or for an offense described in a municipal ordi-
22 nance which has the same elements as an offense described
23 in said section shall report to the commissioner of the
24 division of motor vehicles by written statement within
25 forty-eight hours the name and address of the person so
26 arrested. The report shall include the specific offense with
27 which the person is charged and, if applicable, a copy of
28 the results of any secondary tests of blood, breath or urine.
29 The signing of the statement required to be signed by this
30 subsection shall constitute an oath or affirmation by the
31 person signing the statement that the statements contained
32 therein are true and that any copy filed is a true copy. The
33 statement shall contain upon its face a warning to the

34 officer signing that to willfully sign a statement containing
35 false information concerning any matter or thing, material
36 or not material, is false swearing and is a misdemeanor.

37 (c) If, upon examination of the written statement of the
38 officer and the tests results described in subsection (b) of
39 this section, the commissioner shall determine that a
40 person was arrested for an offense described in section
41 two, article five of this chapter or for an offense described
42 in a municipal ordinance which has the same elements as
43 an offense described in said section and that the results of
44 any secondary test or tests indicate that at the time the
45 test or tests were administered the person had, in his or her
46 blood, an alcohol concentration of eight hundredths of one
47 percent or more, by weight, or at the time the person was
48 arrested he or she was under the influence of alcohol,
49 controlled substances or drugs, the commissioner shall
50 make and enter an order revoking the person's license to
51 operate a motor vehicle in this state. If the results of the
52 tests indicate that at the time the test or tests were admin-
53 istered the person was under the age of twenty-one years
54 and had an alcohol concentration in his or her blood of
55 two hundredths of one percent or more, by weight, but less
56 than eight hundredths of one percent, by weight, the
57 commissioner shall make and enter an order suspending
58 the person's license to operate a motor vehicle in this state.
59 A copy of the order shall be forwarded to the person by
60 registered or certified mail, return receipt requested, and
61 shall contain the reasons for the revocation or suspension
62 and describe the applicable revocation or suspension
63 periods provided for in section two of this article. No
64 revocation or suspension shall become effective until ten
65 days after receipt of a copy of the order.

66 (d) Any law-enforcement officer taking a child into
67 custody under the provisions of section six-a, article five
68 of this chapter who has reasonable cause to believe that
69 the child, at the time of driving the motor vehicle, had an
70 alcohol concentration in his or her blood of two hun-

71 dredths of one percent or more, by weight, or that the act
72 of the child in driving the motor vehicle was such that it
73 would provide grounds for arrest for an offense defined
74 under the provisions of section two of said article if the
75 child were an adult, shall report to the commissioner of the
76 division of motor vehicles by written statement within
77 forty-eight hours the name and address of the child.

78 (e) If applicable, the report shall include a description of
79 the specific offense with which the child could have been
80 charged if the child were an adult, and a copy of the
81 results of any secondary tests of blood, breath or urine.
82 The signing of the statement required to be signed by this
83 subsection shall constitute an oath or affirmation by the
84 person signing such statement that the statements con-
85 tained therein are true and that any copy filed is a true
86 copy. Such statement shall contain upon its face a warn-
87 ing to the officer signing that to willfully sign a statement
88 containing false information concerning any matter or
89 thing, material or not material, is false swearing and is a
90 misdemeanor.

91 (f) Upon examination of the written statement of the
92 officer and any test results described in subsection (d) of
93 this section, if the commissioner determines that the
94 results of the tests indicate that at the time the test or tests
95 were administered the child had, in his or her blood, an
96 alcohol concentration of two hundredths of one percent or
97 more, by weight, but also determines that the act of the
98 child in driving the motor vehicle was not such that it
99 would provide grounds for arrest for an offense defined
100 under the provisions of subsection (a), (b), (c), (d), (e), (f) or
101 (g), section two, article five of this chapter if the child were
102 an adult, the commissioner shall make and enter an order
103 suspending the child's license to operate a motor vehicle in
104 this state. If the commissioner determines that the act of
105 the child in driving the motor vehicle was such that it
106 would provide grounds for arrest for an offense defined
107 under the provisions of subsection (a), (b), (c), (d), (e), (f) or

108 (g) of said section if the child were an adult, the commis-
109 sioner shall make and enter an order revoking the child's
110 license to operate a motor vehicle in this state. A copy of
111 such order shall be forwarded to the child by registered or
112 certified mail, return receipt requested, and shall contain
113 the reasons for the suspension or revocation and describe
114 the applicable suspension or revocation periods provided
115 for in section two of this article. No suspension or revoca-
116 tion shall become effective until ten days after receipt of
117 a copy of such order.

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

1 (a) If a person is convicted for an offense defined in
2 section two, article five of this chapter or for an offense
3 described in a municipal ordinance which has the same
4 elements as an offense described in said section because
5 the person did drive a motor vehicle while under the
6 influence of alcohol, controlled substances or drugs, or the
7 combined influence of alcohol or controlled substances or
8 drugs, or did drive a motor vehicle while having an
9 alcoholic concentration in his or her blood of eight hun-
10 dredths of one percent or more, by weight, or did drive a
11 motor vehicle while under the age of twenty-one years
12 with an alcohol concentration in his or her blood of two
13 hundredths of one percent or more, by weight, but less
14 than eight hundredths of one percent, by weight, and if the
15 person does not act to appeal the conviction within the
16 time periods described in subsection (b) of this section, the
17 person's license to operate a motor vehicle in this state
18 shall be revoked or suspended in accordance with the
19 provisions of this section.

20 (b) The clerk of the court in which a person is convicted
21 for an offense described in section two, article five of this
22 chapter or for an offense described in a municipal ordi-
23 nance which has the same elements as an offense described
24 in said section shall forward to the commissioner a tran-

25 script of the judgment of conviction. If the conviction is
26 the judgment of a magistrate court, the magistrate court
27 clerk shall forward the transcript when the person con-
28 victed has not requested an appeal within twenty days of
29 the sentencing for such conviction. If the conviction is the
30 judgment of a mayor or police court judge or municipal
31 court judge, the clerk or recorder shall forward the
32 transcript when the person convicted has not perfected an
33 appeal within ten days from and after the date upon which
34 the sentence is imposed. If the conviction is the judgment
35 of a circuit court, the circuit clerk shall forward the
36 transcript when the person convicted has not filed a notice
37 of intent to file a petition for appeal or writ of error within
38 thirty days after the judgment was entered.

