

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 534

FISCAL NOTE

BY SENATORS TRUMP, KESSLER, PALUMBO, ROMANO,
WALTERS, WOELFEL, STOLLINGS, PLYMALE AND BLAIR

[Introduced February 6, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §17C-5-2, §17C-5-4 and §17C-5-7 of the Code of West Virginia,
2 1931, as amended; to amend and reenact §17C-5A-1a, §17C-5A-2, §17C-5A-2a,
3 §17C-5A-3 and §17C-5A-3a of said code; and to amend said code by adding thereto a
4 new section, designated §17C-5C-6, all relating to the procedures for driver's license
5 suspension and revocation in criminal proceedings for driving under the influence of
6 alcohol, controlled substances or drugs (DUI); requiring that an individual arrested for DUI
7 be given a written statement informing the individual of the legal consequences of taking
8 or refusing to take a preliminary breath test and informing the individual of the right to
9 receive a secondary blood test; requiring that, following an individual's refusal to take a
10 preliminary breath test, an arresting officer execute a signed statement that the officer
11 administered all required warnings; eliminating all statutory provisions authorizing or
12 requiring the Commissioner of the Division of Motor Vehicles to take administrative action
13 upon an individual's driver's license on the basis of DUI in the absence of a conviction or
14 a court-ordered suspension or revocation; eliminating all statutory provisions authorizing
15 or requiring the commissioner to require an individual to complete the Motor Vehicle Test
16 and Lock program; including in the definition of "impaired state" the act of operating a
17 vehicle with a blood concentration of five nanograms or more of delta
18 9-tetrahydrocannabinol; requiring revocation of an individual's driver's license following a
19 conviction of DUI for operating a vehicle with a blood concentration of five nanograms or
20 more of delta 9-tetrahydrocannabinol; completely eliminating the Division of Motor
21 Vehicle's administrative hearing process for suspending and revoking driver's licenses
22 based on a DUI; creating a process by which an individual may notify the commissioner if
23 his or her driver's license has been incorrectly suspended or revoked based on mistaken
24 identity of the defendant in a transcript of judgment or conviction; requiring the
25 commissioner to take corrective action if a driver's license is incorrectly suspended or
26 revoked based on mistaken identity; completely transferring jurisdiction for suspension or

27 revocation of a driver’s license based on DUI to the court with jurisdiction over the criminal
 28 proceedings; requiring a court to suspend a defendant’s driver’s license pending criminal
 29 proceedings if the defendant submitted to an alcohol concentration test that revealed a
 30 certain level of impairment, committed certain prior offenses, was involved in an accident
 31 causing death or bodily injury, or refused to submit to a secondary chemical test; allowing
 32 a court to suspend a defendant’s license upon a finding that the defendant would
 33 otherwise pose a risk of harm to others during the pendency of criminal proceedings;
 34 establishing the right to request and receive judicial review of driver’s license suspension
 35 orders pending criminal proceedings; establishing the scope of review for judicial review
 36 of driver’s license suspension orders; requiring a defendant to surrender his or her driver’s
 37 license upon suspension by the court; requiring the clerk of a court to transmit a copy of
 38 an order suspending or revoking a driver’s license; establishing procedures and a timeline
 39 for the Division of Motor Vehicles to transfer jurisdiction of driver’s license suspension and
 40 revocation to the courts; and eliminating all statutory provisions authorizing or requiring
 41 the commissioner to prescribe the terms and conditions of driver’s license reissuance
 42 following DUI.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

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

1 (a) *Definitions-*

2 (1) Almpaired State@ means a person:

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 any controlled substance or any other
7 drug; or

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

10 (F) Has a blood concentration of five nanograms or more of delta 9-tetrahydrocannabinol
11 per millileter in whole blood.

12 (2) "Bodily Injury" means injury that causes substantial physical pain, illness or any
13 impairment of physical condition.

14 (3) "Serious Bodily Injury" means bodily injury that creates a substantial risk of death, that
15 causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or
16 impairment of the function of any bodily organ.

17 (b) Any person who drives a vehicle in this state while he or she is in an impaired state
18 and such impaired state proximately causes the death of any person is guilty of a felony and,
19 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three
20 nor more than fifteen years and shall be fined not less than \$1,000 nor more than \$3,000:

21 *Provided*, That any death charged under this subsection must occur within one year of the
22 offense.(c) Any person who drives a vehicle in this state while he or she is in an impaired state

23 and such impaired state proximately causes serious bodily injury to any person other than himself
24 or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state
25 correctional facility for not less than two nor more than ten years and shall be fined not less than

26 \$1,000 nor more than \$3,000.(d) Any person who drives a vehicle in this state while he or she is
27 in an impaired state and such impaired state proximately causes a bodily injury to any person
28 other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be

