

Senate Bill No. 538

(By Senators Kirkendoll, Romano, Trump, Facemire and Snyder)

[Introduced February 20, 2015; referred to the Committee on the Judiciary.]

**FISCAL
NOTE**

9 A BILL to amend and reenact §17C-5A-2 of the Code of West Virginia, 1931, as amended; and to
10 amend said code by adding thereto two new sections, designated §17C-5C-4c and
11 §17C-5C-4d, all relating to hearings before the Office of Administrative Hearings; deleting
12 provision that provides OAH cannot be made a party to an appeal; requiring parties appealing
13 a decision of OAH to serve petition for appeal on OAH; establishing procedures for recusal
14 of Chief Hearing Examiner; providing appeal procedures for petitioners denied entry into
15 alcohol test and lock program; allowing OAH to enter orders nunc pro tunc to correct clerical
16 mistakes or omissions; and providing that OAH has jurisdiction to decide cases in which
17 substantial prejudice is asserted due to alleged constitutional violations.

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

19 That §17C-5A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted;
20 and that said code be amended by adding thereto two new sections, designated §17C-5C-4c and
21 §17C-5C-4d, all to read as follows:

1 **ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND**
2 **REVOCAION OF LICENSES FOR DRIVING UNDER THE**
3 **INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR**
4 **DRUGS.**

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

6 (a) Written objections to an order of revocation or suspension under the provisions of section
7 one of this article or section seven, article five of this chapter shall be filed with the Office of
8 Administrative Hearings. Upon the receipt of an objection, the Office of Administrative Hearings
9 shall notify the Commissioner of the Division of Motor Vehicles, who shall stay the imposition of
10 the period of revocation or suspension and afford the person an opportunity to be heard by the Office
11 of Administrative Hearings. The written objection must be filed with Office of Administrative
12 Hearings in person, by registered or certified mail, return receipt requested, or by facsimile
13 transmission or electronic mail within thirty calendar days after receipt of a copy of the order of
14 revocation or suspension or no hearing will be granted: *Provided*, That a successful transmittal sheet
15 shall be necessary for proof of written objection in the case of filing by fax. ~~The hearing shall be~~
16 ~~before a hearing examiner employed by the Office of Administrative Hearings who shall rule on~~
17 ~~evidentiary issues. Upon consideration of the designated record, the hearing examiner shall, based~~
18 ~~on the determination of the facts of the case and applicable law, render a decision affirming,~~
19 ~~reversing or modifying the action protested. The decision shall contain findings of fact and~~
20 ~~conclusions of law and shall be provided to all parties by registered or certified mail, return receipt~~
21 ~~requested, or with a party's written consent, by facsimile or electronic mail.~~

1 **(b) A Petitioner who has previously elected to avail himself or herself of the provisions of**
2 **§17C-5A-3a(e) but was not accepted into the program shall have thirty calendar days after receipt**
3 **of notification of nonacceptance into the alcohol test and lock program to file a written objection or**
4 **no hearing will be granted. The written objection must be filed with Office of Administrative**
5 **Hearings in person, by registered or certified mail, return receipt requested, or by facsimile**
6 **transmission or electronic mail, or no hearing shall be granted: *Provided*, That a successful**
7 **transmittal sheet shall be necessary for proof of written objection in the case of filing by fax. Upon**
8 **the receipt of an objection, the Office of Administrative Hearings shall notify the Commissioner of**
9 **the Division of Motor Vehicles, who shall stay the imposition of the period of revocation or**
10 **suspension and afford the person an opportunity to be heard by the Office of Administrative**
11 **Hearings.**

12 **(c) All hearings before the Office of Administrative Hearings shall be before a hearing**
13 **examiner employed by the Office of Administrative Hearings who shall rule on evidentiary issues.**
14 **Upon consideration of the designated record, the hearing examiner shall, based on the determination**
15 **of the facts of the case and applicable law, render a decision affirming, reversing or modifying the**
16 **action protested. The decision shall contain findings of fact and conclusions of law and shall be**
17 **provided to all parties by registered or certified mail, return receipt requested, or with a party's**
18 **written consent, by facsimile or electronic mail.**

