

SB 535

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**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2008**

SECRETARY OF STATE

**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 535**

(SENATORS FOSTER, JENKINS, KESSLER,  
GREEN, HUNTER, WELLS, HALL,  
McKENZIE AND WHITE, *original sponsors*)

[Passed March 8, 2008; in effect ninety days from passage.]

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AN ACT to amend and reenact §17B-4-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §17C-5-2 and §17C-5-7 of said code; and to amend and reenact

§17C-5A-1, §17C-5A-2, §17C-5A-3 and §17C-5A-3a of said code, all relating to modifications to administrative and criminal penalties for driving a motor vehicle under the influence of alcohol and/or drugs; reducing the criminal and administrative sanctions for driving a vehicle with a lawfully suspended or revoked license; providing for concurrent sentences for driving a vehicle with a lawfully suspended or revoked license; removing the mandatory 24-hour incarceration for first offense driving under the influence; creating an aggravated offense of driving with a blood alcohol concentration of fifteen hundredths of one percent or more, by weight; permitting participation in the Motor Vehicle Alcohol Test and Lock Program for first offense driving under the influence; process for rejecting or modifying hearing examiner's proposed findings; law-enforcement officers excused from hearings unless presence is requested by party whose license is at issue; adoption of law-enforcement affidavit if officer does not attend hearing; mandating participation in the Motor Vehicle Alcohol Test and Lock Program for first offense driving under the influence; providing enhanced administrative sanctions for persons operating a motor vehicle with a blood alcohol concentration of fifteen hundredths of one percent or more, by weight; making certain technical changes to administrative procedures; transferring primary authority of the Safety and Treatment Program to the Department of Health and Human Resources; providing for removal of the Driver's Rehabilitation Fund from the jurisdiction of the Division of Motor Vehicles and placing it under the jurisdiction of the Secretary of the Department of Health and Human Resources; requiring Department of Health and Human Resources to propose legislative rules; providing that a person whose driver's license is revoked for refusing to take a secondary chemical test is not eligible to reduce the

revocation period by completing the Safety and Treatment Program; removing requirement that victim impact panels be implemented pursuant to legislative rules; requiring the Commissioner of the Division of Motor Vehicles to propose legislative rules; reducing the minimum period of revocation for participation in the test and lock program; increasing minimum periods of participation in the ignition interlock device for aggravating offenses; and denying participation in the Motor Vehicle Alcohol Test and Lock Program for person whose driver's license is revoked for driving under the influence of drugs.

*Be it enacted by the Legislature of West Virginia:*

That §17B-4-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17C-5-2 and §17C-5-7 of said code be amended and reenacted; and that §17C-5A-1, §17C-5A-2, §17C-5A-3 and §17C-5A-3a of said code be amended and reenacted, all to read as follows:

**CHAPTER 17B. MOTOR VEHICLE  
DRIVER'S LICENSES.**

**ARTICLE 4. VIOLATION 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
- 2 (d) of this section, any person who drives a motor

3 vehicle on any public highway of this state at a time  
4 when his or her privilege to do so has been lawfully  
5 suspended or revoked by this state or any other  
6 jurisdiction is, for the first offense, guilty of a  
7 misdemeanor and, upon conviction thereof, shall be  
8 fined not less than one hundred dollars nor more than  
9 five hundred dollars; for the second offense, the person  
10 is guilty of a misdemeanor and, upon conviction  
11 thereof, shall be fined not less than one hundred dollars  
12 nor more than five hundred dollars; for the third or any  
13 subsequent offense, the person is guilty of a  
14 misdemeanor and, upon conviction thereof, shall be  
15 confined in jail for a period of not less than thirty days  
16 nor more than ninety days and shall be fined not less  
17 than one hundred fifty dollars nor more than five  
18 hundred dollars.

19 (b) Any person who drives a motor vehicle on any  
20 public highway of this state at a time when his or her  
21 privilege to do so has been lawfully revoked for driving  
22 under the influence of alcohol, controlled substances or  
23 other drugs, or any combination thereof, or for driving  
24 while having an alcoholic concentration in his or her  
25 blood of eight hundredths of one percent or more, by  
26 weight, or for refusing to take a secondary chemical test  
27 of blood alcohol content, is, for the first offense, guilty  
28 of a misdemeanor and, upon conviction thereof, shall be  
29 confined in jail for a period of not less than thirty days  
30 nor more than six months and shall be fined not less  
31 than one hundred dollars nor more than five hundred  
32 dollars; for the second offense, the person is guilty of a  
33 misdemeanor and, upon conviction thereof, shall be  
34 confined in jail for a period of not less than six months  
35 nor more than one year and shall be fined not less than  
36 one thousand dollars nor more than three thousand

37 dollars; for the third or any subsequent offense, the  
38 person is guilty of a felony and, upon conviction  
39 thereof, shall be imprisoned in a state correctional  
40 facility for not less than one year nor more than three  
41 years and, in addition to the mandatory prison  
42 sentence, shall be fined not less than three thousand  
43 dollars nor more than five thousand dollars.

44 (c) Upon receiving a record of the first or subsequent  
45 conviction of any person under subsection (b) of this  
46 section upon a charge of driving a vehicle while the  
47 license of that person was lawfully suspended or  
48 revoked, the division shall extend the period of the  
49 suspension or revocation for an additional period of six  
50 months which may be served concurrently with any  
51 other suspension or revocation. Upon receiving a  
52 record of the second or subsequent conviction of any  
53 person under subsection (a) of this section upon a  
54 charge of driving a vehicle while the license of that  
55 person was lawfully suspended or revoked, the division  
56 shall extend the period of the suspension or revocation  
57 for an additional period of ninety days which may be  
58 served concurrently with any other suspension or  
59 revocation. (d) Any person who drives a motor  
60 vehicle on any public highway of this state at a time  
61 when his or her privilege to do so has been lawfully  
62 suspended for driving while under the age of  
63 twenty-one years with an alcohol concentration in his  
64 or her blood of two hundredths of one percent or more,  
65 by weight, but less than eight hundredths of one  
66 percent, by weight, is guilty of a misdemeanor and,  
67 upon conviction thereof, shall be confined in jail for  
68 twenty-four hours or shall be fined not less than fifty  
69 dollars nor more than five hundred dollars, or both.

70       Upon receiving a record of a first or subsequent  
71 conviction under this subsection for a charge of driving  
72 a vehicle while the license of that person was lawfully  
73 suspended or revoked, the division shall extend the  
74 period of the suspension or revocation for an additional  
75 period of six months which may be served concurrently  
76 with any other suspension or revocation.

77       (e) An order for home detention by the court pursuant  
78 to the provisions of article eleven-b, chapter sixty-two  
79 of this code may be used as an alternative sentence to  
80 any period 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  
substances 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;
- 4       (B) Is under the influence of any controlled substance;
- 5       (C) Is under the influence of any other drug;
- 6       (D) Is under the combined influence of alcohol and  
7 any 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;

10 and

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

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

24 (b) Any person who:

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

26 (A) Is under the influence of alcohol;

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

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

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

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

34 (2) While driving does any act forbidden by law or



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

43 (c) Any person who:

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

45 (A) Is under the influence of alcohol;

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

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

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

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

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

62 dollars nor more than one thousand dollars.

63 (d) Any person who:

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

65 (A) Is under the influence of alcohol;

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

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

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

70 (E) Has an alcohol concentration in his or her blood of  
71 eight hundredths of one percent or more, by weight, but  
72 less than fifteen hundredths of one percent, by weight;

73 (2) Is guilty of a misdemeanor and, upon conviction  
74 thereof, shall be confined in jail for up to six months  
75 and shall be fined not less than one hundred dollars nor  
76 more than five hundred dollars. A person sentenced  
77 pursuant to this subdivision shall receive credit for any  
78 period of actual confinement he or she served upon  
79 arrest for the subject offense.

80 (e) Any person who drives a vehicle in this state while  
81 he or she has an alcohol concentration in his or her  
82 blood of fifteen hundredths of one percent or more, by  
83 weight, is guilty of a misdemeanor and, upon conviction  
84 thereof, shall be confined in jail for not less than two  
85 days nor more than six months, which jail term is to  
86 include actual confinement of not less than twenty-four  
87 hours, and shall be fined not less than two hundred

88 dollars nor more than one thousand dollars. A person  
89 sentenced pursuant to this subdivision shall receive  
90 credit for any period of actual confinement he or she  
91 served upon arrest for the subject offense.