39 (c) If, upon examination of the transcript of the judg-
40 ment of conviction, the commissioner shall determine that
41 the person was convicted for an offense described in
42 section two, article five of this chapter or for an offense
43 described in a municipal ordinance which has the same
44 elements as an offense described in said section because
45 the person did drive a motor vehicle while under the
46 influence of alcohol, controlled substances or drugs, or the
47 combined influence of alcohol or controlled substances or
48 drugs, or did drive a motor vehicle while having an
49 alcoholic concentration in his or her blood of eight hun-
50 dredths of one percent or more, by weight, the commis-
51 sioner shall make and enter an order revoking the person's
52 license to operate a motor vehicle in this state. If the
53 commissioner determines that the person was convicted of
54 driving a motor vehicle while under the age of twenty-one
55 years with an alcohol concentration in his or her blood of
56 two hundredths of one percent or more, by weight, but less
57 than eight hundredths of one percent, by weight, the
58 commissioner shall make and enter an order suspending
59 the person's license to operate a motor vehicle in this state.
60 The order shall contain the reasons for the revocation or
61 suspension and the revocation or suspension periods
62 provided for in section two of this article. Further, the

63 order shall give the procedures for requesting a hearing
64 which is to be held in accordance with the provisions of
65 said section. The person shall be advised in the order that
66 because of the receipt of a transcript of the judgment of
67 conviction by the commissioner a presumption exists that
68 the person named in the transcript of the judgment of
69 conviction is the person named in the commissioner's order
70 and such constitutes sufficient evidence to support revoca-
71 tion or suspension and that the sole purpose for the
72 hearing held under this section is for the person requesting
73 the hearing to present evidence that he or she is not the
74 person named in the transcript of the judgment of convic-
75 tion. A copy of the order shall be forwarded to the person
76 by registered or certified mail, return receipt requested.
77 No revocation or suspension shall become effective until
78 ten days after receipt of a copy of the order.

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

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

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

1 (a) Upon the written request of a person whose license to
2 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 the division of motor vehicles shall stay
6 the imposition of the period of revocation or suspension
7 and afford the person an opportunity to be heard. The
8 written request must be filed with the commissioner in
9 person or by registered or certified mail, return receipt
10 requested, within thirty calendar days after receipt of a
11 copy of the order of revocation or suspension or no hearing
12 will be granted. The hearing shall be before the commis-

13 sioner or a hearing examiner retained by the commissioner
14 who shall rule on evidentiary issues and submit proposed
15 findings of fact and conclusions of law for the consider-
16 ation of the commissioner and all of the pertinent provi-
17 sions of article five, chapter twenty-nine-a of this code
18 shall apply. The hearing shall be held at an office of the
19 division located in or near the county wherein the arrest
20 was made in this state or at some other suitable place in
21 the county wherein the arrest was made if an office of the
22 division is not available.

23 (b) Any such hearing shall be held within one hundred
24 eighty days after the date upon which the commissioner
25 received the timely written request therefor unless there is
26 a 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 imple-
30 ment by a procedural rule written policies governing the
31 postponement or continuance of any such hearing on the
32 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
40 the 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.

45 (c) Law-enforcement officers shall be compensated for
46 the time expended in their travel and appearance before
47 the commissioner by the law-enforcement agency by
48 whom they are employed at their regular rate if they are
49 scheduled to be on duty during said time or at their

50 regular overtime rate if they are scheduled to be off duty
51 during said time.

52 (d) The principal question at the hearing shall be
53 whether the person did drive a motor vehicle while under
54 the influence of alcohol, controlled substances or drugs, or
55 did drive a motor vehicle while having an alcohol concen-
56 tration in the person's blood of eight hundredths of one
57 percent or more, by weight, or did refuse to submit to the
58 designated secondary chemical test, or did drive a motor
59 vehicle while under the age of twenty-one years with an
60 alcohol concentration in his or her blood of two hun-
61 dredths of one percent or more, by weight, but less than
62 eight hundredths of one percent, by weight.

63 The commissioner may propose a legislative rule in
64 compliance with the provisions of article three, chapter
65 twenty-nine-a of this code, which rule may provide that if
66 a person accused of driving a motor vehicle while under
67 the influence of alcohol, controlled substances or drugs, or
68 accused of driving a motor vehicle while having an alcohol
69 concentration in the person's blood of eight hundredths of
70 one percent or more, by weight, or accused of driving a
71 motor vehicle while under the age of twenty-one years
72 with an alcohol concentration in his or her blood of two
73 hundredths of one percent or more, by weight, but less
74 than eight hundredths of one percent, by weight, intends
75 to challenge the results of any secondary chemical test of
76 blood, breath or urine, or intends to cross-examine the
77 individual or individuals who administered the test or
78 performed the chemical analysis, the person shall, within
79 an appropriate period of time prior to the hearing, notify
80 the commissioner in writing of such intention. The rule
81 may provide that when there is a failure to comply with
82 the notice requirement, the results of the secondary test, if
83 any, shall be admissible as though the person and the
84 commissioner had stipulated the admissibility of such
85 evidence. Any such rule shall provide that the rule shall
86 not be invoked in the case of a person who is not repre-

87 sented by counsel unless the communication from the
88 commissioner to the person establishing a time and place
89 for the hearing also informed the person of the conse-
90 quences of the person's failure to timely notify the com-
91 missioner of the person's intention to challenge the results
92 of the secondary chemical test or cross-examine the
93 individual or individuals who administered the test or
94 performed the chemical analysis.