29 confined in jail for not less than one day more than one year and shall be fined not less than \$200
30 nor more than \$1,000: *Provided, however,* That such jail term shall include actual confinement of
31 not less than twenty-four hours: *Provided ~~however~~ further,* That a person sentenced pursuant to
32 this subsection shall receive credit for any period of actual confinement he or she served upon
33 arrest for the subject offense.(e) Any person who drives a vehicle in this state while he or she is
34 in an impaired state, but has an alcohol concentration in his or her blood of less than fifteen
35 hundredths of one percent by weight, is guilty of a misdemeanor and, upon conviction thereof,
36 shall be confined in jail for up to six months and shall be fined not less than \$100 nor more than
37 \$500: *And provided further,* That a person sentenced pursuant to this subsection shall receive
38 credit for any period of actual confinement he or she served upon arrest for the subject offense.(f)
39 Any person who drives a vehicle in this state while he or she has an alcohol concentration in his
40 or her blood of fifteen-hundredths of one percent or more, by weight, is guilty of a misdemeanor
41 and, upon conviction thereof, shall be confined in jail for not less than two days nor more than six
42 months, which jail term is to include actual confinement of not less than twenty-four hours, and
43 shall be fined not less than \$200 nor more than \$1,000. A person sentenced pursuant to this
44 subdivision shall receive credit for any period of actual confinement he or she served upon arrest
45 for the subject offense.

46 (g) Any person who, being a habitual user of narcotic drugs or amphetamine or any
47 derivative thereof, drives a vehicle in this state is guilty of a misdemeanor and, upon conviction
48 thereof, shall be confined in jail for not less than one day nor more than six months, which jail
49 term is to include actual confinement of not less than twenty-four hours, and shall be fined not
50 less than \$100 nor more than \$500. A person sentenced pursuant to this subdivision shall receive
51 credit for any period of actual confinement he or she served upon arrest for the subject offense.

52 (h) Any person who knowingly permits his or her vehicle to be driven in this state by any
53 other person who is in an impaired state is guilty of a misdemeanor and, upon conviction thereof,
54 shall be confined in jail for not more than six months and shall be fined not less than \$100 nor

55 more than \$500.

56 (i) Any person who knowingly permits his or her vehicle to be driven in this state by any
57 other person who is a habitual user of narcotic drugs or amphetamine or any derivative thereof is
58 guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than
59 six months and shall be fined not less than \$100 nor more than \$500.

60 (j) Any person under the age of twenty-one years who drives a vehicle in this state while
61 he or she has an alcohol concentration in his or her blood of two hundredths of one percent or
62 more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under
63 this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less
64 than \$25 nor more than \$100. For a second or subsequent offense under this subsection, the
65 person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for
66 twenty-four hours and shall be fined not less than \$100 nor more than \$500. A person who is
67 charged with a first offense under the provisions of this subsection may move for a continuance
68 of the proceedings, from time to time, to allow the person to participate in the Motor Vehicle
69 Alcohol Test and Lock Program as provided in section three-a, article five-a of this chapter. Upon
70 successful completion of the program, the court shall dismiss the charge against the person and
71 expunge the person's record as it relates to the alleged offense. In the event the person fails to
72 successfully complete the program, the court shall proceed to an adjudication of the alleged
73 offense. A motion for a continuance under this subsection may not be construed as an admission
74 or be used as evidence.

75 A person arrested and charged with an offense under the provisions of this subsection or
76 subsection (b), (c), (d), (e), (f), (g), (h) or (i) of this section may not also be charged with an offense
77 under this subsection arising out of the same transaction or occurrence.

78 (k) Any person who drives a vehicle in this state while he or she is in an impaired state
79 and has within the vehicle one or more other persons who are unemancipated minors who have
80 not yet reached their sixteenth birthday is guilty of a misdemeanor and, upon conviction thereof,

81 shall be confined in jail for not less than two days nor more than twelve months, and shall be fined
82 not less than \$200 nor more than \$1,000: *Provided*, That such jail term shall include actual
83 confinement of not less than forty-eight hours: *Provided, however*, That a person sentenced
84 pursuant to this subdivision shall receive credit for any period of actual confinement he or she
85 served upon arrest for the subject offense.

86 (l) A person violating any provision of subsection(d), (e), (f), (g), (h) or(j) of this section, for
87 the second offense under this section, is guilty of a misdemeanor and, upon conviction thereof,
88 shall be confined in jail for not less than six months nor more than one year and the court may, in
89 its discretion, impose a fine of not less than \$1,000 nor more than \$3,000.

90 (m) A person violating any provision of subsection(d), (e), (f), (g), (h) or(j) of this section,
91 for the third or any subsequent offense under this section, is guilty of a felony and, upon conviction
92 thereof, shall be imprisoned in a state correctional facility for not less than two nor more than five
93 years and the court may, in its discretion, impose a fine of not less than \$3,000 nor more than
94 \$5,000.