19 **(b) (d) (1) The hearing shall be held at an office of the Division of Motor Vehicles suitable**
20 **for hearing purposes located in or near the county in which the arrest was made in this state or at**
21 **some other suitable place in the county in which the arrest was made if an office of the division is**

1 ~~not available. At the discretion of the Office of Administrative Hearings, the hearing may also be~~
2 ~~held at an office of the Office of Administrative Hearings located in or near the county in which the~~
3 ~~arrest was made in this state. The hearing shall be held at an office of the Office of Administrative~~
4 ~~Hearings or the Division of Motor Vehicles located in or near the county in which the arrest was~~
5 ~~made in this state or at some other suitable place in the county in which the arrest was made if an~~
6 ~~office of the Office of Administrative Hearings or the Division of Motor Vehicles is not available.~~

7 (2) The Office of Administrative Hearings shall send a notice of hearing to the person whose
8 driving privileges are at issue and the person's legal counsel if the person is represented by legal
9 counsel, by regular mail, or with the written consent of the person whose driving privileges are at
10 issue or their legal counsel, by facsimile or electronic mail. The Office of Administrative Hearings
11 shall also send a notice of hearing by regular mail, facsimile or electronic mail to the Division of
12 Motor Vehicles, and the Attorney General's Office, if the Attorney General has filed a notice of
13 appearance of counsel on behalf of the Division of Motor Vehicles.

14 (1) Any hearing shall be held within one hundred eighty days after the date upon which
15 the Office of Administrative Hearings received the timely written objection unless there is a
16 postponement or continuance.

17 (2) The Office of Administrative Hearings may postpone or continue any hearing on its own
18 motion or upon application by the party whose license is at issue in that hearing or by the
19 commissioner for good cause shown.

20 (3) The Office of Administrative Hearings may issue subpoenas commanding the appearance
21 of witnesses and subpoenas duces tecum commanding the submission of documents, items or other

1 things. Subpoenas duces tecum shall be returnable on the date of the next scheduled hearing unless
2 otherwise specified. The Office of Administrative hearings shall issue subpoenas and subpoenas
3 duces tecum at the request of a party or the party's legal representative. The party requesting the
4 subpoena shall be responsible for service of the subpoena upon the appropriate individual. Every
5 subpoena or subpoena duces tecum shall be served at least five days before the return date thereof,
6 either by personal service made by a person over eighteen years of age or by registered or certified
7 mail, return receipt requested, and received by the party responsible for serving the subpoena or
8 subpoena duces tecum: *Provided*, That the Division of Motor Vehicles may serve subpoenas to
9 law-enforcement officers through electronic mail to the department of his or her employer. If a
10 person does not obey the subpoena or fails to appear, the party who issued the subpoena to the person
11 may petition the circuit court wherein the action lies for enforcement of the subpoena.

12 (4) The Chief Hearing Examiner for the Office of Administrative Hearings may recuse
13 himself or herself from any matter pending before the Office of Administrative Hearings when the
14 Chief Hearing Examiner believes a conflict of interest in the matter exists. Further, the Chief
15 Hearing Examiner may recuse himself or herself from any matter pending before the Office of
16 Administrative Hearings when the examiner believes his or her continued involvement in the matter
17 would create the appearance of impropriety. If the Chief Hearing Examiner considers it necessary
18 to recuse himself or herself, he or she shall designate either the Deputy Chief Hearing Examiner or
19 the Legal Section Supervisor, both of whom shall be licensed attorneys in good standing in this state,
20 to assume and perform all duties and responsibilities related to the case for which the Chief Hearing
21 Examiner would otherwise be responsible. If the Chief Hearing Examiner considers it necessary to

1 recuse himself or herself, he or she shall have no further involvement in the matter.

2 ~~(d)~~ (f) Law-enforcement officers shall be compensated for the time expended in their travel
3 and appearance before the Office of Administrative Hearings by the law-enforcement agency by
4 whom they are employed at their regular rate if they are scheduled to be on duty during said time or
5 at their regular overtime rate if they are scheduled to be off duty during said time.