95 (e) In the case of a hearing wherein a person is accused
96 of driving a motor vehicle while under the influence of
97 alcohol, controlled substances or drugs, or accused of
98 driving a motor vehicle while having an alcohol concentra-
99 tion in the person's blood of eight hundredths of one
100 percent or more, by weight, or accused of driving a motor
101 vehicle while under the age of twenty-one years with an
102 alcohol concentration in his or her blood of two hun-
103 dredths of one percent or more, by weight, but less than
104 eight hundredths of one percent, by weight, the commis-
105 sioner shall make specific findings as to: (1) Whether the
106 arresting law-enforcement officer had reasonable grounds
107 to believe the person to have been driving while under the
108 influence of alcohol, controlled substances or drugs, or
109 while having an alcohol concentration in the person's
110 blood of eight hundredths of one percent or more, by
111 weight, or to have been driving a motor vehicle while
112 under the age of twenty-one years with an alcohol concen-
113 tration in his or her blood of two hundredths of one
114 percent or more, by weight, but less than eight hundredths
115 of one percent, by weight; (2) whether the person was
116 lawfully placed under arrest for an offense involving
117 driving under the influence of alcohol, controlled sub-
118 stances or drugs, or was lawfully taken into custody for
119 the purpose of administering a secondary test; and (3)
120 whether the tests, if any, were administered in accordance
121 with the provisions of this article and article five of this
122 chapter.

123 (f) If, in addition to a finding that the person did drive a
124 motor vehicle while under the influence of alcohol, con-
125 trolled substances or drugs, or did drive a motor vehicle
126 while having an alcohol concentration in the person's
127 blood of eight hundredths of one percent or more, by
128 weight, or did drive a motor vehicle while under the age of
129 twenty-one years with an alcohol concentration in his or
130 her blood of two hundredths of one percent or more, by
131 weight, but less than eight hundredths of one percent, by
132 weight, the commissioner also finds by a preponderance of
133 the evidence that the person when so driving did an act
134 forbidden by law or failed to perform a duty imposed by
135 law, which act or failure proximately caused the death of
136 a person and was committed in reckless disregard of the
137 safety of others, and if the commissioner further finds that
138 the influence of alcohol, controlled substances or drugs or
139 the alcohol concentration in the blood was a contributing
140 cause to the death, the commissioner shall revoke the
141 person's license for a period of ten years: *Provided*, That if
142 the commissioner has previously suspended or revoked the
143 person's license under the provisions of this section or
144 section one of this article within the ten years immediately
145 preceding the date of arrest, the period of revocation shall
146 be for the life of the person.

147 (g) If, in addition to a finding that the person did drive
148 a motor vehicle while under the influence of alcohol,
149 controlled substances or drugs, or did drive a motor
150 vehicle while having an alcohol concentration in the
151 person's blood of eight hundredths of one percent or more,
152 by weight, the commissioner also finds by a preponderance
153 of the evidence that the person when so driving did an act
154 forbidden by law or failed to perform a duty imposed by
155 law, which act or failure proximately caused the death of
156 a person, the commissioner shall revoke the person's
157 license for a period of five years: *Provided*, That if the
158 commissioner has previously suspended or revoked the
159 person's license under the provisions of this section or
160 section one of this article within the ten years immediately

161 preceding the date of arrest, the period of revocation shall
162 be for the life of the person.

163 (h) If, in addition to a finding that the person did drive
164 a motor vehicle while under the influence of alcohol,
165 controlled substances or drugs, or did drive a motor
166 vehicle while having an alcohol concentration in the
167 person's blood of eight hundredths of one percent or more,
168 by weight, the commissioner also finds by a preponderance
169 of the evidence that the person when so driving did an act
170 forbidden by law or failed to perform a duty imposed by
171 law, which act or failure proximately caused bodily injury
172 to a person other than himself or herself, the commissioner
173 shall revoke the person's license for a period of two years:
174 *Provided*, That if the commissioner has previously sus-
175 pended or revoked the person's license under the provi-
176 sions of this section or section one of this article within the
177 ten years immediately preceding the date of arrest, the
178 period of revocation shall be ten years: *Provided, however*,
179 That if the commissioner has previously suspended or
180 revoked the person's license more than once under the
181 provisions of this section or section one of this article
182 within the ten years immediately preceding the date of
183 arrest, the period of revocation shall be for the life of the
184 person.

185 (i) If the commissioner finds by a preponderance of the
186 evidence that the person did drive a motor vehicle while
187 under the influence of alcohol, controlled substances or
188 drugs, or did drive a motor vehicle while having an alcohol
189 concentration in the person's blood of eight hundredths of
190 one percent or more, by weight, or finds that the person,
191 being an habitual user of narcotic drugs or amphetamine
192 or any derivative thereof, did drive a motor vehicle, or
193 finds that the person knowingly permitted the person's
194 vehicle to be driven by another person who was under the
195 influence of alcohol, controlled substances or drugs, or
196 knowingly permitted the person's vehicle to be driven by
197 another person who had an alcohol concentration in his or

198 her blood of eight hundredths of one percent or more, by
199 weight, the commissioner shall revoke the person's license
200 for a period of six months: *Provided*, That if the commis-
201 sioner has previously suspended or revoked the person's
202 license under the provisions of this section or section one
203 of this article within the ten years immediately preceding
204 the date of arrest, the period of revocation shall be ten
205 years: *Provided, however*, That if the commissioner has
206 previously suspended or revoked the person's license more
207 than once under the provisions of this section or section
208 one of this article within the ten years immediately
209 preceding the date of arrest, the period of revocation shall
210 be for the life of the person.

211 (j) If, in addition to a finding that the person did drive a
212 motor vehicle while under the age of twenty-one years
213 with an alcohol concentration in his or her blood of two
214 hundredths of one percent or more, by weight, but less
215 than eight hundredths of one percent, by weight, the
216 commissioner also finds by a preponderance of the evi-
217 dence that the person when so driving did an act forbidden
218 by law or failed to perform a duty imposed by law, which
219 act or failure proximately caused the death of a person,
220 and if the commissioner further finds that the alcohol
221 concentration in the blood was a contributing cause to the
222 death, the commissioner shall revoke the person's license
223 for a period of five years: *Provided*, That if the commis-
224 sioner has previously suspended or revoked the person's
225 license under the provisions of this section or section one
226 of this article within the ten years immediately preceding
227 the date of arrest, the period of revocation shall be for the
228 life of the person.