92 (f) Any person who, being an habitual user of narcotic  
93 drugs or amphetamine or any derivative thereof, drives  
94 a vehicle in this state is guilty of a misdemeanor and,  
95 upon conviction thereof, shall be confined in jail for not  
96 less than one day nor more than six months, which jail  
97 term is to include actual confinement of not less than  
98 twenty-four hours, and shall be fined not less than one  
99 hundred dollars nor more than five hundred dollars. A  
100 person sentenced pursuant to this subdivision shall  
101 receive credit for any period of actual confinement he  
102 or she served upon arrest for the subject offense.

103 (g) Any person who:

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

106 (A) Is under the influence of alcohol;

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

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

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

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

113 (2) Is guilty of a misdemeanor and, upon conviction

114 thereof, shall be confined in jail for not more than six  
115 months and shall be fined not less than one hundred  
116 dollars nor more than five hundred dollars.

117 (h) Any person who knowingly permits his or her  
118 vehicle to be driven in this state by any other person  
119 who is an habitual user of narcotic drugs or  
120 amphetamine or any derivative thereof is guilty of a  
121 misdemeanor and, upon conviction thereof, shall be  
122 confined in jail for not more than six months and shall  
123 be fined not less than one hundred dollars nor more  
124 than five hundred dollars.

125 (i) Any person under the age of twenty-one years who  
126 drives a vehicle in this state while he or she has an  
127 alcohol concentration in his or her blood of two  
128 hundredths of one percent or more, by weight, but less  
129 than eight hundredths of one percent, by weight, for a  
130 first offense under this subsection is guilty of a  
131 misdemeanor and, upon conviction thereof, shall be  
132 fined not less than twenty-five dollars nor more than  
133 one hundred dollars. For a second or subsequent  
134 offense under this subsection, the person is guilty of a  
135 misdemeanor and, upon conviction thereof, shall be  
136 confined in jail for twenty-four hours and shall be fined  
137 not less than one hundred dollars nor more than five  
138 hundred dollars. A person who is charged with a first  
139 offense under the provisions of this subsection may  
140 move for a continuance of the proceedings, from time to  
141 time, to allow the person to participate in the Motor  
142 Vehicle Alcohol Test and Lock Program as provided in  
143 section three-a, article five-a of this chapter. Upon  
144 successful completion of the program, the court shall  
145 dismiss the charge against the person and expunge the  
146 person's record as it relates to the alleged offense. In

147 the event the person fails to successfully complete the  
148 program, the court shall proceed to an adjudication of  
149 the alleged offense. A motion for a continuance under  
150 this subsection may not be construed as an admission or  
151 be used as evidence.

152 A person arrested and charged with an offense under  
153 the provisions of this subsection or subsection (a), (b),  
154 (c), (d), (e), (f), (g) or (h) of this section may not also be  
155 charged with an offense under this subsection arising  
156 out of the same transaction or occurrence.

157 (j) Any person who:

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

159 (A) Is under the influence of alcohol;

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

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

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

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

167 (2) The person while driving has on or within the  
168 motor vehicle one or more other persons who are  
169 unemancipated minors who have not reached their  
170 sixteenth birthday is guilty of a misdemeanor and, upon  
171 conviction thereof, shall be confined in jail for not less  
172 than two days nor more than twelve months, which jail

173 term is to include actual confinement of not less than  
174 forty-eight hours and shall be fined not less than two  
175 hundred dollars nor more than one thousand dollars.

176 (k) A person violating any provision of subsection (b),  
177 (c), (d), (e), (f), (g) or (i) of this section, for the second  
178 offense under this section, is guilty of a misdemeanor  
179 and, upon conviction thereof, shall be confined in jail  
180 for not less than six months nor more than one year and  
181 the court may, in its discretion, impose a fine of not less  
182 than one thousand dollars nor more than three  
183 thousand dollars.

184 (l) A person violating any provision of subsection (b),  
185 (c), (d), (e), (f), (g) or (i) of this section, for the third or  
186 any subsequent offense under this section, is guilty of a  
187 felony and, upon conviction thereof, shall be  
188 imprisoned in a state correctional facility for not less  
189 than one nor more than three years and the court may,  
190 in its discretion, impose a fine of not less than three  
191 thousand dollars nor more than five thousand dollars.

192 (m) For purposes of subsections (k) and (l) of this  
193 section relating to second, third and subsequent  
194 offenses, the following types of convictions are to be  
195 regarded as convictions under this section:

196 (1) Any conviction under the provisions of subsection  
197 (a), (b), (c), (d), (e), (f) or (g) of this section or under a  
198 prior enactment of this section for an offense which  
199 occurred within the ten-year period immediately  
200 preceding the date of arrest in the current proceeding;

201 (2) Any conviction under a municipal ordinance of  
202 this state or any other state or a statute of the United

203 States or of any other state of an offense which has the  
204 same elements as an offense described in subsection (a),  
205 (b), (c), (d), (e), (f), (g) or (h) of this section, which  
206 offense occurred within the ten-year period  
207 immediately preceding the date of arrest in the current  
208 proceeding.

209 (n) A person may be charged in a warrant or  
210 indictment or information for a second or subsequent  
211 offense under this section if the person has been  
212 previously arrested for or charged with a violation of  
213 this section which is alleged to have occurred within the  
214 applicable time period for prior offenses,  
215 notwithstanding the fact that there has not been a final  
216 adjudication of the charges for the alleged previous  
217 offense. In that case, the warrant or indictment or  
218 information must set forth the date, location and  
219 particulars of the previous offense or offenses. No  
220 person may be convicted of a second or subsequent  
221 offense under this section unless the conviction for the  
222 previous offense has become final.

223 (o) The fact that any person charged with a violation  
224 of subsection (a), (b), (c), (d), (e) or (f) of this section, or  
225 any person permitted to drive as described under  
226 subsection (g) or (h) of this section, is or has been  
227 legally entitled to use alcohol, a controlled substance or  
228 a drug does not constitute a defense against any charge  
229 of violating subsection (a), (b), (c), (d), (e), (f), (g) or (h)  
230 of this section.

231 (p) For purposes of this section, the term "controlled  
232 substance" has the meaning ascribed to it in chapter  
233 sixty-a of this code.

234 (q) The sentences provided in this section upon  
235 conviction for a violation of this article are mandatory  
236 and are not subject to suspension or probation:  
237 *Provided*, That the court may apply the provisions of  
238 article eleven-a, chapter sixty-two of this code to a  
239 person sentenced or committed to a term of one year or  
240 less for a first offense under this section. An order for  
241 home detention by the court pursuant to the provisions  
242 of article eleven-b of said chapter may be used as an  
243 alternative sentence to any period of incarceration  
244 required by this section for a first or subsequent  
245 offense: *Provided, however*, That for any period of  
246 home incarceration ordered for a person convicted of  
247 second offense under this section, electronic monitoring  
248 shall be required for no fewer than five days of the total  
249 period of home confinement ordered and the offender  
250 may not leave home for those five days notwithstanding  
251 the provisions of section five, article eleven-b, chapter  
252 sixty-two of this code: *Provided further*, That for any  
253 period of home incarceration ordered for a person  
254 convicted of a third or subsequent violation of this  
255 section, electronic monitoring shall be included for no  
256 fewer than ten days of the total period of home  
257 confinement ordered and the offender may not leave  
258 home for those ten days notwithstanding section five,  
259 article eleven-b, chapter sixty-two of this code.

**§17C-5-7. Refusal to submit to tests; revocation of license or  
privilege; consent not withdrawn if person  
arrested is incapable of refusal; hearing.**

1 (a) If any person under arrest as specified in section  
2 four of this article refuses to submit to any secondary  
3 chemical test, the tests shall not be given: *Provided*,  
4 That prior to the refusal, the person is given an oral



5 warning and a written statement advising him or her  
6 that his or her refusal to submit to the secondary test  
7 finally designated will result in the revocation of his or  
8 her license to operate a motor vehicle in this state for a  
9 period of at least forty-five days and up to life; and that  
10 after fifteen minutes following the warnings the refusal  
11 is considered final. The arresting officer after that  
12 period of time expires has no further duty to provide  
13 the person with an opportunity to take the secondary  
14 test. The officer shall, within forty-eight hours of the  
15 refusal, sign and submit to the Commissioner of Motor  
16 Vehicles a written statement of the officer that: (1) He  
17 or she had reasonable grounds to believe the person had  
18 been driving a motor vehicle in this state while under  
19 the influence of alcohol, controlled substances or drugs;  
20 (2) the person was lawfully placed under arrest for an  
21 offense relating to driving a motor vehicle in this state  
22 while under the influence of alcohol, controlled  
23 substances or drugs; (3) the person refused to submit to  
24 the secondary chemical test finally designated in the  
25 manner provided in section four of this article; and (4)  
26 the person was given a written statement advising him  
27 or her that his or her license to operate a motor vehicle  
28 in this state would be revoked for a period of at least  
29 forty-five days and up to life if he or she refused to  
30 submit to the secondary test finally designated in the  
31 manner provided in section four of this article. The  
32 signing of the statement required to be signed by this  
33 section constitutes an oath or affirmation by the person  
34 signing the statement that the statements contained in  
35 the statement are true and that any copy filed is a true  
36 copy. The statement shall contain upon its face a  
37 warning to the officer signing that to willfully sign a  
38 statement containing false information concerning any  
39 matter or thing, material or not material, is false

40 swearing and is a misdemeanor. Upon receiving the  
41 statement the commissioner shall make and enter an  
42 order revoking the person's license to operate a motor  
43 vehicle in this state for the period prescribed by this  
44 section.