95 (n) For purposes of subsections(l) and (m) of this section relating to second, third and
96 subsequent offenses, the following events shall be regarded as offenses under this section:

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

100 (2) Any conviction under a municipal ordinance of this state or any other state or a statute
101 of the United States or of any other state of an offense which has the same elements as an offense
102 described in subsection(b), (c), (d), (e), (f), (g), (h) or(i) of this section, which offense occurred
103 within the ten-year period immediately preceding the date of arrest in the current proceeding; and,

104 (3) Any period of conditional probation imposed pursuant section two-b of this article for
105 violation of subsection (e) of this section, which violation occurred within the ten-year period
106 immediately preceding the date of arrest in the current proceeding.

107 (o) A person may be charged in a warrant or indictment or information for a second or
108 subsequent offense under this section if the person has been previously arrested for or charged
109 with a violation of this section which is alleged to have occurred within the applicable time period
110 for prior offenses, notwithstanding the fact that there has not been a final adjudication of the
111 charges for the alleged previous offense. In that case, the warrant or indictment or information
112 must set forth the date, location and particulars of the previous offense or offenses. No person
113 may be convicted of a second or subsequent offense under this section unless the conviction for
114 the previous offense has become final, or the person has previously had a period of conditional
115 probation imposed pursuant to section two-b of this article.

116 (p) The fact that any person charged with a violation of subsection(b), (c), (d), (e), (f) or(g)
117 of this section, or any person permitted to drive as described under subsection(h) or (i) of this
118 section, is or has been legally entitled to use alcohol, a controlled substance or a drug does not
119 constitute a defense against any charge of violating subsection(b), (c), (d), (e), (f), (g), (h) or(i) of
120 this section.

121 (q) For purposes of this section, the term Acontrolled substance@ has the meaning
122 ascribed to it in chapter sixty-a of this code.

123 (r) The sentences provided in this section upon conviction for a violation of this article are
124 mandatory and are not subject to suspension or probation: *Provided*, That the court may apply
125 the provisions of article eleven-a, chapter sixty-two of this code to a person sentenced or
126 committed to a term of one year or less for a first offense under this section: *Provided, further*
127 however, That the court may impose a term of conditional probation pursuant to section two-b of
128 this article to persons adjudicated thereunder. An order for home detention by the court pursuant
129 to the provisions of article eleven-b of said chapter may be used as an alternative sentence to
130 any period of incarceration required by this section for a first or subsequent offense: *Provided*
131 ~~however, further~~, That for any period of home incarceration ordered for a person convicted of
132 second offense under this section, electronic monitoring shall be required for no fewer than five

133 days of the total period of home confinement ordered and the offender may not leave home for
134 those five days notwithstanding the provisions of section five, article eleven-b, chapter sixty-two
135 of this code: *And provided further*, That for any period of home incarceration ordered for a person
136 convicted of a third or subsequent violation of this section, electronic monitoring shall be included
137 for no fewer than ten days of the total period of home confinement ordered and the offender may
138 not leave home for those ten days notwithstanding section five, article eleven-b, chapter sixty-two
139 of this code.

**§17C-5-4. Implied consent to test; administration at direction of law-enforcement officer;
designation of type of test; definition of law-enforcement officer.**

1 (a) Any person who drives a motor vehicle in this state is considered to have given his or
2 her consent by the operation of the motor vehicle to a preliminary breath analysis and a secondary
3 chemical test of either his or her blood or breath to determine the alcohol concentration in his or
4 her blood, or the concentration in the persons body of a controlled substance, drug, or any
5 combination thereof.

6 (b) A preliminary breath analysis may be administered in accordance with the provisions
7 of section five of this article whenever a law-enforcement officer has reasonable cause to believe
8 a person has committed an offense prohibited by section two of this article or by an ordinance of
9 a municipality of this state which has the same elements as an offense described in section two
10 of this article.

11 (c) A secondary test of blood or breath is incidental to a lawful arrest and is to be
12 administered at the direction of the arresting law-enforcement officer having probable cause to
13 believe the person has committed an offense prohibited by section two of this article or by an
14 ordinance of a municipality of this state which has the same elements as an offense described in
15 section two of this article.

16 (d) The law-enforcement agency that employs the arresting law-enforcement officer shall
17 designate the secondary tests to be administered: Notwithstanding the provisions of section

18 seven of this article, the refusal to submit to a blood test only may not result in the revocation of
19 the arrested persons license to operate a motor vehicle in this state.