229 (k) If, in addition to a finding that the person did drive
230 a motor vehicle while under the age of twenty-one years
231 with an alcohol concentration in his or her blood of two
232 hundredths of one percent or more, by weight, but less
233 than eight hundredths of one percent, by weight, the
234 commissioner also finds by a preponderance of the evi-

235 dence that the person when so driving did an act forbidden
236 by law or failed to perform a duty imposed by law, which
237 act or failure proximately caused bodily injury to a person
238 other than himself or herself, and if the commissioner
239 further finds that the alcohol concentration in the blood
240 was a contributing cause to the bodily injury, the commis-
241 sioner shall revoke the person's license for a period of two
242 years: *Provided*, That if the commissioner has previously
243 suspended or revoked the person's license under the
244 provisions of this section or section one of this article
245 within the ten years immediately preceding the date of
246 arrest, the period of revocation shall be ten years: *Pro-*
247 *vided, however*, That if the commissioner has previously
248 suspended or revoked the person's license more than once
249 under the provisions of this section or section one of this
250 article within the ten years immediately preceding the date
251 of arrest, the period of revocation shall be for the life of
252 the person.

253 (l) If the commissioner finds by a preponderance of the
254 evidence that the person did drive a motor vehicle while
255 under the age of twenty-one years with an alcohol concen-
256 tration in his or her blood of two hundredths of one
257 percent or more, by weight, but less than eight hundredths
258 of one percent, by weight, the commissioner shall suspend
259 the person's license for a period of sixty days: *Provided*,
260 That if the commissioner has previously suspended or
261 revoked the person's license under the provisions of this
262 section or section one of this article, the period of revoca-
263 tion shall be for one year, or until the person's twenty-first
264 birthday, whichever period is longer.

265 (m) If, in addition to a finding that the person did drive
266 a motor vehicle while under the influence of alcohol,
267 controlled substances or drugs, or did drive a motor
268 vehicle while having an alcohol concentration in the
269 person's blood of eight hundredths of one percent or more,
270 by weight, the commissioner also finds by a preponderance
271 of the evidence that the person when so driving did have

272 on or within the motor vehicle another person who has not
273 reached his or her sixteenth birthday, the commissioner
274 shall revoke the person's license for a period of one year:
275 *Provided*, That if the commissioner has previously sus-
276 pended or revoked the person's license under the provi-
277 sions of this section or section one of this article within the
278 ten years immediately preceding the date of arrest, the
279 period of revocation shall be ten years: *Provided, however*,
280 That if the commissioner has previously suspended or
281 revoked the person's license more than once under the
282 provisions of this section or section one of this article
283 within the ten years immediately preceding the date of
284 arrest, the period of revocation shall be for the life of the
285 person.

286 (n) For purposes of this section, where reference is made
287 to previous suspensions or revocations under this section,
288 the following types of criminal convictions or administra-
289 tive suspensions or revocations shall also be regarded as
290 suspensions or revocations under this section or section
291 one of this article:

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

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

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

307 (o) In the case of a hearing wherein a person is accused
308 of refusing to submit to a designated secondary test, the
309 commissioner shall make specific findings as to: (1)
310 Whether the arresting law-enforcement officer had
311 reasonable grounds to believe the person had been driving
312 a motor vehicle in this state while under the influence of
313 alcohol, controlled substances or drugs; (2) whether the
314 person was lawfully placed under arrest for an offense
315 relating to driving a motor vehicle in this state while under
316 the influence of alcohol, controlled substances or drugs; (3)
317 whether the person refused to submit to the secondary test
318 finally designated in the manner provided in section four,
319 article five of this chapter; and (4) whether the person had
320 been given a written statement advising the person that
321 the person's license to operate a motor vehicle in this state
322 would be revoked for at least one year and up to life if the
323 person refused to submit to the test finally designated in
324 the manner provided in said section.

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

344 under this section or section one of this article arising out
345 of the same occurrence.

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

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

357 If the commissioner shall after hearing make and enter
358 an order affirming the commissioner's earlier order of
359 revocation, the person shall be entitled to judicial review
360 as set forth in chapter twenty-nine-a of this code. The
361 commissioner may not stay enforcement of the order. The
362 court may grant a stay or supersede as of the order only
363 upon motion and hearing, and a finding by the court upon
364 the evidence presented, that there is a substantial proba-
365 bility that the appellant shall prevail upon the merits, and
366 the appellant will suffer irreparable harm if the order is
367 not stayed: *Provided*, That in no event shall the stay or
368 supersede as of the order exceed one hundred fifty days.
369 Notwithstanding the provisions of section four, article five
370 of said chapter, the commissioner may not be compelled to
371 transmit a certified copy of the transcript of the hearing to
372 the circuit court in less than sixty days.

373 (r) In any revocation or suspension pursuant to this
374 section, if the driver whose license is revoked or suspended
375 had not reached the driver's eighteenth birthday at the
376 time of the conduct for which the license is revoked or
377 suspended, the driver's license shall be revoked or sus-
378 pended until the driver's eighteenth birthday or the

379 applicable statutory period of revocation or suspension
380 prescribed by this section, whichever is longer.

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

**§17C-5A-3a. Establishment of and participation in the motor
vehicle alcohol test and lock program.**

1 (a) The division of motor vehicles shall control and
2 regulate a motor vehicle alcohol test and lock program for
3 persons whose licenses have been revoked pursuant to this
4 article or the provisions of article five of this chapter.
5 Such program shall include the establishment of a users'
6 fee for persons participating in the program which shall be
7 paid in advance and deposited into the driver's rehabilita-
8 tion fund. Except where specified otherwise, the use of the
9 term "program" in this section refers to the motor vehicle
10 alcohol test and lock program. The commissioner of the
11 division of motor vehicles shall propose legislative rules
12 for promulgation in accordance with the provisions of
13 chapter twenty-nine-a of this code for the purpose of
14 implementing the provisions of this section. Such rules
15 shall also prescribe those requirements which, in addition
16 to the requirements specified by this section for eligibility
17 to participate in the program, the commissioner deter-
18 mines must be met to obtain the commissioner's approval
19 to operate a motor vehicle equipped with a motor vehicle
20 alcohol test and lock system. For purposes of this section,
21 a "motor vehicle alcohol test and lock system" means a
22 mechanical or computerized system which, in the opinion
23 of the commissioner, prevents the operation of a motor
24 vehicle when, through the system's assessment of the blood
25 alcohol content of the person operating or attempting to
26 operate the vehicle, such person is determined to be under
27 the influence of alcohol.