6 ~~(e)~~ (g) The principal question at the hearing shall be whether the person did drive a motor
7 vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor
8 vehicle while having an alcohol concentration in the person's blood of eight hundredths of one
9 percent or more, by weight, or did refuse to submit to the designated secondary chemical test, or did
10 drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his
11 or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of
12 one percent, by weight.

13 ~~(f)~~ (h) In the case of a hearing in which a person is accused of driving a motor vehicle while
14 under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle
15 while having an alcohol concentration in the person's blood of eight hundredths of one percent or
16 more, by weight, or accused of driving a motor vehicle while under the age of twenty-one years with
17 an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight,
18 but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings shall
19 make specific findings as to: (1) Whether the investigating law-enforcement officer had reasonable
20 grounds to believe the person to have been driving while under the influence of alcohol, controlled
21 substances or drugs, or while having an alcohol concentration in the person's blood of eight

1 hundredths of one percent or more, by weight, or to have been driving a motor vehicle while under
2 the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of
3 one percent or more, by weight, but less than eight hundredths of one percent, by weight; (2) whether
4 the person was lawfully placed under arrest for an offense involving driving under the influence of
5 alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of
6 administering a secondary test: *Provided*, That this element shall be waived in cases where no arrest
7 occurred due to driver incapacitation; (3) whether the person committed an offense involving driving
8 under the influence of alcohol, controlled substances or drugs; and (4) whether the tests, if any, were
9 administered in accordance with the provisions of this article and article five of this chapter.

10 ~~(g)~~ (i) If, in addition to a finding that the person did drive a motor vehicle while under the
11 influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an
12 alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight,
13 or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration
14 in his or her blood of two hundredths of one percent or more, by weight, but less than eight
15 hundredths of one percent, by weight, the Office of Administrative Hearings also finds by a
16 preponderance of the evidence that the person when driving did an act forbidden by law or failed to
17 perform a duty imposed by law, which act or failure proximately caused the death of a person and
18 was committed in reckless disregard of the safety of others and if the Office of Administrative
19 Hearings further finds that the influence of alcohol, controlled substances or drugs or the alcohol
20 concentration in the blood was a contributing cause to the death, the commissioner shall revoke the
21 person's license for a period of ten years: *Provided*, That if the person's license has previously been

1 suspended or revoked under the provisions of this section or section one of this article within the ten
2 years immediately preceding the date of arrest, the period of revocation shall be for the life of the
3 person.

4 ~~(h)~~ (j) If, in addition to a finding that the person did drive a motor vehicle while under the
5 influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an
6 alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight,
7 the Office of Administrative Hearings also finds by a preponderance of the evidence that the person
8 when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or
9 failure proximately caused the death of a person, the commissioner shall revoke the person's license
10 for a period of five years: *Provided*, That if the person's license has previously been suspended or
11 revoked under the provisions of this section or section one of this article within the ten years
12 immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

13 ~~(i)~~ (k) If, in addition to a finding that the person did drive a motor vehicle while under the
14 influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an
15 alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight,
16 the Office of Administrative Hearings also finds by a preponderance of the evidence that the person
17 when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or
18 failure proximately caused bodily injury to a person other than himself or herself, the commissioner
19 shall revoke the person's license for a period of two years: *Provided*, That if the license has
20 previously been suspended or revoked under the provisions of this section or section one of this
21 article within the ten years immediately preceding the date of arrest, the period of revocation shall

1 be ten years: *Provided, however,* That if the person's license has previously been suspended or
2 revoked more than once under the provisions of this section or section one of this article within the
3 ten years immediately preceding the date of arrest, the period of revocation shall be for the life of
4 the person.