20 (e) Any person to whom a preliminary breath test is administered who is arrested shall be
21 given a written statement advising him or her ~~that his or her refusal to submit to the secondary~~
22 ~~chemical test pursuant to subsection (d) of this section will result in the revocation of his or her~~
23 ~~license to operate a motor vehicle in this state for a period of at least forty-five days and up to life~~
24 of the following:

25 (1) That a person's refusal to submit to a secondary chemical test pursuant to subsection
26 (d) of this section will result in the revocation of his or her license to operate a motor vehicle during
27 the pendency of any criminal charges brought alleging a violation of section two of this article or
28 an ordinance of a municipality of this state which has the same elements as an offense described
29 in section two of this article;

30 (2) That, if the person refuses to submit to such tests, the fact of this refusal may be used
31 against him or her in court as evidence of violating section two of this article;

32 (3) That, if a test is taken, the results of the test may be used against him or her in court
33 as evidence of violating section two of this article or an ordinance of a municipality of this state
34 which has the same elements as an offense described in section two of this article; and

35 (4) That, if the person first submits to the requested alcohol and/or substance tests, the
36 person has the right to have a test or tests of his or her blood performed by a person of his or her
37 choosing within a reasonable time of his or her arrest at the expense of the person arrested.

38 (f) Any law-enforcement officer who has been properly trained in the administration of any
39 secondary chemical test authorized by this article, including, but not limited to, certification by the
40 Bureau for Public Health in the operation of any equipment required for the collection and analysis
41 of a breath sample, may conduct the test at any location in the county wherein the arrest is made:
42 *Provided*, That the law-enforcement officer may conduct the test at the nearest available properly
43 functioning secondary chemical testing device located outside the county in which the arrest was

44 made, if: (l) There is no properly functioning secondary chemical testing device located within the
45 county the arrest was made; or (ii) there is no magistrate available within the county the arrest
46 was made for the arraignment of the person arrested. A law-enforcement officer who is directing
47 that a secondary chemical test be conducted has the authority to transport the person arrested to
48 where the secondary chemical testing device is located.

49 (g) If the arresting officer lacks proper training in the administration of a secondary
50 chemical test, then any other law-enforcement officer who has received training in the
51 administration of the secondary chemical test to be administered may, upon the request of the
52 arresting law-enforcement officer and in his or her presence, conduct the secondary test. The
53 results of a test conducted pursuant to this subsection may be used in evidence to the same
54 extent and in the same manner as if the test had been conducted by the arresting law-enforcement
55 officer.

56 (h) Only the person actually administering or conducting a test conducted pursuant to this
57 article is competent to testify as to the results and the veracity of the test.

58 (i) (1) For the purpose of this article, the term "law-enforcement officer" or "police officer"
59 means: (1) Any member of the West Virginia State Police; (2) any sheriff and any deputy sheriff
60 of any county; (3) any member of a police department in any municipality as defined in section
61 two, article one, chapter eight of this code; (4) any natural resources police officer of the Division
62 of Natural Resources; and (5) any special police officer appointed by the Governor pursuant to
63 the provisions of section forty-one, article three, chapter sixty-one of this code who has completed
64 the course of instruction at a law-enforcement training academy as provided for under the
65 provisions of section nine, article twenty-nine, chapter thirty of this code.

66 (2) In addition to standards promulgated by the Governors Committee on Crime,
67 Delinquency and Correction, pursuant to section three, article twenty-nine, chapter thirty of this
68 code, governing the qualification of law-enforcement officers and the entry-level law-enforcement
69 training curricula, the Governors Committee on Crime, Delinquency and Correction shall require

70 the satisfactory completion of a minimum of not less than six hours of training in the recognition
71 of impairment in drivers who are under the influence of controlled substances or drugs other than
72 alcohol.

73 (3) In addition to standards promulgated by the Governors Committee on Crime,
74 Delinquency and Correction, pursuant to section three, article twenty-nine, chapter thirty of this
75 code, establishing standards governing in-service law-enforcement officer training curricula and
76 in-service supervisory level training curricula, the Governors Committee on Crime, Delinquency
77 and Correction shall require the satisfactory completion of a minimum of not less than six hours
78 of training in the recognition of impairment in drivers who are under the influence of controlled
79 substances or drugs other than alcohol.

80 (4) ~~That after December 31, 2014,~~ A law-enforcement officer who has not satisfactorily
81 completed the minimum number of hours of training in the recognition of impairment in drivers
82 who are under the influence of controlled substances or drugs other than alcohol, required by
83 subdivisions (2) or (3), may no longer require any person to submit to secondary chemical test of
84 his or her blood for the purposes of determining the concentration in the persons body of a
85 controlled substance, drug, or any combination thereof.

86 (j) A law-enforcement officer who has reasonable cause to believe that person has
87 committed an offense prohibited by section eighteen, article seven, chapter twenty of this code,
88 relating to the operation of a motorboat, jet ski or other motorized vessel, shall follow the
89 provisions of this section in administering, or causing to be administered, a preliminary breath
90 analysis and incidental to a lawful arrest, a secondary chemical test of the accused persons blood
91 or breath to determine the alcohol concentration in his or her blood, or the concentration in the
92 persons body of a controlled substance, drug, or any combination thereof.