28 (b) (1) Any person whose license has been revoked
29 pursuant to this article or the provisions of article five of
30 this chapter is eligible to participate in the program when
31 such person's minimum revocation period as specified by
32 subsection (c) of this section has expired and such person
33 is enrolled in or has successfully completed the safety and
34 treatment program or presents proof to the commissioner
35 within sixty days of receiving approval to participate by
36 the commissioner that he or she is enrolled in a safety and
37 treatment program: *Provided*, That no person whose
38 license has been revoked pursuant to the provisions of
39 section one-a of this article for conviction of an offense
40 defined in subsection (a) or (b), section two, article five of
41 this chapter, or pursuant to the provisions of subsection (f)
42 or (g), section two of this article, shall be eligible for
43 participation in the program: *Provided, however*, That any
44 person whose license is revoked pursuant to this article or
45 pursuant to article five of this chapter for an act which
46 occurred either while participating in or after successfully
47 completing the program shall not again be eligible to
48 participate in such program.

49 (2) Any person whose license has been suspended pursu-
50 ant to the provisions of subsection (l), section two of this
51 article for driving a motor vehicle while under the age of
52 twenty-one years with an alcohol concentration in his or
53 her blood of two hundredths of one percent or more, by
54 weight, but less than eight hundredths of one percent, by
55 weight, is eligible to participate in the program after thirty
56 days have elapsed from the date of the initial suspension,
57 during which time the suspension was actually in effect:
58 *Provided*, That in the case of a person under the age of
59 eighteen, the person shall be eligible to participate in the
60 program after thirty days have elapsed from the date of
61 the initial suspension, during which time the suspension
62 was actually in effect, or after the person's eighteenth
63 birthday, whichever is later. Before the commissioner
64 approves a person to operate a motor vehicle equipped
65 with a motor vehicle alcohol test and lock system, the

66 person must agree to thereafter comply with the following
67 conditions:

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

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

77 (3) Notwithstanding the provisions of this section to the
78 contrary, no person eligible to participate in the program
79 shall operate a motor vehicle unless approved to do so by
80 the commissioner.

81 (c) For purposes of this section, "minimum revocation
82 period" means the portion which has actually expired of
83 the period of revocation imposed by the commissioner
84 pursuant to this article or the provisions of article five of
85 this chapter upon a person eligible for participation in the
86 program as follows:

87 (1) For a person whose license has been revoked for a
88 first offense for six months pursuant to the provisions of
89 section one-a of this article for conviction of an offense
90 defined in section two, article five of this chapter, or
91 pursuant to subsection (i), section two of this article, the
92 minimum period of revocation before such person is
93 eligible for participation in the test and lock program is
94 thirty days, and the minimum period for the use of the
95 ignition interlock device is five months, or that period
96 described in subdivision (1), subsection (e) of this section,
97 whichever period is greater;

98 (2) For a person whose license has been revoked for a
99 first offense pursuant to section seven, article five of this
100 chapter, refusal to submit to a designated secondary

101 chemical test, the minimum period of revocation before
102 such person is eligible for participation in the test and lock
103 program is thirty days, and the minimum period for the
104 use of the ignition interlock device is nine months, or the
105 period set forth in subdivision (1), subsection (e) of this
106 section, whichever period is greater;

107 (3) For a person whose license has been revoked for a
108 second offense pursuant to the provisions of section one-a
109 of this article for conviction of an offense defined in
110 section two, article five of this chapter, or pursuant to
111 section two of this article, the minimum period of revoca-
112 tion before such person is eligible for participation in the
113 test and lock program is nine months, and the minimum
114 period for the use of the ignition interlock device is
115 eighteen months, or that period set forth in subdivision (2),
116 subsection (e) of this section, whichever period is greater;

117 (4) For a person whose license has been revoked for any
118 other period of time pursuant to the provisions of section
119 one-a of this article for conviction of an offense defined in
120 section two, article five of this chapter, or pursuant to
121 section two of this article or pursuant to section seven,
122 article five of this chapter, the minimum period of revoca-
123 tion is eighteen months, and the minimum period for the
124 use of the ignition interlock device is two years, or that
125 period set forth in subdivision (3), subsection (e) of this
126 section, whichever period is greater;

127 (5) An applicant for the test and lock program must not
128 have been convicted of any violation of section three,
129 article four, chapter seventeen-b of this code, for driving
130 while the applicant's driver's license was suspended or
131 revoked, within the two-year period preceding the date of
132 application for admission to the test and lock program;

133 (6) The commissioner is hereby authorized to allow
134 individuals in the test and lock program an additional
135 device or devices if such is necessary for employment
136 purposes.

137 (d) Upon permitting an eligible person to participate in
138 the program, the commissioner shall issue to such person,
139 and such person shall be required to exhibit on demand, a
140 driver's license which shall reflect that such person is
141 restricted to the operation of a motor vehicle which is
142 equipped with an approved motor vehicle alcohol test and
143 lock system.

144 (e) Any person who has completed the safety and treat-
145 ment program and who has not violated the terms required
146 by the commissioner of such person's participation in the
147 motor vehicle alcohol test and lock program shall be
148 entitled to the restoration of such person's driver's license
149 upon the expiration of:

150 (1) One hundred eighty days of the full revocation period
151 imposed by the commissioner for a person described in
152 subdivision (1) or (2), subsection (c) of this section;

153 (2) The full revocation period imposed by the commis-
154 sioner for a person described in subdivision (3), subsection
155 (c) of this section;

156 (3) One year from the date a person described in subdivi-
157 sion (4), subsection (c) of this section is permitted to
158 operate a motor vehicle by the commissioner.