45 For the first refusal to submit to the designated  
46 secondary chemical test, the commissioner shall make  
47 and enter an order revoking the person's license to  
48 operate a motor vehicle in this state for a period of one  
49 year or forty-five days, with an additional one year of  
50 participation in the Motor Vehicle Alcohol Test and  
51 Lock Program in accordance with the provisions of  
52 section three-a, article five-a of this chapter: *Provided,*  
53 That a person revoked for driving while under the  
54 influence of drugs is not eligible to participate in the  
55 Motor Vehicle Test and Lock Program. The application  
56 for participation in the Motor Vehicle Alcohol Test and  
57 Lock Program shall be considered to be a waiver of the  
58 hearing provided in section two of said article. If the  
59 commissioner has previously revoked the person's  
60 license under the provisions of this section, the  
61 commissioner shall, for the refusal to submit to the  
62 designated secondary chemical test, make and enter an  
63 order revoking the person's license to operate a motor  
64 vehicle in this state for a period of ten years: *Provided,*  
65 That the license may be reissued in five years in  
66 accordance with the provisions of section three, article  
67 five-a of this chapter. If the commissioner has  
68 previously revoked the person's license more than once  
69 under the provisions of this section, the commissioner  
70 shall, for the refusal to submit to the designated  
71 secondary chemical test, make and enter an order  
72 revoking the person's license to operate a motor vehicle  
73 in this state for a period of life. A copy of each order

74 shall be forwarded to the person by registered or  
75 certified mail, return receipt requested, and shall  
76 contain the reasons for the revocation and shall specify  
77 the revocation period imposed pursuant to this section.  
78 A revocation shall not become effective until ten days  
79 after receipt of the copy of the order. Any person who  
80 is unconscious or who is otherwise in a condition  
81 rendering him or her incapable of refusal shall be  
82 considered not to have withdrawn his or her consent for  
83 a test of his or her blood, breath or urine as provided in  
84 section four of this article and the test may be  
85 administered although the person is not informed that  
86 his or her failure to submit to the test will result in the  
87 revocation of his or her license to operate a motor  
88 vehicle in this state for the period provided for in this  
89 section.

90 A revocation under this section shall run concurrently  
91 with the period of any suspension or revocation  
92 imposed in accordance with other provisions of this  
93 code and growing out of the same incident which gave  
94 rise to the arrest for driving a motor vehicle while  
95 under the influence of alcohol, controlled substances or  
96 drugs and the subsequent refusal to undergo the test  
97 finally designated in accordance with the provisions of  
98 section four of this article.

99 (b) For the purposes of this section, where reference is  
100 made to previous suspensions or revocations under this  
101 section, the following types of suspensions or  
102 revocations shall also be regarded as suspensions or  
103 revocations under this section:

104 (1) Any suspension or revocation on the basis of a  
105 conviction under a municipal ordinance of another

106 state or a statute of the United States or of any other  
107 state of an offense which has the same elements as an  
108 offense described in section two of this article for  
109 conduct which occurred on or after the tenth day of  
110 June, one thousand nine hundred eighty-three; and

111 (2) Any revocation under the provisions of section one  
112 or two, article five-a of this chapter for conduct which  
113 occurred on or after the tenth day of June, one  
114 thousand nine hundred eighty-three.

115 (c) A person whose license to operate a motor vehicle  
116 in this state has been revoked shall be afforded an  
117 opportunity to be heard, in accordance with the  
118 provisions of section two, article five-a of this chapter.

**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 drugs  
or refusal to submit to secondary  
chemical test.**

1 (a) Any person who is licensed to operate a motor  
2 vehicle in this state and who drives a motor vehicle in  
3 this state shall be deemed to have given his or her  
4 consent by the operation thereof, subject to the  
5 provisions of this article, to the procedure set forth in  
6 this article for the determination of whether his or her  
7 license to operate a motor vehicle in this state should be  
8 revoked because he or she did drive a motor vehicle  
9 while under the influence of alcohol, controlled  
10 substances or drugs, or combined influence of alcohol

11 or controlled substances or drugs, or did drive a motor  
12 vehicle while having an alcohol concentration in his or  
13 her blood of eight hundredths of one percent or more,  
14 by weight, or did refuse to submit to any secondary  
15 chemical test required under the provisions of article  
16 five of this chapter or did drive a motor vehicle while  
17 under the age of twenty-one years with an alcohol  
18 concentration in his or her blood of two hundredths of  
19 one percent or more, by weight, but less than eight  
20 hundredths of one percent, by weight.

21 (b) Any law-enforcement officer investigating a  
22 person for an offense described in section two, article  
23 five of this chapter or for an offense described in a  
24 municipal ordinance which has the same elements as an  
25 offense described in said section shall report to the  
26 Commissioner of the Division of Motor Vehicles by  
27 written statement within forty-eight hours of the  
28 conclusion of the investigation the name and address of  
29 the person believed to have committed the offense. The  
30 report shall include the specific offense with which the  
31 person is charged and, if applicable, a copy of the  
32 results of any secondary tests of blood, breath or urine.  
33 The signing of the statement required to be signed by  
34 this subsection constitutes an oath or affirmation by the  
35 person signing the statement that the statements  
36 contained in the statement are true and that any copy  
37 filed is a true copy. The statement shall contain upon  
38 its face a warning to the officer signing that to willfully  
39 sign a statement containing false information  
40 concerning any matter or thing, material or not  
41 material, is false swearing and is a misdemeanor.

42 (c) If, upon examination of the written statement of  
43 the officer and the tests results described in subsection

44 (b) of this section, the commissioner determines that a  
45 person committed an offense described in section two,  
46 article five of this chapter or an offense described in a  
47 municipal ordinance which has the same elements as an  
48 offense described in said section and that the results of  
49 any secondary test or tests indicate that at the time the  
50 test or tests were administered the person had, in his or  
51 her blood, an alcohol concentration of eight hundredths  
52 of one percent or more, by weight, or at the time the  
53 person committed the offense he or she was under the  
54 influence of alcohol, controlled substances or drugs, the  
55 commissioner shall make and enter an order revoking  
56 or suspending the person's license to operate a motor  
57 vehicle in this state. If the results of the tests indicate  
58 that at the time the test or tests were administered the  
59 person was under the age of twenty-one years and had  
60 an alcohol concentration in his or her blood of two  
61 hundredths of one percent or more, by weight, but less  
62 than eight hundredths of one percent, by weight, the  
63 commissioner shall make and enter an order suspending  
64 the person's license to operate a motor vehicle in this  
65 state. A copy of the order shall be forwarded to the  
66 person by registered or certified mail, return receipt  
67 requested, and shall contain the reasons for the  
68 revocation or suspension and describe the applicable  
69 revocation or suspension periods provided in section  
70 two of this article. A revocation or suspension shall not  
71 become effective until ten days after receipt of a copy of  
72 the order.

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

78 hundredths of one percent or more, by weight, or that  
79 the act of the child in driving the motor vehicle was  
80 such that it would provide grounds for arrest for an  
81 offense defined under the provisions of section two of  
82 said article if the child were an adult, shall report to the  
83 Commissioner of the Division of Motor Vehicles by  
84 written statement within forty-eight hours the name  
85 and address of the child.

86 (e) If applicable, the report shall include a description  
87 of the specific offense with which the child could have  
88 been charged if the child were an adult and a copy of  
89 the results of any secondary tests of blood, breath or  
90 urine. The signing of the statement required to be  
91 signed by this subsection constitutes an oath or  
92 affirmation by the person signing the statement that the  
93 statements contained in the statement are true and that  
94 any copy filed is a true copy. The statement shall  
95 contain upon its face a warning to the officer signing  
96 that to willfully sign a statement containing false  
97 information concerning any matter or thing, material or  
98 not material, is false swearing and is a misdemeanor.