**§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 four of this article refuses to submit

2 to any secondary chemical test, the tests shall not be given: *Provided*, That prior to the refusal,
3 the person is given ~~an oral warning and a written statement advising him or her that~~ containing
4 the warnings contained in subsection (e), section four of this article, and an oral warning that his
5 or her refusal to submit to the secondary test finally designated will result in the revocation of his
6 or her license to operate a motor vehicle in this state ~~for a period of at least forty-five days and up~~
7 ~~to life;~~ during the pendency of any criminal charge brought pursuant to section two of this article
8 or an ordinance of a municipality of this state which has the same elements as an offense
9 described in section two of this article. ~~and that after~~ After fifteen minutes following the receipt of
10 these warnings by the person under arrest the refusal is considered final. The arresting officer
11 after that period of time expires has no further duty to provide the person with an opportunity to
12 take the secondary test. The officer shall, within forty-eight hours of the refusal, sign and submit
13 to the Commissioner of Motor Vehicles a written statement of the officer that: (1) He or she had
14 probable cause to believe the person had been driving a motor vehicle in this state while under
15 the influence of alcohol, controlled substances or drugs; (2) the person was lawfully placed under
16 arrest for an offense relating to driving a motor vehicle in this state while under the influence of
17 alcohol, controlled substances or drugs; (3) the person refused to submit to the secondary
18 chemical test finally designated in the manner provided in section four of this article; and (4) the
19 person was given a written statement ~~advising him or her that~~ containing the warnings contained
20 in subsection (e), section four of this article, and an oral warning that his or her refusal to submit
21 to the secondary test finally designated will result in the revocation of his or her license to operate
22 a motor vehicle in this state ~~would be revoked for a period of at least forty-five days and up to life~~
23 ~~if he or she refused to submit to the secondary test finally designated in the manner provided in~~
24 ~~section four of this article~~ during the pendency of any criminal charge brought pursuant to section
25 two of this article or an ordinance of a municipality of this state which has the same elements as
26 an offense described in section two of this article. The signing of the statement required to be
27 signed by this section constitutes an oath or affirmation by the person signing the statement that

28 the statements contained in the statement are true and that any copy filed is a true copy. The
29 statement shall contain upon its face a warning to the officer signing that to willfully sign a
30 statement containing false information concerning any matter or thing, material or not material, is
31 false swearing and is a misdemeanor. ~~Upon receiving the statement the commissioner shall make
32 and enter an order revoking the person=s license to operate a motor vehicle in this state for the
33 period prescribed by this section.~~

34 For the first refusal to submit to the designated secondary chemical test, the commissioner
35 shall ~~make and enter an order revoking the person=s license to operate a motor vehicle in this
36 state for a period of one year or forty five days, with an additional one year of participation in the
37 Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section
38 three-a, article five-a of this chapter: *Provided*, That a person revoked for driving while under the
39 influence of drugs is not eligible to participate in the Motor Vehicle Test and Lock Program. The
40 application for participation in the Motor Vehicle Alcohol Test and Lock Program shall be
41 considered to be a waiver of the hearing provided in section two of said article. If the person=s
42 license has previously been revoked under the provisions of this section, the commissioner shall,
43 for the refusal to submit to the designated secondary chemical test, make and enter an order
44 revoking the person=s license to operate a motor vehicle in this state for a period of ten years:
45 *Provided, however*, That the license may be reissued in five years in accordance with the
46 provisions of section three, article five-a of this chapter. If the person=s license has previously
47 been revoked more than once under the provisions of this section, the commissioner shall, for the
48 refusal to submit to the designated secondary chemical test, make and enter an order revoking
49 the person=s license to operate a motor vehicle in this state for a period of life. A copy of each
50 order shall be forwarded to the person by registered or certified mail, return receipt requested,
51 and shall contain the reasons for the revocation and shall specify the revocation period imposed
52 pursuant to this section. A revocation shall not become effective until ten days after receipt of the~~

53 ~~copy of the order. Any person who is unconscious or who is otherwise in a condition rendering~~
54 ~~him or her incapable of refusal shall be considered not to have withdrawn his or her consent for~~
55 ~~a test of his or her blood or breath as provided in section four of this article and the test may be~~
56 ~~administered although the person is not informed that his or her failure to submit to the test will~~
57 ~~result in the revocation of his or her license to operate a motor vehicle in this state for the period~~
58 ~~provided for in this section. A revocation under this section shall run concurrently with the period~~
59 ~~of any suspension or revocation imposed in accordance with other provisions of this code and~~
60 ~~growing out of the same incident which gave rise to the arrest for driving a motor vehicle while~~
61 ~~under the influence of alcohol, controlled substances or drugs and the subsequent refusal to~~
62 ~~undergo the test finally designated in accordance with the provisions of section four of this article.~~