5 (†) (1) If the Office of Administrative Hearings finds by a preponderance of the evidence that
6 the person did drive a motor vehicle while under the influence of alcohol, controlled substances or
7 drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of
8 eight hundredths of one percent or more, by weight, but less than fifteen hundredths of one percent
9 or more, by weight, or finds that the person knowingly permitted the persons vehicle to be driven
10 by another person who was under the influence of alcohol, controlled substances or drugs, or
11 knowingly permitted the person's vehicle to be driven by another person who had an alcohol
12 concentration in his or her blood of eight hundredths of one percent or more, by weight the
13 commissioner shall revoke the person's license for a period of six months or a period of fifteen days
14 with an additional one hundred and twenty days of participation in the Motor Vehicle Alcohol Test
15 and Lock Program in accordance with the provisions of section three-a of this article: *Provided,*
16 That any period of participation in the Motor Vehicle Alcohol Test and Lock Program that has been
17 imposed by a court pursuant to section two-b, article five of this chapter shall be credited against any
18 period of participation imposed by the commissioner: *Provided, however,* That a person whose
19 license is revoked for driving while under the influence of drugs is not eligible to participate in the
20 Motor Vehicle Alcohol Test and Lock Program: *Provided further,* That if the person's license has
21 previously been suspended or revoked under the provisions of this section or section one of this

1 article within the ten years immediately preceding the date of arrest, the period of revocation shall
2 be ten years: *And provided further*, That if the person's license has previously been suspended or
3 revoked more than once under the provisions of this section or section one of this article within the
4 ten years immediately preceding the date of arrest, the period of revocation shall be for the life of
5 the person.

6 ~~(k)~~ (m) (1) If in addition to finding by a preponderance of the evidence that the person did
7 drive a motor vehicle while under the influence of alcohol, controlled substance or drugs, the Office
8 of Administrative Hearings also finds by a preponderance of the evidence that the person did drive
9 a motor vehicle while having an alcohol concentration in the person's blood of fifteen hundredths
10 of one percent or more, by weight, the commissioner shall revoke the person's license for a period
11 of forty-five days with an additional two hundred and seventy days of participation in the Motor
12 Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-a, article
13 five-a, chapter seventeen-c of this code: *Provided*, That if the person's license has previously been
14 suspended or revoked under the provisions of this section or section one of this article within the ten
15 years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided*,
16 *however*, That if the person's license has previously been suspended or revoked the person's license
17 more than once under the provisions of this section or section one of this article within the ten years
18 immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

19 (2) If a person whose license is revoked pursuant to subdivision (1) of this subsection proves
20 by clear and convincing evidence that they do not own a motor vehicle upon which the alcohol test
21 and lock device may be installed or is otherwise incapable of participating in the Motor Vehicle

1 Alcohol Test and Lock Program, the period of revocation shall be one hundred eighty days:
2 *Provided*, That if the person's license has previously been suspended or revoked under the provisions
3 of this section or section one of this article within the ten years immediately preceding the date of
4 arrest, the period of revocation shall be ten years: *Provided, however*, That if the person's license
5 has previously been suspended or revoked more than once under the provisions of this section or
6 section one of this article within the ten years immediately preceding the date of arrest, the period
7 of revocation shall be for the life of the person.

8 ~~(h)~~ (n) If, in addition to a finding that the person did drive a motor vehicle while under the
9 age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one
10 percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of
11 Administrative Hearings also finds by a preponderance of the evidence that the person when driving
12 did an act forbidden by law or failed to perform a duty imposed by law, which act or failure
13 proximately caused the death of a person, and if the Office of Administrative Hearings further finds
14 that the alcohol concentration in the blood was a contributing cause to the death, the commissioner
15 shall revoke the person's license for a period of five years: *Provided*, That if the person's license has
16 previously been suspended or revoked under the provisions of this section or section one of this
17 article within the ten years immediately preceding the date of arrest, the period of revocation shall
18 be for the life of the person.

19 ~~(m)~~ (o) If, in addition to a finding that the person did drive a motor vehicle while under the
20 age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one
21 percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of

1 Administrative Hearings also finds by a preponderance of the evidence that the person when driving
2 did an act forbidden by law or failed to perform a duty imposed by law, which act or failure
3 proximately caused bodily injury to a person other than himself or herself, and if the Office of
4 Administrative Hearings further finds that the alcohol concentration in the blood was a contributing
5 cause to the bodily injury, the commissioner shall revoke the person's license for a period of two
6 years: *Provided*, That if the person's license has previously been suspended or revoked under the
7 provisions of this section or section one of this article within the ten years immediately preceding
8 the date of arrest, the period of revocation shall be ten years: *Provided, however*, That if the person's
9 license has previously been suspended or revoked more than once under the provisions of this
10 section or section one of this article within the ten years immediately preceding the date of arrest,
11 the period of revocation shall be for the life of the person.