99 (f) Upon examination of the written statement of the  
100 officer and any test results described in subsection (d)  
101 of this section, if the commissioner determines that the  
102 results of the test indicate that at the time the test or  
103 tests were administered the child had, in his or her  
104 blood, an alcohol concentration of two hundredths of  
105 one percent or more, by weight, but also determines  
106 that the act of the child in driving the motor vehicle  
107 was not such that it would provide grounds for arrest  
108 for an offense defined under the provisions of  
109 subsection (a), (b), (c), (d), (e), (f), (g) or (h), section two,  
110 article five of this chapter if the child were an adult, the

111 commissioner shall make and enter an order suspending  
112 the child's license to operate a motor vehicle in this  
113 state. If the commissioner determines that the act of  
114 the child in driving the motor vehicle was such that it  
115 would provide grounds for arrest for an offense defined  
116 under the provisions of subsection (a), (b), (c), (d), (e),  
117 (f), (g) or (h), section two, article five of this chapter if  
118 the child were an adult, the commissioner shall make  
119 and enter an order revoking the child's license to  
120 operate a motor vehicle in this state. A copy of the  
121 order shall be forwarded to the child by registered or  
122 certified mail, return receipt requested, and shall  
123 contain the reasons for the suspension or revocation  
124 and describe the applicable suspension or revocation  
125 periods provided for in section two of this article. A  
126 suspension or revocation shall not become effective  
127 until ten days after receipt of a copy of the order.

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

1 (a) Upon the written request of a person whose license  
2 to operate a motor vehicle in this state has been revoked  
3 or 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  
6 stay the imposition of the period of revocation or  
7 suspension and afford the person an opportunity to be  
8 heard. The written request must be filed with the  
9 commissioner in person or by registered or certified  
10 mail, return receipt requested, within thirty calendar  
11 days after receipt of a copy of the order of revocation or  
12 suspension or no hearing will be granted. The hearing  
13 shall be before the commissioner or a hearing examiner  
14 retained by the commissioner who shall rule on  
15 evidentiary issues and submit proposed findings of fact



16 and conclusions of law for the consideration of the  
17 commissioner and all of the pertinent provisions of  
18 article five, chapter twenty-nine-a of this code shall  
19 apply. The commissioner may reject or modify the  
20 hearing examiner's proposed findings of fact and  
21 conclusions of law, in writing, and only if:

22 (1) There is an error of law;

23 (2) They are clearly wrong in view of the reliable,  
24 probative and substantial evidence on the whole record;  
25 or

26 (3) They are arbitrary or capricious or characterized  
27 by abuse of discretion or clearly unwarranted exercise  
28 of discretion.

29 (b) The hearing shall be held at an office of the  
30 division located in or near the county in which the  
31 arrest was made in this state or at some other suitable  
32 place in the county in which the arrest was made if an  
33 office of the division is not available.

34 (c) Any hearing shall be held within one hundred  
35 eighty days after the date upon which the commissioner  
36 received the timely written request for a hearing unless  
37 there is a postponement or continuance. The  
38 commissioner may postpone or continue any hearing on  
39 the commissioner's own motion or upon application for  
40 each person for good cause shown. The commissioner  
41 shall adopt and implement by a procedural rule written  
42 policies governing the postponement or continuance of  
43 any hearing on the commissioner's own motion or for  
44 the benefit of any law-enforcement officer or any  
45 person requesting the hearing and the policies shall be

46 enforced and applied to all parties equally. For the  
47 purpose of conducting the hearing, the commissioner  
48 may issue subpoenas and subpoenas duces tecum in  
49 accordance with the provisions of section one, article  
50 five, chapter twenty-nine-a of this code: *Provided*, That  
51 the notice of hearing to the appropriate law-  
52 enforcement officers by registered or certified mail,  
53 return receipt requested, constitutes a subpoena to  
54 appear at the hearing without the necessity of payment  
55 of fees by the Division of Motor Vehicles.

56 (d) Any investigating officer who submits a statement  
57 pursuant to section one of this article that results in a  
58 hearing pursuant to this section shall not attend the  
59 hearing on the subject of that affidavit unless requested  
60 to do so by the party whose license is at issue in that  
61 hearing or by the commissioner. The hearing request  
62 form shall clearly and concisely inform a person seeking  
63 a hearing of the fact that the investigating officer will  
64 only attend the hearing if requested to do so and  
65 provide for a box to be checked requesting the  
66 investigating officer's attendance. The language shall  
67 appear prominently on the hearing request form. The  
68 Division of Motor Vehicles is solely responsible for  
69 causing the attendance of the investigating officers.  
70 Law-enforcement officers shall be compensated for the  
71 time expended in their travel and appearance before  
72 the commissioner by the law-enforcement agency by  
73 whom they are employed at their regular rate if they are  
74 scheduled to be on duty during said time or at their  
75 regular overtime rate if they are scheduled to be off  
76 duty during said time. If the party whose license is at  
77 issue does not request the investigating officer to attend  
78 the hearing, the commissioner shall consider the written  
79 statement, test results and any other information

80 submitted by the investigating officer pursuant to  
81 section one of this article in that officer's absence.

82 (e) The principal question at the hearing shall be  
83 whether the person did drive a motor vehicle while  
84 under the influence of alcohol, controlled substances or  
85 drugs, or did drive a motor vehicle while having an  
86 alcohol concentration in the person's blood of eight  
87 hundredths of one percent or more, by weight, or did  
88 refuse to submit to the designated secondary chemical  
89 test, or did drive a motor vehicle while under the age of  
90 twenty-one years with an alcohol concentration in his  
91 or her blood of two hundredths of one percent or more,  
92 by weight, but less than eight hundredths of one  
93 percent, by weight.

94 The commissioner may propose a legislative rule in  
95 compliance with the provisions of article three, chapter  
96 twenty-nine-a of this code which may provide that if a  
97 person accused of driving a motor vehicle while under  
98 the influence of alcohol, controlled substances or drugs,  
99 or accused of driving a motor vehicle while having an  
100 alcohol concentration in the person's blood of eight  
101 hundredths of one percent or more, by weight, or  
102 accused of driving a motor vehicle while under the age  
103 of twenty-one years with an alcohol concentration in  
104 his or her blood of two hundredths of one percent or  
105 more, by weight, but less than eight hundredths of one  
106 percent, by weight, intends to challenge the results of  
107 any secondary chemical test of blood, breath or urine  
108 under section seven, article five of this chapter or  
109 intends to cross-examine the individual or individuals  
110 who administered the test or performed the chemical  
111 analysis, the person shall, within an appropriate period  
112 of time prior to the hearing, notify the commissioner in

113 writing of his or her intention. The rule may provide  
114 that when there is a failure to comply with the notice  
115 requirement, the results of the secondary test, if any,  
116 shall be admissible as though the person and the  
117 commissioner had stipulated the admissibility of the  
118 evidence. Any rule shall provide that the rule shall not  
119 be invoked in the case of a person who is not  
120 represented by counsel unless the communication from  
121 the commissioner to the person establishing a time and  
122 place for the hearing also informed the person of the  
123 consequences of the person's failure to timely notify the  
124 commissioner of the person's intention to challenge the  
125 results of the secondary chemical test or cross-examine  
126 the individual or individuals who administered the test  
127 or performed the chemical analysis.

128 (f) In the case of a hearing in which a person is  
129 accused of driving a motor vehicle while under the  
130 influence of alcohol, controlled substances or drugs, or  
131 accused of driving a motor vehicle while having an  
132 alcohol concentration in the person's blood of eight  
133 hundredths of one percent or more, by weight, or  
134 accused of driving a motor vehicle while under the age  
135 of twenty-one years with an alcohol concentration in  
136 his or her blood of two hundredths of one percent or  
137 more, by weight, but less than eight hundredths of one  
138 percent, by weight, the commissioner shall make  
139 specific findings as to: (1) Whether the investigating  
140 law-enforcement officer had reasonable grounds to  
141 believe the person to have been driving while under the  
142 influence of alcohol, controlled substances or drugs, or  
143 while having an alcohol concentration in the person's  
144 blood of eight hundredths of one percent or more, by  
145 weight, or to have been driving a motor vehicle while  
146 under the age of twenty-one years with an alcohol

147 concentration in his or her blood of two hundredths of  
148 one percent or more, by weight, but less than eight  
149 hundredths of one percent, by weight; (2) whether the  
150 person committed an offense involving driving under  
151 the influence of alcohol, controlled substances or drugs,  
152 or was lawfully taken into custody for the purpose of  
153 administering a secondary test; and (3) whether the  
154 tests, if any, were administered in accordance with the  
155 provisions of this article and article five of this chapter.