63 ~~(b) For the purposes of this section, where reference is made to previous suspensions or~~
64 ~~revocations under this section, the following types of suspensions or revocations shall also be~~
65 ~~regarded as suspensions or revocations under this section:~~

66 ~~(1) Any suspension or revocation on the basis of a conviction under a municipal ordinance~~
67 ~~of another state or a statute of the United States or of any other state of an offense which has the~~
68 ~~same elements as an offense described in section two of this article for conduct which occurred~~
69 ~~on or after June 10, 1983; and~~

70 ~~(2) Any revocation under the provisions of section one or two, article five-a of this chapter~~
71 ~~for conduct which occurred on or after June 10, 1983.~~

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

75 ~~(d) (b) The refusal to submit to a blood test may be admissible at the courts discretion in~~
76 ~~a trial for the offense of driving a motor vehicle in this state while under the influence of alcohol a~~
77 ~~controlled substance or drug or the combination of alcohol and drugs.~~

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND

**REVOCAION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL,
CONTROLLED SUBSTANCES OR DRUGS.**

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

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

15 (b) The clerk of the court in which a person has had a term of conditional probation
16 imposed pursuant to section two-b, article five of this chapter, or is convicted for an offense
17 described in section two, article five of this chapter or for an offense described in a municipal
18 ordinance which has the same elements as an offense described in said section shall forward to
19 the Commissioner of the Division of Motor Vehicles a transcript of the judgment of conviction. If
20 the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the
21 transcript when the person convicted has not requested an appeal within twenty days of the
22 sentencing for such conviction. If the term of conditional probation is the act of a magistrate court,

23 the magistrate court clerk shall forward the transcript when the order imposing the term of
24 conditional probation is entered. If the conviction is the judgment of a mayor or police court judge
25 or municipal court judge, the clerk or recorder shall forward the transcript when the person
26 convicted has not perfected an appeal within ten days from and after the date upon which the
27 sentence is imposed. If the conviction is the judgment of a circuit court, the circuit clerk shall
28 forward the transcript when the person convicted has not filed a notice of intent to file a petition
29 for appeal or writ of error within thirty days after the judgment was entered.

30 (c) If, upon examination of the transcript of the judgment of conviction, or imposition of a
31 term of conditional probation pursuant to section two-b, article five of this chapter, the
32 Commissioner of the Division of Motor Vehicles determines that the person was convicted for an
33 offense described in section two, article five of this chapter or an ordinance of a municipality of
34 this state which has the same elements as an offense described in section two of this article, or
35 had a period of conditional probation imposed pursuant to section two-b, article five of this chapter,
36 ~~or for an offense described in a municipal ordinance which has the same elements as an offense~~
37 ~~described in said section~~ because the person did drive a motor vehicle while under the influence
38 of alcohol, controlled substances or drugs, or the combined influence of alcohol or controlled
39 substances or drugs, or did drive a motor vehicle while having an alcohol concentration in his or
40 her blood of eight-hundredths of one percent or more, by weight, or did drive a motor vehicle while
41 having a concentration of five nanograms or more of delta 9-tetrahydrocannabinol per millileter in
42 whole blood, the commissioner shall make and enter an order revoking the person's license to
43 operate a motor vehicle in this state. If the commissioner determines that the person was
44 convicted of driving a motor vehicle while under the age of twenty-one years with an alcohol
45 concentration in his or her blood of two hundredths of one percent or more, by weight, but less
46 than eight hundredths of one percent, by weight, the commissioner shall make and enter an order
47 suspending the person's license to operate a motor vehicle in this state. The order shall contain
48 the reasons for the revocation or suspension and the revocation or suspension periods provided

49 for in section two of this article. ~~Further, the order shall give the procedures for requesting a~~
50 ~~hearing which is to be held in accordance with the provisions of said section. The person shall be~~
51 ~~advised in the order that because of the receipt of a transcript of the judgment of conviction by~~
52 ~~the commissioner a presumption exists that the person named in the transcript of the judgment~~
53 ~~of conviction is the person named in the commissioner's order and such constitutes sufficient~~
54 ~~evidence to support revocation or suspension and that the sole purpose for the hearing held under~~
55 ~~this section is for the person requesting the hearing to present evidence that he or she is not the~~
56 ~~person named in the transcript of the judgment of conviction. A copy of the order shall be~~
57 ~~forwarded to the person by registered or certified mail, return receipt requested. No revocation or~~
58 ~~suspension shall become effective until ten days after receipt of a copy of the order.~~

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

62 (d) If a person receives an order advising him or her that his or her license has been
63 suspended or revoked following receipt by the commissioner of a transcript of a judgment of
64 conviction, and the person believes that he or she is not the person named in the commissioner's
65 order, the person should notify the commissioner. Upon receipt of this notification, the
66 commissioner shall immediately review the contents of the judgment of conviction and the
67 information provided by the person in question and determine if an error has been made. If such
68 an error is discovered, the commissioner shall immediately reverse the suspension or revocation
69 of the person's license and take steps to correctly identify the individual whose against whom the
70 judgment of conviction has been entered, and immediately suspend his or her license pursuant
71 to subsection (c) of this section.