12 ~~(n)~~ (p) If the Office of Administrative Hearings finds by a preponderance of the evidence that
13 the person did drive a motor vehicle while under the age of twenty-one years with an alcohol
14 concentration in his or her blood of two hundredths of one percent or more, by weight, but less than
15 eight hundredths of one percent, by weight, the commissioner shall suspend the person's license for
16 a period of sixty days: *Provided*, That if the person's license has previously been suspended or
17 revoked under the provisions of this section or section one of this article, the period of revocation
18 shall be for one year, or until the person's twenty-first birthday, whichever period is longer.

19 ~~(o)~~ (q) If, in addition to a finding that the person did drive a motor vehicle while under the
20 influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an
21 alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight,

1 the Office of Administrative Hearings also finds by a preponderance of the evidence that the person
2 when driving did have on or within the motor vehicle another person who has not reached his or her
3 sixteenth birthday, the commissioner shall revoke the person's license for a period of one year:
4 *Provided*, That if the person's license has previously been suspended or revoked under the provisions
5 of this section or section one of this article within the ten years immediately preceding the date of
6 arrest, the period of revocation shall be ten years: *Provided, however*, That if the person's license
7 has previously been suspended or revoked more than once under the provisions of this section or
8 section one of this article within the ten years immediately preceding the date of arrest, the period
9 of revocation shall be for the life of the person.

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

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

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

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

1 ~~(q)~~ (s) In the case of a hearing in which a person is accused of refusing to submit to a
2 designated secondary test, the Office of Administrative Hearings shall make specific findings as to:
3 (1) Whether the arresting law-enforcement officer had reasonable grounds to believe the person had
4 been driving a motor vehicle in this state while under the influence of alcohol, controlled substances
5 or drugs; (2) whether the person was lawfully placed under arrest for an offense involving driving
6 under the influence of alcohol, controlled substances or drugs, or was lawfully taken into custody
7 for the purpose of administering a secondary test: *Provided*, That this element shall be waived in
8 cases where no arrest occurred due to driver incapacitation; (3) whether the person committed an
9 offense relating to driving a motor vehicle in this state while under the influence of alcohol,
10 controlled substances or drugs; (4) whether the person refused to submit to the secondary test finally
11 designated in the manner provided in section four, article five of this chapter; and (5) whether the
12 person had been given a written statement advising the person that the person's license to operate a
13 motor vehicle in this state would be revoked for at least forty-five days and up to life if the person
14 refused to submit to the test finally designated in the manner provided in said section.

15 ~~(r)~~ (t) If the Office of Administrative Hearings finds by a preponderance of the evidence that:
16 (1) The investigating officer had reasonable grounds to believe the person had been driving a motor
17 vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) whether
18 the person was lawfully placed under arrest for an offense involving driving under the influence of
19 alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of
20 administering a secondary test: *Provided*, That this element shall be waived in cases where no arrest
21 occurred due to driver incapacitation; (3) the person committed an offense relating to driving a motor

1 vehicle in this state while under the influence of alcohol, controlled substances or drugs; (4) the
2 person refused to submit to the secondary test finally designated in the manner provided in section
3 four, article five of this chapter; and (5) the person had been given a written statement advising the
4 person that the person's license to operate a motor vehicle in this state would be revoked for at least
5 forty-five days and up to life if the person refused to submit to the test finally designated, the
6 commissioner shall revoke the person's license to operate a motor vehicle in this state for the periods
7 specified in section seven, article five of this chapter. The revocation period prescribed in this
8 subsection shall run concurrently with any other revocation period ordered under this section or
9 section one of this article arising out of the same occurrence. The revocation period prescribed in
10 this subsection shall run concurrently with any other revocation period ordered under this section or
11 section one of this article arising out of the same occurrence.