156 (g) If, in addition to a finding that the person did  
157 drive a motor vehicle while under the influence of  
158 alcohol, controlled substances or drugs, or did drive a  
159 motor vehicle while having an alcohol concentration in  
160 the person's blood of eight hundredths of one percent or  
161 more, by weight, or did drive a motor vehicle while  
162 under the age of twenty-one years with an alcohol  
163 concentration in his or her blood of two hundredths of  
164 one percent or more, by weight, but less than eight  
165 hundredths of one percent, by weight, the commissioner  
166 also finds by a preponderance of the evidence that the  
167 person when driving did an act forbidden by law or  
168 failed to perform a duty imposed by law, which act or  
169 failure proximately caused the death of a person and  
170 was committed in reckless disregard of the safety of  
171 others and if the commissioner further finds that the  
172 influence of alcohol, controlled substances or drugs or  
173 the alcohol concentration in the blood was a  
174 contributing cause to the death, the commissioner shall  
175 revoke the person's license for a period of ten years:  
176 *Provided*, That if the commissioner has previously  
177 suspended or revoked the person's license under the  
178 provisions of this section or section one of this article  
179 within the ten years immediately preceding the date of  
180 arrest, the period of revocation shall be for the life of

181 the person.

182 (h) If, in addition to a finding that the person did  
183 drive a motor vehicle while under the influence of  
184 alcohol, controlled substances or drugs, or did drive a  
185 motor vehicle while having an alcohol concentration in  
186 the person's blood of eight hundredths of one percent or  
187 more, by weight, the commissioner also finds by a  
188 preponderance of the evidence that the person when  
189 driving did an act forbidden by law or failed to perform  
190 a duty imposed by law, which act or failure proximately  
191 caused the death of a person, the commissioner shall  
192 revoke the person's license for a period of five years:  
193 *Provided*, That if the commissioner has previously  
194 suspended or revoked the person's license under the  
195 provisions of this section or section one of this article  
196 within the ten years immediately preceding the date of  
197 arrest, the period of revocation shall be for the life of  
198 the person.

199 (i) If, in addition to a finding that the person did drive  
200 a motor vehicle while under the influence of alcohol,  
201 controlled substances or drugs, or did drive a motor  
202 vehicle while having an alcohol concentration in the  
203 person's blood of eight hundredths of one percent or  
204 more, by weight, the commissioner also finds by a  
205 preponderance of the evidence that the person when  
206 driving did an act forbidden by law or failed to perform  
207 a duty imposed by law, which act or failure proximately  
208 caused bodily injury to a person other than himself or  
209 herself, the commissioner shall revoke the person's  
210 license for a period of two years: *Provided*, That if the  
211 commissioner has previously suspended or revoked the  
212 person's license under the provisions of this section or  
213 section one of this article within the ten years

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

222 (j) If the commissioner finds by a preponderance of  
223 the evidence that the person did drive a motor vehicle  
224 while under the influence of alcohol, controlled  
225 substances or drugs, or did drive a motor vehicle while  
226 having an alcohol concentration in the person's blood  
227 of eight hundredths of one percent or more, by weight,  
228 but less than fifteen hundredths of one percent or more,  
229 by weight, or finds that the person knowingly permitted  
230 the person's vehicle to be driven by another person who  
231 was under the influence of alcohol, controlled  
232 substances or drugs, or knowingly permitted the  
233 person's vehicle to be driven by another person who  
234 had an alcohol concentration in his or her blood of  
235 eight hundredths of one percent or more, by weight, the  
236 commissioner shall revoke the person's license for a  
237 period of six months or a period of fifteen days with an  
238 additional one hundred and twenty days of  
239 participation in the Motor Vehicle Alcohol Test and  
240 Lock Program in accordance with the provisions of  
241 section three-a of this article: *Provided,* That a person  
242 whose license is revoked for driving while under the  
243 influence of drugs is not eligible to participate in the  
244 Motor Vehicle Alcohol Test and Lock Program:  
245 *Provided, however,* That if the commissioner has  
246 previously suspended or revoked the person's license  
247 under the provisions of this section or section one of

248 this article within the ten years immediately preceding  
249 the date of arrest, the period of revocation shall be ten  
250 years: *Provided further*, That if the commissioner has  
251 previously suspended or revoked the person's license  
252 more than once under the provisions of this section or  
253 section one of this article within the ten years  
254 immediately preceding the date of arrest, the period of  
255 revocation shall be for the life of the person.

256 (k) (1) If in addition to finding by a preponderance of  
257 the evidence that the person did drive a motor vehicle  
258 while under the influence of alcohol, controlled  
259 substance or drugs, the commissioner also finds by a  
260 preponderance of the evidence that the person did drive  
261 a motor vehicle while having an alcohol concentration  
262 in the person's blood of fifteen hundredths of one  
263 percent or more, by weight, the commissioner shall  
264 revoke the person's license for a period of forty-five  
265 days with an additional two hundred and seventy days  
266 of participation in the Motor Vehicle Alcohol Test and  
267 Lock Program in accordance with the provisions of  
268 article three-a, article five-a, chapter seventeen-c of  
269 this code: *Provided*, That if the commissioner has  
270 previously suspended or revoked the person's license  
271 under the provisions of this section or section one of  
272 this article within the ten years immediately preceding  
273 the date of arrest, the period of revocation shall be ten  
274 years: *Provided, however*, That if the commissioner has  
275 previously suspended or revoked the person's license  
276 more than once under the provisions of this section or  
277 section one of this article within the ten years  
278 immediately preceding the date of arrest, the period of  
279 revocation shall be for the life of the person.

280 (2) If a person whose license is revoked pursuant to



281 subdivision (1) of this subsection proves by clear and  
282 convincing evidence that they do not own a motor  
283 vehicle upon which the alcohol test and lock device may  
284 be installed or is otherwise incapable of participating in  
285 the Motor Vehicle Alcohol Test and Lock Program, the  
286 period of revocation shall be one hundred eighty days:  
287 *Provided*, That if the commissioner has previously  
288 suspended or revoked the person's license under the  
289 provisions of this section or section one of this article  
290 within the ten years immediately preceding the date of  
291 arrest, the period of revocation shall be ten years:  
292 *Provided, however*, That if the commissioner has  
293 previously suspended or revoked the person's license  
294 more than once under the provisions of this section or  
295 section one of this article within the ten years  
296 immediately preceding the date of arrest, the period of  
297 revocation shall be for the life of the person.

298 (1) If, in addition to a finding that the person did drive  
299 a motor vehicle while under the age of twenty-one years  
300 with an alcohol concentration in his or her blood of two  
301 hundredths of one percent or more, by weight, but less  
302 than eight hundredths of one percent, by weight, the  
303 commissioner also finds by a preponderance of the  
304 evidence that the person when driving did an act  
305 forbidden by law or failed to perform a duty imposed  
306 by law, which act or failure proximately caused the  
307 death of a person, and if the commissioner further finds  
308 that the alcohol concentration in the blood was a  
309 contributing cause to the death, the commissioner shall  
310 revoke the person's license for a period of five years:  
311 *Provided*, That if the commissioner has previously  
312 suspended or revoked the person's license under the  
313 provisions of this section or section one of this article  
314 within the ten years immediately preceding the date of

315 arrest, the period of revocation shall be for the life of  
316 the person.

317 (m) If, in addition to a finding that the person did  
318 drive a motor vehicle while under the age of twenty-one  
319 years with an alcohol concentration in his or her blood  
320 of two hundredths of one percent or more, by weight,  
321 but less than eight hundredths of one percent, by  
322 weight, the commissioner also finds by a preponderance  
323 of the evidence that the person when driving did an act  
324 forbidden by law or failed to perform a duty imposed  
325 by law, which act or failure proximately caused bodily  
326 injury to a person other than himself or herself, and if  
327 the commissioner further finds that the alcohol  
328 concentration in the blood was a contributing cause to  
329 the bodily injury, the commissioner shall revoke the  
330 person's license for a period of two years: *Provided*,  
331 That if the commissioner has previously suspended or  
332 revoked the person's license under the provisions of this  
333 section or section one of this article within the ten years  
334 immediately preceding the date of arrest, the period of  
335 revocation shall be ten years: *Provided, however*, That  
336 if the commissioner has previously suspended or  
337 revoked the person's license more than once under the  
338 provisions of this section or section one of this article  
339 within the ten years immediately preceding the date of  
340 arrest, the period of revocation shall be for the life of  
341 the person.

342 (n) If the commissioner finds by a preponderance of  
343 the evidence that the person did drive a motor vehicle  
344 while under the age of twenty-one years with an alcohol  
345 concentration in his or her blood of two hundredths of  
346 one percent or more, by weight, but less than eight  
347 hundredths of one percent, by weight, the commissioner

348 shall suspend the person's license for a period of sixty  
349 days: *Provided*, That if the commissioner has previously  
350 suspended or revoked the person's license under the  
351 provisions of this section or section one of this article,  
352 the period of revocation shall be for one year, or until  
353 the person's twenty-first birthday, whichever period is  
354 longer.