72 (e) For the purposes of this section, a person is convicted when the person enters a plea
73 of guilty or is found guilty by a court or jury. A plea of no contest does not constitute a conviction
74 for purposes of this section except where the person holds a commercial drivers license or

75 operates a commercial vehicle.

§17C-5A-2. Pretrial suspension of driver's license.

1 (a) The court shall, at the arraignment or as soon as such relevant information becomes
2 available, suspend the motor vehicle operator's license and motorcycle operator's license and
3 driving privileges of any person charged with a violation of section two, article five of this chapter
4 who:

5 (1) Submitted to an alcohol concentration test that showed that the person had an alcohol
6 concentration in his or her blood of fifteen-hundredths of one percent or more;

7 (2) Submitted to a secondary chemical test that showed that the person had a blood
8 concentration of five nanograms or more of delta 9-tetrahydrocannabinol per millileter in whole
9 blood;

10 (3) Has been convicted of one or more prior offenses as described in subsection (n),
11 section two, article five of this chapter or has had his or her driver's license revoked or suspended
12 on one or more occasions for refusing to take an alcohol concentration or substance test, in the
13 five year period immediately preceding his or her arrest;

14 (4) Was involved in an accident that resulted in death, bodily injury or serious bodily injury,
15 as defined in subsection (a), section two, article five of this chapter, to a person other than the
16 defendant; or

17 (5) Refused to submit to a secondary chemical test as required by section four, article five
18 of this chapter.

19 (b) Upon motion by the prosecutor, the court may, at the arraignment or as soon as such
20 relevant information becomes available, suspend the motor vehicle operator's license and
21 motorcycle operator's license and driving privileges of any person charged with a violation of
22 section two, article five of this chapter if the court finds that allowing the person to maintain his or
23 her license would pose a high risk of harming others during the pendency of the action.

24 (c) A person whose license has been suspended pursuant to this section may file a motion

25 for judicial review of the suspension, and the court shall conduct the review in accordance with
26 this article within thirty days after the filing of the motion. The court shall, at the time of the
27 suspension, advise the defendant of his or her right to the review.

28 (d) When the court orders the suspension of a license pursuant to this section, the
29 defendant shall immediately surrender the license to the clerk of the court in which the charges
30 are pending. If the defendant does not have his or her license, he or she shall produce and
31 surrender the license as soon as possible thereafter. Upon notice that the court has ordered the
32 suspension of a person's license, the clerk of the court in which the charges are pending shall
33 forthwith transmit to the commissioner of the Division of Motor Vehicles a copy of the order
34 suspending the person's license, along with any license surrendered by the person, and the
35 commissioner shall promptly update the division's records to indicate that the person's license is
36 suspended.

37 (e) Licenses suspended under this section shall remain suspended until a judgment of
38 conviction or acquittal is entered in the case or until the court enters an order terminating the
39 suspension, but in no event for a period longer than the maximum license suspension period
40 applicable to the person under section two, article five of this chapter.

41 (f) Any person whose driver's license has been suspended pursuant to this section shall
42 be given credit for all pretrial suspension time against the period of revocation imposed.

§17C-5A-2a. Judicial review of pretrial license suspension for test refusal.

1 If a person appeals a pretrial suspension of his or her license under section two of this
2 article, the scope of the appeal is limited to determining whether one or more of the following
3 conditions have not been met:

4 (a) Whether the arresting law-enforcement officer had reasonable ground to believe the
5 arrested person had committed a violation of section two, article five of this chapter;

6 (b) Whether the law-enforcement officer requested the arrested person to submit to the
7 chemical test or tests designated pursuant to section four, article five;

8 (c) Whether, at the time the test was requested, the law-enforcement officer administered
9 the required written and verbal warnings pursuant to section seven, article five of this chapter;
10 and

11 (d) Whichever of the following is applicable:

12 (1) If the suspension was imposed for refusal to consent to a chemical test, whether the
13 arrested person refused to submit to the chemical test or tests requested by the law-enforcement
14 officer;

15 (2) If the suspension was imposed for a person's failure of a chemical test, whether the
16 chemical test results indicate that at the time of the alleged offense the arrested person's whole
17 blood, blood serum or plasma, breath, or urine contained at least the concentration of alcohol or
18 delta 9-tetrahydrocannabinol specified in the provision of section two, article five of this chapter
19 with which the person is charged; or

20 (3) If the suspension was imposed for a person who submitted to a chemical test but
21 whose blood alcohol content registered below eight one-hundredths of one percent, whether the
22 individual exhibited specific behavior that demonstrated that the person's continued operation of
23 a motor vehicle during the pendency of the criminal action would pose a high risk of harming
24 others.