12 ~~(s)~~ (u) If, the Office of Administrative Hearings finds to the contrary with respect to the
13 above issues, it shall rescind or modify the commissioner's order and, in the case of modification,
14 the commissioner shall reduce the order of revocation to the appropriate period of revocation under
15 this section or section seven, article five of this chapter. A copy of the Office of Administrative
16 Hearings' final order containing its findings of fact and conclusions of law made and entered
17 following the hearing shall be served upon the person whose license is at issue or upon the person's
18 legal counsel if the person is represented by legal counsel by registered or certified mail, return
19 receipt requested, or by facsimile or by electronic mail if available. The final order shall be served
20 upon the commissioner by electronic mail. During the pendency of any hearing, the revocation of
21 the person's license to operate a motor vehicle in this state shall be stayed.

1 A person whose license is at issue and the commissioner shall be entitled to judicial review
2 as set forth in chapter twenty-nine-a of this code. Neither the commissioner nor the Office of
3 Administrative Hearings may stay enforcement of the order. The court may grant a stay ~~or supersede~~
4 ~~as~~ of the order only upon motion and hearing, and a finding by the court upon the evidence
5 presented, that there is a substantial probability that the appellant shall prevail upon the merits and
6 the appellant will suffer irreparable harm if the order is not stayed: *Provided*, That in no event shall
7 the stay ~~or supersede~~ as of the order exceed one hundred fifty days. ~~The Office of Administrative~~
8 ~~Hearings may not be made a party to an appeal.~~ A copy of the petition shall be served upon the
9 Office of Administrative Hearings and any other party to the appeal by registered or certified mail.
10 The party filing the appeal shall pay the Office of Administrative Hearings for the production and
11 transmission of the certified file copy and the hearing transcript to the court. Notwithstanding the
12 provisions of section four, article five of said chapter, the Office of Administrative Hearings may
13 not be compelled to transmit a certified copy of the file or the transcript of the hearing to the circuit
14 court in less than sixty days. The circuit clerk shall provide a copy of the circuit court's final order
15 on the appeal to the Office of Administrative Hearings by regular mail, by facsimile, or by electronic
16 mail if available.

17 ~~(t)~~ (v) In any revocation or suspension pursuant to this section, if the driver whose license
18 is revoked or suspended had not reached the driver's eighteenth birthday at the time of the conduct
19 for which the license is revoked or suspended, the driver's license shall be revoked or suspended until
20 the driver's eighteenth birthday or the applicable statutory period of revocation or suspension
21 prescribed by this section, whichever is longer.

1 ~~(u)~~ (w) Funds for this section's hearing and appeal process may be provided from the Drunk
 2 Driving Prevention Fund, as created by section forty-one, article two, chapter fifteen of this code,
 3 upon application for the funds to the Commission on Drunk Driving Prevention.

4 **ARTICLE 5C. OFFICE OF ADMINISTRATIVE HEARINGS.**

5 **§17C-5C-4c. Orders nunc pro tunc.**

6 The Office of Administrative Hearings may issue orders nunc pro tunc to correct clerical
 7 mistakes or omissions.

8 **§17C-5C-4d. Legal Determinations related to constitutional violations.**

9 The Office of Administrative Hearings has authority to address and rule upon matters
 10 involving allegations by a party that unreasonable delay in the issuance of a revocation or suspension
 11 order has substantially prejudiced the party's legal position in the matter.

NOTE: The purpose of this bill is to: (1) Require parties appealing a decision of the OAH to serve the Petition for Appeal on the OAH; (2) establish procedures for the recusal of the Chief Hearing Examiner; (3) provide appeal procedures for petitioners denied entry into the alcohol test and lock program described in §17C-5A-3(e) of the Code of West Virginia, 1931, as amended; (4) allow OAH to enter orders nunc pro tunc to correct clerical mistakes or omissions; and (5) clarify that OAH has jurisdiction to decide cases in which a party asserts that unreasonable delay in issuance of a revocation or suspension order has substantially prejudiced the party's legal position in the matter.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§17C-5C-4c and §17C-5C-4d are new; therefore strike-throughs and underscoring have been omitted.