159 (f) A person whose license has been suspended pursuant
160 to the provisions of subsection (l), section two of this
161 article who has completed the educational program, and
162 who has not violated the terms required by the commis-
163 sioner of such person's participation in the motor vehicle
164 alcohol test and lock program shall be entitled to the
165 reinstatement of his or her driver's license six months from
166 the date the person is permitted to operate a motor vehicle
167 by the commissioner. When a license has been reinstated
168 pursuant to this subsection, the records ordering the
169 suspension, records of any administrative hearing, records
170 of any blood alcohol test results and all other records
171 pertaining to the suspension shall be expunged by opera-

172 tion of law: *Provided*, That a person shall be entitled to
173 expungement under the provisions of this subsection only
174 once. The expungement shall be accomplished by physi-
175 cally marking the records to show that such records have
176 been expunged and by securely sealing and filing the
177 records. Expungement shall have the legal effect as if the
178 suspension never occurred. The records shall not be
179 disclosed or made available for inspection and, in response
180 to a request for record information, the commissioner shall
181 reply that no information is available. Information from
182 the file may be used by the commissioner for research and
183 statistical purposes so long as the use of such information
184 does not divulge the identity of the person.

185 (g) In addition to any other penalty imposed by this code,
186 any person who operates a motor vehicle not equipped
187 with an approved motor vehicle alcohol test and lock
188 system during such person's participation in the motor
189 vehicle alcohol test and lock program is guilty of a misde-
190 meanor and, upon conviction thereof, shall be confined in
191 the county or regional jail for a period not less than one
192 month nor more than six months and fined not less than
193 one hundred dollars nor more than five hundred dollars.
194 Any person who assists another person required by the
195 terms of such other person's participation in the motor
196 vehicle alcohol test and lock program to use a motor
197 vehicle alcohol test and lock system in any effort to bypass
198 the system is guilty of a misdemeanor and, upon conviction
199 thereof, shall be confined in the county or regional jail not
200 more than six months and fined not less than one hundred
201 dollars nor more than one thousand dollars: *Provided*,
202 That notwithstanding any provision of this code to the
203 contrary, a person enrolled and participating in the test
204 and lock program may operate a motor vehicle solely at his
205 or her job site if such is a condition of his or her employ-
206 ment.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT, MOTOR BOATING, LITTER.

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

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

5 (b) No person shall operate any motorboat, jet ski or
6 other motorized vessel, or manipulate any water skis,
7 surfboard or similar device while under the influence of
8 alcohol or a controlled substance or drug, under the
9 combined influence of alcohol and any controlled sub-
10 stance or any other drug, or while having an alcohol
11 concentration in his or her blood of eight hundredths of
12 one percent or more, by weight.

13 (c) It shall be the duty of the operator of a vessel in-
14 volved in a collision, accident or other casualty, so far as
15 he or she can do so without serious danger to his or her
16 own vessel, crew and passengers (if any), to render to other
17 persons affected by the collision, accident or other casu-
18 alty such assistance as may be practicable and as may be
19 necessary in order to save them from or minimize any
20 danger caused by the collision, accident or other casualty,
21 and also to give his or her name, address and identification
22 of his or her vessel in writing to any person injured and to
23 the owner of any property damaged in the collision,
24 accident or other casualty.

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

35 to this subsection shall be transmitted to the official or
36 agency.

§20-7-18b. Operating under influence of alcohol, controlled substances or drugs; penalties.

1 (a) Any person who:

2 (1) Operates a motorboat, jet ski or other motorized
3 vessel in this state while:

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

5 (B) He or she is under the influence of any controlled
6 substance; or

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

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

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

13 (2) When so operating does any act forbidden by law or
14 fails to perform any duty imposed by law in the operating
15 of the motorboat, jet ski or other motorized vessel, which
16 act or failure proximately causes the death of any person
17 within one year next following the act or failure; and

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

26 (b) Any person who:

27 (1) Operates a motorboat, jet ski or other motorized
28 vessel in this state while:

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

30 (B) He or she is under the influence of any controlled
31 substance; or

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

33 (D) He or she is under the combined influence of alcohol
34 and any controlled substance or any other drug; or

35 (E) He or she has an alcohol concentration in his or her
36 blood of eight hundredths of one percent or more, by
37 weight; and

38 (2) When so operating does any act forbidden by law or
39 fails to perform any duty imposed by law in the operating
40 of the motorboat, jet ski or other motorized vessel, which
41 act or failure proximately causes the death of any person
42 within one year next following the act or failure, is guilty
43 of a misdemeanor and, upon conviction thereof, shall be
44 confined in the county or regional jail for not less than
45 ninety days nor more than one year and shall be fined not
46 less than five hundred dollars nor more than one thousand
47 dollars.

48 (c) Any person who:

49 (1) Operates a motorboat, jet ski or other motorized
50 vessel in this state while:

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

52 (B) He or she is under the influence of any controlled
53 substance; or

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

55 (D) He or she is under the combined influence of alcohol
56 and any controlled substance or any other drug; or

57 (E) He or she has an alcohol concentration in his or her
58 blood of eight hundredths of one percent or more, by
59 weight; and

60 (2) When so operating does any act forbidden by law or
61 fails to perform any duty imposed by law in the operating
62 of the motorboat, jet ski or other motorized vessel, which
63 act or failure proximately causes bodily injury to any
64 person other than himself or herself, is guilty of a misde-
65 meanor and, upon conviction thereof, shall be confined in
66 the county or regional jail for not less than one day nor
67 more than one year, which jail term shall include actual
68 confinement of not less than twenty-four hours, and shall
69 be fined not less than two hundred dollars nor more than
70 one thousand dollars.

71 (d) Any person who:

72 (1) Operates a motorboat, jet ski or other motorized
73 vessel in this state while:

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

75 (B) He or she is under the influence of any controlled
76 substance; or

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

78 (D) He or she is under the combined influence of alcohol
79 and any controlled substance or any other drug; or

80 (E) He or she has an alcohol concentration in his or her
81 blood of eight hundredths of one percent or more, by
82 weight;

83 (2) Is guilty of a misdemeanor and, upon conviction
84 thereof, shall be confined in the county or regional jail for
85 not less than one day nor more than six months, which jail
86 term shall include actual confinement of not less than
87 twenty-four hours, and shall be fined not less than one
88 hundred dollars nor more than five hundred dollars.