355 (o) If, in addition to a finding that the person did  
356 drive a motor vehicle while under the influence of  
357 alcohol, controlled substances or drugs, or did drive a  
358 motor vehicle while having an alcohol concentration in  
359 the person's blood of eight hundredths of one percent or  
360 more, by weight, the commissioner also finds by a  
361 preponderance of the evidence that the person when  
362 driving did have on or within the motor vehicle another  
363 person who has not reached his or her sixteenth  
364 birthday, the commissioner shall revoke the person's  
365 license for a period of one year: *Provided*, That if the  
366 commissioner has previously suspended or revoked the  
367 person's license under the provisions of this section or  
368 section one of this article within the ten years  
369 immediately preceding the date of arrest, the period of  
370 revocation shall be ten years: *Provided, however*, That  
371 if the commissioner has previously suspended or  
372 revoked the person's license more than once under the  
373 provisions of this section or section one of this article  
374 within the ten years immediately preceding the date of  
375 arrest, the period of revocation shall be for the life of  
376 the person.

377 (p) For purposes of this section, where reference is  
378 made to previous suspensions or revocations under this  
379 section, the following types of criminal convictions or  
380 administrative suspensions or revocations shall also be

381 regarded as suspensions or revocations under this  
382 section or section one of this article:

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

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

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

398 (q) In the case of a hearing in which a person is  
399 accused of refusing to submit to a designated secondary  
400 test, the commissioner shall make specific findings as  
401 to: (1) Whether the arresting law-enforcement officer  
402 had reasonable grounds to believe the person had been  
403 driving a motor vehicle in this state while under the  
404 influence of alcohol, controlled substances or drugs; (2)  
405 whether the person committed an offense relating to  
406 driving a motor vehicle in this state while under the  
407 influence of alcohol, controlled substances or drugs; (3)  
408 whether the person refused to submit to the secondary  
409 test finally designated in the manner provided in  
410 section four, article five of this chapter; and (4) whether  
411 the person had been given a written statement advising

412 the person that the person's license to operate a motor  
413 vehicle in this state would be revoked for at least forty-  
414 five days and up to life if the person refused to submit  
415 to the test finally designated in the manner provided in  
416 said section.

417 (r) If the commissioner finds by a preponderance of  
418 the evidence that: (1) The investigating officer had  
419 reasonable grounds to believe the person had been  
420 driving a motor vehicle in this state while under the  
421 influence of alcohol, controlled substances or drugs; (2)  
422 the person committed an offense relating to driving a  
423 motor vehicle in this state while under the influence of  
424 alcohol, controlled substances or drugs; (3) the person  
425 refused to submit to the secondary chemical test finally  
426 designated; and (4) the person had been given a written  
427 statement advising the person that the person's license  
428 to operate a motor vehicle in this state would be  
429 revoked for a period of at least forty-five days and up  
430 to life if the person refused to submit to the test finally  
431 designated, the commissioner shall revoke the person's  
432 license to operate a motor vehicle in this state for the  
433 periods specified in section seven, article five of this  
434 chapter. The revocation period prescribed in this  
435 subsection shall run concurrently with any other  
436 revocation period ordered under this section or section  
437 one of this article arising out of the same occurrence.

438 (s) If the commissioner finds to the contrary with  
439 respect to the above issues the commissioner shall  
440 rescind his or her earlier order of revocation or shall  
441 reduce the order of revocation to the appropriate period  
442 of revocation under this section or section seven, article  
443 five of this chapter. A copy of the commissioner's order  
444 made and entered following the hearing shall be served

445 upon the person by registered or certified mail, return  
446 receipt requested. During the pendency of any hearing,  
447 the revocation of the person's license to operate a motor  
448 vehicle in this state shall be stayed.

449 If the commissioner shall after hearing make and  
450 enter an order affirming the commissioner's earlier  
451 order of revocation, the person shall be entitled to  
452 judicial review as set forth in chapter twenty-nine-a of  
453 this code. The commissioner may not stay enforcement  
454 of the order. The court may grant a stay or supersede as  
455 of the order only upon motion and hearing, and a  
456 finding by the court upon the evidence presented, that  
457 there is a substantial probability that the appellant  
458 shall prevail upon the merits and the appellant will  
459 suffer irreparable harm if the order is not stayed:  
460 *Provided*, That in no event shall the stay or supersede  
461 as of the order exceed one hundred fifty days.  
462 Notwithstanding the provisions of section four, article  
463 five of said chapter, the commissioner may not be  
464 compelled to transmit a certified copy of the file or the  
465 transcript of the hearing to the circuit court in less than  
466 sixty days.

467 (t) In any revocation or suspension pursuant to this  
468 section, if the driver whose license is revoked or  
469 suspended had not reached the driver's eighteenth  
470 birthday at the time of the conduct for which the  
471 license is revoked or suspended, the driver's license  
472 shall be revoked or suspended until the driver's  
473 eighteenth birthday or the applicable statutory period  
474 of revocation or suspension prescribed by this section,  
475 whichever is longer.

476 (u) Funds for this section's hearing and appeal process

477 may be provided from the Drunk Driving Prevention  
478 Fund, as created by section forty-one, article two,  
479 chapter fifteen of this code, upon application for the  
480 funds to the Commission on Drunk Driving Prevention.  
481

**§17C-5A-3. Safety and treatment program; reissuance of  
license.**

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

21 (b) The program shall include, but not be limited to,  
22 treatment of alcoholism, alcohol and drug abuse,  
23 psychological counseling, educational courses on the  
24 dangers of alcohol and drugs as they relate to driving,  
25 defensive driving or other safety driving instruction

26 and other programs designed to properly educate, train  
27 and rehabilitate the offender.

28 (c) (1) The Department of Health and Human  
29 Resources, Division of Alcoholism and Drug Abuse,  
30 shall provide for the preparation of an educational and  
31 treatment program for each person whose license has  
32 been revoked under the provisions of this article or  
33 section seven, article five of this chapter or subsection  
34 (6), section five, article three, chapter seventeen-b of  
35 this code which shall contain the following: (A) A  
36 listing and evaluation of the offender's prior traffic  
37 record; (B) The characteristics and history of alcohol or  
38 drug use, if any; (C) His or her amenability to  
39 rehabilitation through the alcohol safety program; and  
40 (D) A recommendation as to treatment or rehabilitation  
41 and the terms and conditions of the treatment or  
42 rehabilitation. The program shall be prepared by  
43 persons knowledgeable in the diagnosis of alcohol or  
44 drug abuse and treatment.

45 (2) The Department of Health and Human Resources  
46 shall establish a fee by legislative rule proposed  
47 pursuant to article three, chapter twenty-nine-a of this  
48 code to be collected from each offender enrolled in the  
49 safety and treatment program. The program provider  
50 shall collect the established fee from each participant  
51 upon enrollment unless the department has determined  
52 that the participant is an indigent based upon criteria  
53 established pursuant to subdivision (3) of this  
54 subsection. The Department of Health and Human  
55 Resources shall reimburse enrollment fees to program  
56 providers for each eligible indigent offender.

57 (3) The Department of Health and Human Resources



58 shall establish by legislative rule, proposed pursuant to  
59 article three, chapter twenty-nine-a of this code,  
60 criteria to determine the eligibility for the payment of  
61 safety and treatment services for indigent offenders.  
62 The rule shall include, but is not limited to, the  
63 development of a criteria for determining eligibility;  
64 promulgation of application forms; establishment of  
65 procedures for the review of applications; and the  
66 establishment of a mechanism for the payment for  
67 safety and training services for eligible offenders.

68 (4) On or before the fifteenth day of January, of each  
69 year, the Secretary of the Department of Health and  
70 Human Resources shall report to the Legislature on:

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

73 (B) The total number of indigent offenders  
74 participating in the safety and treatment program  
75 during the prior year;

76 (C) The total number of program providers during the  
77 prior year; and

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

80 (5) The commissioner after giving due consideration  
81 to the program developed for the offender, shall  
82 prescribe the necessary terms and conditions for the  
83 reissuance of the license to operate a motor vehicle in  
84 this state revoked under this article or section seven,  
85 article five of this chapter or subsection (6), section five,  
86 article three, chapter seventeen-b of this code which

87 shall include successful completion of the educational,  
88 treatment or rehabilitation program, subject to the  
89 following:

90 (A) When the period of revocation is six months, the  
91 license to operate a motor vehicle in this state shall not  
92 be reissued until: (i) At least ninety days have elapsed  
93 from the date of the initial revocation, during which  
94 time the revocation was actually in effect; (ii) the  
95 offender has successfully completed the program; (iii)  
96 all costs of the program and administration have been  
97 paid; and (iv) all costs assessed as a result of a  
98 revocation hearing have been paid;

99 (B) When the period of revocation is for a period of  
100 one year or for more than a year, the license to operate  
101 a motor vehicle in this state shall not be reissued until:  
102 (i) At least one half of the time period has elapsed from  
103 the date of the initial revocation, during which time the  
104 revocation was actually in effect; (ii) The offender has  
105 successfully completed the program; (iii) All costs of the  
106 program and administration have been paid; and (iv)  
107 All costs assessed as a result of a revocation hearing  
108 have been paid. Notwithstanding any provision in this  
109 code, a person whose license is revoked for refusing to  
110 take a chemical test as required by section seven, article  
111 five of this chapter for a first offense is not eligible to  
112 reduce the revocation period by completing the safety  
113 and treatment program.

114 (C) When the period of revocation is for life, the  
115 license to operate a motor vehicle in this state shall not  
116 be reissued until: (i) At least ten years have elapsed  
117 from the date of the initial revocation, during which  
118 time the revocation was actually in effect; (ii) the

119 offender has successfully completed the program; (iii)  
120 all costs of the program and administration have been  
121 paid; and (iv) all costs assessed as a result of a  
122 revocation hearing have been paid.

123 (D) Notwithstanding any provision of this code or any  
124 rule, any mental health facilities or other public  
125 agencies or private entities conducting the safety and  
126 treatment program when certifying that a person has  
127 successfully completed a safety and treatment program  
128 shall only have to certify that the person has  
129 successfully completed the program.

130 (d) (1) The Department of Health and Human  
131 Resources, Division of Alcoholism and Drug Abuse,  
132 shall provide for the preparation of an educational  
133 program for each person whose license has been  
134 suspended for sixty days pursuant to the provisions of  
135 subsection (n), section two, article five-a of this chapter.  
136 The educational program shall consist of not less than  
137 twelve nor more than eighteen hours of actual  
138 classroom time.

139 (2) When a sixty-day period of suspension has been  
140 ordered, the license to operate a motor vehicle shall not  
141 be reinstated until: (A) At least sixty days have elapsed  
142 from the date of the initial suspension, during which  
143 time the suspension was actually in effect; (B) the  
144 offender has successfully completed the educational  
145 program; (C) all costs of the program and  
146 administration have been paid; and (D) all costs  
147 assessed as a result of a suspension hearing have been  
148 paid.

149 (e) A required component of the rehabilitation

150 program provided in subsection (b) of this section and  
151 the education program provided for in subsection (c) of  
152 this section shall be participation by the violator with  
153 a victim impact panel program providing a forum for  
154 victims of alcohol and drug-related offenses and  
155 offenders to share first-hand experiences on the impact  
156 of alcohol- and drug-related offenses in their lives. The  
157 Department of Health and Human Resources, Division  
158 of Alcoholism and Drug Abuse, shall propose and  
159 implement a plan for victim impact panels where  
160 appropriate numbers of victims are available and  
161 willing to participate and shall establish guidelines for  
162 other innovative programs which may be substituted  
163 where the victims are not available to assist persons  
164 whose licenses have been suspended or revoked for  
165 alcohol and drug-related offenses to gain a full  
166 understanding of the severity of their offenses in terms  
167 of the impact of the offenses on victims and offenders.  
168 The plan shall require, at a minimum, discussion and  
169 consideration of the following:

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

171 (B) Death or physical injuries suffered by victims or  
172 offenders;

173 (C) Psychological injuries suffered by victims or  
174 offenders;

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

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

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

**§17C-5A-3a. Establishment of and participation in the Motor  
Vehicle Alcohol Test and Lock Program.**

1 (a) (1) The Division of Motor Vehicles shall control  
2 and regulate a Motor Vehicle Alcohol Test and Lock  
3 Program for persons whose licenses have been revoked  
4 pursuant to this article or the provisions of article five  
5 of this chapter or have been convicted under section  
6 two, article five of this chapter.

7 (2) The program shall include the establishment of a  
8 users fee for persons participating in the program  
9 which shall be paid in advance and deposited into the  
10 Driver's Rehabilitation Fund: *Provided*, That on and  
11 after the first day of July, two thousand seven, any  
12 unexpended balance remaining in the Driver's  
13 Rehabilitation Fund shall be transferred to the Motor  
14 Vehicle Fees Fund created under the provisions of  
15 section twenty-one, article two, chapter seventeen-a of  
16 this code and all further fees collected shall be  
17 deposited in that fund.

18 (3) Except where specified otherwise, the use of the  
19 term "program" in this section refers to the Motor  
20 Vehicle Alcohol Test and Lock Program. The  
21 Commissioner of the Division of Motor Vehicles shall  
22 propose legislative rules for promulgation in  
23 accordance with the provisions of chapter twenty-nine-  
24 a of this code for the purpose of implementing the

25 provisions of this section. The rules shall also prescribe  
26 those requirements which, in addition to the  
27 requirements specified by this section for eligibility to  
28 participate in the program, the commissioner  
29 determines must be met to obtain the commissioner's  
30 approval to operate a motor vehicle equipped with a  
31 motor vehicle alcohol test and lock system.

32 (4) For purposes of this section, a "motor vehicle  
33 alcohol test and lock system" means a mechanical or  
34 computerized system which, in the opinion of the  
35 commissioner, prevents the operation of a motor vehicle  
36 when, through the system's assessment of the blood  
37 alcohol content of the person operating or attempting to  
38 operate the vehicle, the person is determined to be  
39 under the influence of alcohol.

40 (5) The commissioner shall establish by legislative  
41 rule, proposed pursuant to article three, chapter  
42 twenty-nine-a of this code, criteria to determine the  
43 eligibility for the payment of the installation of ignition  
44 interlock devices in the vehicles of indigent offenders.  
45 The rule shall include, but is not limited to, the  
46 development of a criteria for determining eligibility;  
47 promulgation of application forms; establishment of  
48 procedures for the review of applications; and the  
49 establishment of a mechanism for the payment of  
50 installations for eligible offenders.

51 (6) On or before the fifteenth day of January, of each  
52 year, the commissioner of the division of motor vehicles  
53 shall report to the Legislature on:

54 (A) The total number of offenders participating in the  
55 program during the prior year;

56 (B) The total number of indigent offenders  
57 participating in the program during the prior year;

58 (C) The terms of any contracts with the providers of  
59 ignition interlock devices ; and

60 (D) The total cost of the program to the state during  
61 the prior year.

62 (b)(1) Any person whose license is revoked for the first  
63 time pursuant to this article or the provisions of article  
64 five of this chapter is eligible to participate in the  
65 program when the person's minimum revocation period  
66 as specified by subsection (c) of this section has expired  
67 and the person is enrolled in or has successfully  
68 completed the safety and treatment program or  
69 presents proof to the commissioner within sixty days of  
70 receiving approval to participate by the commissioner  
71 that he or she is enrolled in a safety and treatment  
72 program: *Provided*, That anyone whose license is  
73 revoked for the first time pursuant to subsection (k),  
74 section two of this article must participate in the  
75 program when the person's minimum revocation period  
76 as specified by subsection (c) of this section has expired  
77 and the person is enrolled in or has successfully  
78 completed the safety and treatment program or  
79 presents proof to the commissioner within sixty days of  
80 receiving approval to participate by the commissioner  
81 that he or she is enrolled in a safety and treatment  
82 program.

83 (2) Any person whose license has been suspended  
84 pursuant to the provisions of subsection (n), section two  
85 of this article for driving a motor vehicle while under  
86 the age of twenty-one years with an alcohol

87 concentration in his or her blood of two hundredths of  
88 one percent or more, by weight, but less than eight  
89 hundredths of one percent, by weight, is eligible to  
90 participate in the program after thirty days have  
91 elapsed from the date of the initial suspension, during  
92 which time the suspension was actually in effect:  
93 *Provided*, That in the case of a person under the age of  
94 eighteen, the person is eligible to participate in the  
95 program after thirty days have elapsed from the date of  
96 the initial suspension, during which time the suspension  
97 was actually in effect or after the person's eighteenth  
98 birthday, whichever is later. Before the commissioner  
99 approves a person to operate a motor vehicle equipped  
100 with a motor vehicle alcohol test and lock system, the  
101 person must agree to comply with the following  
102 conditions:

103 (A) If not already enrolled, the person shall enroll in  
104 and complete the educational program provided in  
105 subsection (d), section three of this article at the earliest  
106 time that placement in the educational program is  
107 available, unless good cause is demonstrated to the  
108 commissioner as to why placement should be  
109 postponed;

110 (B) The person shall pay all costs of the educational  
111 program, any administrative costs and all costs assessed  
112 for any suspension hearing.