89 (e) Any person who, being an habitual user of narcotic
90 drugs or amphetamine or any derivative thereof, operates
91 a motorboat, jet ski or other motorized vessel in this state,
92 is guilty of a misdemeanor and, upon conviction thereof,
93 shall be confined in the county or regional jail for not less
94 than one day nor more than six months, which jail term
95 shall include actual confinement of not less than
96 twenty-four hours, and shall be fined not less than one
97 hundred dollars nor more than five hundred dollars.

98 (f) Any person who:

99 (1) Knowingly permits his or her motorboat, jet ski or
100 other motorized vessel to be operated in this state by any
101 other person who is:

102 (A) Under the influence of alcohol; or

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

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

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

107 (E) Has an alcohol concentration in his or her blood of
108 eight hundredths of one percent or more, by weight;

109 (2) Is guilty of a misdemeanor and, upon conviction
110 thereof, shall be confined in the county or regional jail for
111 not more than six months and shall be fined not less than
112 one hundred dollars nor more than five hundred dollars.

113 (g) Any person who: Knowingly permits his or her
114 motorboat, jet ski or other motorized vessel to be operated
115 in this state by any other person who is an habitual user of
116 narcotic drugs or amphetamine or any derivative thereof,
117 is guilty of a misdemeanor and, upon conviction thereof,
118 shall be confined in the county or regional jail for not more
119 than six months and shall be fined not less than one
120 hundred dollars nor more than five hundred dollars.

121 (h) Any person under the age of twenty-one years who
122 operates a motorboat, jet ski or other motorized vessel in
123 this state while he or she has an alcohol concentration in
124 his or her blood of two hundredths of one percent or more,
125 by weight, but less than eight hundredths of one percent,
126 by weight, shall, for a first offense under this subsection,
127 be guilty of a misdemeanor and, upon conviction thereof,
128 shall be fined not less than twenty-five dollars nor more
129 than one hundred dollars. For a second or subsequent
130 offense under this subsection, such person is guilty of a
131 misdemeanor and, upon conviction thereof, shall be
132 confined in the county or regional jail for twenty-four
133 hours, and shall be fined not less than one hundred dollars
134 nor more than five hundred dollars.

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

140 (i) Any person who:

141 (1) Operates a motorboat, jet ski or other motorized
142 vessel in this state while:

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

144 (B) He or she is under the influence of any controlled
145 substance; or

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

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

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

152 (2) The person when so operating has on or within the
153 motorboat, jet ski or other motorized vessel one or more

154 other persons who are unemancipated minors who have
155 not reached their sixteenth birthday, shall be guilty of a
156 misdemeanor and, upon conviction thereof, shall be
157 confined in the county or regional jail for not less than two
158 days nor more than twelve months, which jail term shall
159 include actual confinement of not less than forty-eight
160 hours, and shall be fined not less than two hundred dollars
161 nor more than one thousand dollars.

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

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

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

182 (1) Any conviction under the provisions of subsection (a),
183 (b), (c), (d), (e) or (f) of this section for an offense which
184 occurred on or after the effective date of this section;

185 (2) Any conviction under the provisions of subsection (a)
186 or (b) of this section for an offense which occurred within
187 a period of five years immediately preceding the date of
188 the offense; and

189 (3) Any conviction under a municipal ordinance of this
190 state or any other state or a statute of the United States or
191 of any other state of an offense which has the same
192 elements as an offense described in subsection (a), (b), (c),
193 (d), (e), (f) or (g) of this section, which offense occurred
194 after the effective date of this section.

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

207 (n) The fact that any person charged with a violation of
208 subsection (a), (b), (c), (d) or (e) of this section, or any
209 person permitted to operate as described under subsection
210 (f) or (g) of this section, is or has been legally entitled to
211 use alcohol, a controlled substance or a drug shall not
212 constitute a defense against any charge of violating
213 subsection (a), (b), (c), (d), (e), (f) or (g) of this section.

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

217 (p) The sentences provided herein upon conviction for a
218 violation of this article are mandatory and may not be
219 subject to suspension or probation: *Provided*, That the
220 court may apply the provisions of article eleven-a, chapter
221 sixty-two of this code to a person sentenced or committed
222 to a term of one year or less. An order for home detention
223 by the court pursuant to the provisions of article eleven-b

224 of said chapter may be used as an alternative sentence to
225 any period of incarceration required by this section.

CHAPTER 33. INSURANCE.

ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

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

1 No insurer once having issued or delivered a policy
2 providing automobile liability insurance for a private
3 passenger automobile may, after the policy has been in
4 effect for sixty days, or in case of renewal effective
5 immediately, issue or cause to issue a notice of cancella-
6 tion during the term of the policy except for one or more
7 of the reasons specified in this section:

8 (a) The named insured fails to make payments of pre-
9 mium for the policy or any installment of the premium
10 when due;

11 (b) The policy is obtained through material misrepresen-
12 tation;

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

15 (d) The named insured or any other operator, either
16 residing in the same household or who customarily oper-
17 ates an automobile insured under the policy:

18 (1) Has had his or her operator's license suspended or
19 revoked during the policy period including suspension or
20 revocation for failure to comply with the provisions of
21 article five-a, chapter seventeen-c of this code, regarding
22 consent for a chemical test for intoxication: *Provided,*
23 That when a license is suspended for sixty days by the
24 commissioner of the division of motor vehicles because a
25 person drove a motor vehicle while under the age of
26 twenty-one years with an alcohol concentration in his or

27 her blood of two hundredths of one percent or more, by
28 weight, but less than eight hundredths of one percent, by
29 weight, pursuant to subsection (1), section two of said
30 article, the suspension shall not be grounds for cancella-
31 tion; or

32 (2) Is or becomes subject to epilepsy or heart attacks and
33 the individual cannot produce a certificate from a physi-
34 cian testifying to his or her ability to operate a motor
35 vehicle;

36 (e) The named insured or any other operator, either
37 residing in the same household or who customarily oper-
38 ates an automobile insured under such policy, is convicted
39 of or forfeits bail during the policy period for any of the
40 following reasons:

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

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

45 (3) Operating a motor vehicle while under the influence
46 of alcohol or of any controlled substance or while having
47 an alcohol concentration in his or her blood of eight
48 hundredths of one percent or more, by weight;

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

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

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

56 (7) Three or more moving traffic violations committed
57 within a period of twelve months, each of which results in
58 three or more points being assessed on the driver's record
59 by the division of motor vehicles, whether or not the

60 insurer renewed the policy without knowledge of all such
61 violations. Notice of any cancellation made pursuant to
62 this subsection shall be mailed to the named insured either
63 during the current policy period or during the first full
64 policy period following the date that the third moving
65 traffic violation is recorded by the division of motor
66 vehicles.