113 (3) Notwithstanding the provisions of this section to  
114 the contrary, a person eligible to participate in the  
115 program under this subsection may not operate a motor  
116 vehicle unless approved to do so by the commissioner.

117 (c) A person who participates in the program under



118 subdivision (1), subsection (b) of this section is subject  
119 to a minimum revocation period and minimum period  
120 for the use of the ignition interlock device as follows:

121 (1) For a person whose license has been revoked for a  
122 first offense for six months pursuant to the provisions  
123 of section one-a of this article for conviction of an  
124 offense defined in subsection (d) or (g), section two,  
125 article five of this chapter or pursuant to subsection (j),  
126 section two of this article, the minimum period of  
127 revocation for participation in the test and lock  
128 program is fifteen days and the minimum period for the  
129 use of the ignition interlock device is one hundred and  
130 twenty-five days;

131 (2) For a person whose license has been revoked for a  
132 first offense pursuant to section seven, article five of  
133 this chapter, the minimum period of revocation for  
134 participation in the test and lock program is forty-five  
135 days and the minimum period for the use of the ignition  
136 interlock device is one year;

137 (3) For a person whose license has been revoked for a  
138 first offense pursuant to section one-a of this article for  
139 conviction of an offense defined in subsection (e),  
140 section two, article five of this chapter or pursuant to  
141 subsection (j), section two of this article, the minimum  
142 period of revocation for participation in the test and  
143 lock program is forty-five days and the minimum  
144 period for the use of the ignition interlock device is two  
145 hundred seventy days;

146 (4) For a person whose license has been revoked for a  
147 first offense pursuant to the provisions of section one-a  
148 of this article for conviction of an offense defined in

149 subsection (a), section two, article five of this chapter or  
150 pursuant to subsection (f), section two of this article,  
151 the minimum period of revocation before the person is  
152 eligible for participation in the test and lock program is  
153 twelve months and the minimum period for the use of  
154 the ignition interlock device is two years;

155 (5) For a person whose license has been revoked for a  
156 first offense pursuant to the provisions of section one-a  
157 of this article for conviction of an offense defined in  
158 subsection (b), section two, article five of this chapter or  
159 pursuant to subsection (g), section two of this article,  
160 the minimum period of revocation is six months and the  
161 minimum period for the use of the ignition interlock  
162 device is two years;

163 (6) For a person whose license has been revoked for a  
164 first offense pursuant to the provisions of section one-a  
165 of this article for conviction of an offense defined in  
166 subsection (c), section two, article five of this chapter or  
167 pursuant to subsection (h), section two of this article,  
168 the minimum period of revocation for participation in  
169 the program is two months and the minimum period for  
170 the use of the ignition interlock device is one year;

171 (7) For a person whose license has been revoked for a  
172 first offense pursuant to the provisions of section one-a  
173 of this article for conviction of an offense defined in  
174 subsection (j), section two, article five of this chapter or  
175 pursuant to subsection (m), section two of this article,  
176 the minimum period of revocation for participation in  
177 the program is two months and the minimum period for  
178 the use of the ignition interlock device is ten months;

179 (d) Notwithstanding any provision of the code to the

180 contrary, a person shall participate in the program if  
181 the person is convicted under section two, article five of  
182 this chapter or the person's license is revoked under  
183 section two of this article or section seven, article five  
184 of this chapter and the person was previously either  
185 convicted or his or her license was revoked under any  
186 provision cited in this subsection within the past ten  
187 years. The minimum revocation period for a person  
188 required to participate in the program under this  
189 subsection is one year and the minimum period for the  
190 use of the ignition interlock device is two years, except  
191 that the minimum revocation period for a person  
192 required to participate because of a violation of  
193 subsection (n), section two of this article or subsection  
194 (i), section two, article five of this chapter is two months  
195 and the minimum period of participation is one year.  
196 The division shall add an additional two months to the  
197 minimum period for the use of the ignition interlock  
198 device if the offense was committed while a minor was  
199 in the vehicle. The division shall add an additional six  
200 months to the minimum period for the use of the  
201 ignition interlock device if a person other than the  
202 driver received injuries. The division shall add an  
203 additional two years to the minimum period for the use  
204 of the ignition interlock device if a person other than  
205 the driver is injured and the injuries result in that  
206 person's death. The division shall add one year to the  
207 minimum period for the use of the ignition interlock  
208 device for each additional previous conviction or  
209 revocation within the past ten years. Any person  
210 required to participate under this subsection must have  
211 an ignition interlock device installed on every vehicle  
212 he or she owns or operates.

213 (e) Notwithstanding any other provision in this code,

214 a person whose license is revoked for driving under the  
215 influence of drugs is not eligible to participate in the  
216 Motor Vehicle Alcohol Test and Lock Program.

217 (f) An applicant for the test and lock program may not  
218 have been convicted of any violation of section three,  
219 article four, chapter seventeen-b of this code for driving  
220 while the applicant's driver's license was suspended or  
221 revoked within the six-month period preceding the date  
222 of application for admission to the test and lock  
223 program unless such is necessary for employment  
224 purposes.

225 (g) Upon permitting an eligible person to participate  
226 in the program, the commissioner shall issue to the  
227 person, and the person is required to exhibit on  
228 demand, a driver's license which shall reflect that the  
229 person is restricted to the operation of a motor vehicle  
230 which is equipped with an approved motor vehicle  
231 alcohol test and lock system.

232 (h) The commissioner may extend the minimum  
233 period of revocation and the minimum period of  
234 participation in the program for a person who violates  
235 the terms and conditions of participation in the  
236 program as found in this section, or legislative rule, or  
237 any agreement or contract between the participant and  
238 the division or program service provider.

239 (i) A person whose license has been suspended  
240 pursuant to the provisions of subsection (n), section two  
241 of this article who has completed the educational  
242 program and who has not violated the terms required  
243 by the commissioner of the person's participation in the  
244 program is entitled to the reinstatement of his or her

245 driver's license six months from the date the person is  
246 permitted to operate a motor vehicle by the  
247 commissioner. When a license has been reinstated  
248 pursuant to this subsection, the records ordering the  
249 suspension, records of any administrative hearing,  
250 records of any blood alcohol test results and all other  
251 records pertaining to the suspension shall be expunged  
252 by operation of law: *Provided*, That a person is entitled  
253 to expungement under the provisions of this subsection  
254 only once. The expungement shall be accomplished by  
255 physically marking the records to show that the records  
256 have been expunged and by securely sealing and filing  
257 the records. Expungement has the legal effect as if the  
258 suspension never occurred. The records may not be  
259 disclosed or made available for inspection and in  
260 response to a request for record information, the  
261 commissioner shall reply that no information is  
262 available. Information from the file may be used by the  
263 commissioner for research and statistical purposes so  
264 long as the use of the information does not divulge the  
265 identity of the person.

266 (j) In addition to any other penalty imposed by this  
267 code, any person who operates a motor vehicle not  
268 equipped with an approved motor vehicle alcohol test  
269 and lock system during that person's participation in  
270 the Motor Vehicle Alcohol Test and Lock Program is  
271 guilty of a misdemeanor and, upon conviction thereof,  
272 shall be confined in jail for a period not less than one  
273 month nor more than six months and fined not less than  
274 one hundred dollars nor more than five hundred  
275 dollars. Any person who attempts to bypass the alcohol  
276 test and lock system is guilty of a misdemeanor and,  
277 upon conviction thereof, shall be confined in jail not  
278 more than six months and fined not less than one

279 hundred dollars nor more than one thousand dollars:  
280 *Provided*, That notwithstanding any provision of this  
281 code to the contrary, a person enrolled and  
282 participating in the test and lock program may operate  
283 a motor vehicle solely at his or her job site if the  
284 operation is a condition of his or her employment. For  
285 the purpose of this section, job site does not include any  
286 street or highway open to the use of the public for  
287 purposes of vehicular traffic.

Enr. Com. Sub. for Com. Sub. for S. B. No. 535] 54

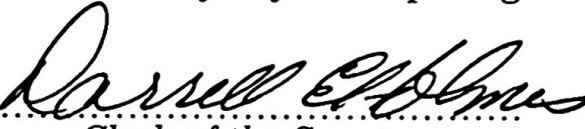
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

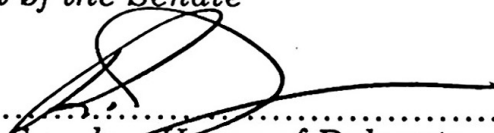
Originated in the Senate.

In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within *is approved* ..... this  
the *1<sup>st</sup>* Day of *April* ....., 2008.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 24 2008

Time 3:05 pm