67 Notwithstanding any of the provisions of this section to
68 the contrary, no insurer may cancel a policy of automobile
69 liability insurance without first giving the insured thirty
70 days' notice of its intention to cancel: *Provided*, That
71 cancellation of the insurance policy by the insurer for
72 failure of consideration to be paid by the insured upon
73 initial issuance of the insurance policy is effective upon
74 the expiration of ten days' notice of cancellation to the
75 insured.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2b. Additional costs in certain criminal proceedings.

1 In each criminal case before a magistrate court in which
2 the defendant is convicted, whether by plea or at trial,
3 under the provisions of section two, article five, chapter
4 seventeen-c of this code or section eighteen-b, article
5 seven, chapter twenty of this code, there shall be imposed,
6 in addition to other costs, fines, forfeitures or penalties as
7 may be allowed by law, costs in the amount of fifty-five
8 dollars. A magistrate court shall, on or before the tenth
9 day of the month following the month in which the costs
10 imposed in this section were collected, remit an amount
11 equal to the amount from each of the criminal proceedings
12 in which the costs specified in this section were collected
13 to the magistrate court clerk or, if there is no magistrate
14 court clerk, to the clerk of the circuit, together with
15 information as may be required by the rules of the su-
16 preme court of appeals and the rules of the office of chief

17 inspector. At the end of each month, for purposes of
18 further defraying the cost to the county of enforcing the
19 provisions of section two, article five, chapter seventeen-c
20 of this code or section eighteen-b, article seven, chapter
21 twenty of this code and related provisions, these moneys
22 shall be paid to the sheriff of the county and deposited in
23 the general revenue fund of the county. The provisions of
24 this section shall be effective after the thirtieth day of
25 June, two thousand four.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11a. Additional costs in certain criminal proceedings.

1 (a) Except as provided in subsections (b) and (c) of this
2 section, in each criminal case before a circuit court in
3 which the defendant is convicted, whether by plea or at
4 trial, under the provisions of section two, article five,
5 chapter seventeen-c of this code or section eighteen-b,
6 article seven, chapter twenty of this code, there shall be
7 imposed, in addition to other costs, fines, forfeitures or
8 penalties as may be allowed by law, costs in the amount of
9 fifty-five dollars. For purposes of further defraying the
10 cost to the county of enforcing the provisions of section
11 two, article five, chapter seventeen-c of this code or
12 section eighteen-b, article seven, chapter twenty of this
13 code and related provisions, the clerk of the circuit court
14 shall, on or before the tenth day of the month following the
15 month in which the costs imposed in this section were
16 collected, remit an amount equal to the amount from each
17 of the criminal proceedings in which the costs specified in
18 this subsection were collected to the sheriff of the county
19 who shall deposit the same in the general revenue fund of
20 the county.

21 (b) In each criminal case before a circuit court upon
22 appeal from a magistrate court in which the defendant is

23 convicted, whether by plea or at trial in the circuit court,
24 under the provisions of section two, article five, chapter
25 seventeen-c of this code or section eighteen-b, article
26 seven, chapter twenty of this code, there shall be imposed,
27 in addition to other costs, fines, forfeitures or penalties as
28 may be allowed by law, costs in the amount of fifty-five
29 dollars. For purposes of further defraying the cost to the
30 county of enforcing the provisions of section two, article
31 five, chapter seventeen-c of this code or section eighteen-b,
32 article seven, chapter twenty of this code and related
33 provisions, the clerk of the circuit court shall, on or before
34 the tenth day of the month following the month in which
35 the costs imposed in this section were collected, remit an
36 amount equal to the amount from each of the criminal
37 proceedings in which the costs specified in this subsection
38 were collected to the sheriff of the county who shall
39 deposit the same in the general revenue fund of the county.
40 The provisions of this subsection shall not require payment
41 of the costs imposed by this subsection to the circuit court
42 where the costs have been paid in the magistrate court.

43 (c) In each criminal case before a circuit court upon
44 appeal from a municipal proceeding in which the defen-
45 dant is convicted, whether by plea or at trial in the circuit
46 court, under the provisions of a municipal ordinance
47 which has the same elements as an offense described in
48 section two, article five, chapter seventeen-c of this code
49 or section eighteen-b, article seven, chapter twenty of this
50 code, there shall be imposed, in addition to other costs,
51 fines, forfeitures or penalties as may be allowed by law,
52 costs in the amount of fifty-five dollars. For purposes of
53 further defraying the cost to the municipality of enforcing
54 the provisions of the ordinance or ordinances described in
55 this subsection and related provisions, the clerk of the
56 circuit court shall, on or before the tenth day of the month
57 following the month in which the costs imposed in this
58 section were collected, remit an amount equal to the
59 amount from each of the criminal proceedings in which the
60 costs specified in this subsection were collected to the

61 clerk of the municipal court or other person designated to
62 receive fines and costs for the municipality from which the
63 conviction was appealed who shall deposit these moneys
64 in the general revenue fund of the municipality. The
65 provisions of this subsection shall not require payment of
66 the costs imposed by this subsection to the circuit court
67 where the costs have been paid to the clerk of the munici-
68 pal court or other person designated to receive fines and
69 costs for the municipality.

70 (d) The provisions of this section shall be effective after
71 the thirtieth day of June, two thousand four.

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

Carly Fiorino
.....
Chairman Senate Committee

Sharon Spencer
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Darrell Holmes
.....
Clerk of the Senate

Bugay D. Bond
.....
Clerk of the House of Delegates

Carl Ray Tompkins
.....
President of the Senate

Robert Skiss
.....
Speaker House of Delegates

The within *is approved* this the *16th*
Day of *January*, 2004.

Bob Wise
.....
Governor

PRESENTED TO THE
GOVERNOR

Date 2/13/04

Time 9:30am