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

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

9 approve participation by violators in another treatment program which provides the same or
10 substantially similar benefits as the safety and treatment program established pursuant to this
11 section.

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

16 (c) The Department of Health and Human Resources, Division of Alcoholism and Drug
17 Abuse shall provide for the preparation of an educational and treatment ~~the program~~ for each
18 person whose license has been revoked under the provisions of this article ~~or section seven,~~
19 ~~article five of this chapter~~ or subsection (6), section five, article three, chapter seventeen-b of this
20 code which shall contain the following: (1) A listing and evaluation of the offender's prior traffic
21 record; (2) the characteristics and history of alcohol or drug use, if any; (3) his or her amenability
22 to rehabilitation through the alcohol safety program; and (4) a recommendation as to treatment or
23 rehabilitation and the terms and conditions of the treatment or rehabilitation. The program shall
24 be prepared by persons knowledgeable in the diagnosis of alcohol or drug abuse and treatment.

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

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

35 (e) (1) The program provider shall collect the established fee from each participant upon
36 enrollment unless the department has determined that the participant is an indigent based upon
37 criteria established pursuant to legislative rule authorized in this section.

38 (2) If the department determined that a participant is an indigent based upon criteria
39 established pursuant to the legislative rule authorized by this section, the department shall provide
40 the applicant with proof of its determination regarding indigency, which proof the applicant shall
41 present to the interlock provider as part of the application process provided in section three-a of
42 this article and/or the rules promulgated pursuant thereto.

43 (3) Program providers shall remit to the Department of Health and Human Resources a
44 portion of the fee collected, which shall be deposited by the secretary of the Department of Health
45 and Human Resources into the Department of Health and Human Resources Safety and
46 Treatment Fund. The Department of Health and Human Resources shall reimburse enrollment
47 fees to program providers for each eligible indigent offender.

48 (f) On or before January 15 of each year, the secretary of the Department of Health and
49 Human Resources shall report to the Legislature on:

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

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

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

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

56 ~~(g) The Commissioner of the Division of Motor Vehicles, after giving due consideration to~~
57 ~~the program developed for the offender, shall prescribe the necessary terms and conditions for~~
58 ~~the reissuance of the license to operate a motor vehicle in this state revoked under this article or~~
59 ~~section seven, article five of this chapter or subsection (6), section five, article three, chapter~~
60 ~~seventeen-b of this code which shall include successful completion of the educational, treatment~~

61 or rehabilitation program, subject to the following:

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

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

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

81 ~~(4) Notwithstanding any provision of this code or any rule, any mental health facilities or~~
82 ~~other public agencies or private entities conducting the safety and treatment program when~~
83 ~~certifying that a person has successfully completed a safety and treatment program shall only~~
84 ~~have to certify that the person has successfully completed the program.~~

85 ~~(h) (1) The Department of Health and Human Resources, Division of Alcoholism and Drug~~
86 ~~Abuse shall provide for the preparation of an educational program for each person whose license~~

87 ~~has been suspended for sixty days pursuant to the provisions of subsection (n), section two,~~
88 ~~article five-a of this chapter. The educational program shall consist of not less than twelve nor~~
89 ~~more than eighteen hours of actual classroom time.~~

90 ~~(2) When a sixty-day period of suspension has been ordered, the license to operate a~~
91 ~~motor vehicle may not be reinstated until: (A) At least sixty days have elapsed from the date of~~
92 ~~the initial suspension, during which time the suspension was actually in effect; (B) the offender~~
93 ~~has successfully completed the educational program; (C) all costs of the program and~~
94 ~~administration have been paid; and (D) all costs assessed as a result of a suspension hearing~~
95 ~~have been paid.~~

96 ~~(i)~~ (g) A required component of the treatment program provided in subsection (b) of this
97 section and the education program provided for in subsection (c) of this section shall be
98 participation by the violator with a victim impact panel program providing a forum for victims of
99 alcohol and drug-related offenses and offenders to share first-hand experiences on the impact of
100 alcohol and drug-related offenses in their lives. The Department of Health and Human Resources,
101 Division of Alcoholism and Drug Abuse shall propose and implement a plan for victim impact
102 panels where appropriate numbers of victims are available and willing to participate and shall
103 establish guidelines for other innovative programs which may be substituted where the victims
104 are not available to assist persons whose licenses have been suspended or revoked for alcohol
105 and drug-related offenses to gain a full understanding of the severity of their offenses in terms of
106 the impact of the offenses on victims and offenders. The plan shall require, at a minimum,
107 discussion and consideration of the following:

- 108 (A) Economic losses suffered by victims or offenders;
- 109 (B) Death or physical injuries suffered by victims or offenders;
- 110 (C) Psychological injuries suffered by victims or offenders;
- 111 (D) Changes in the personal welfare or familial relationships of victims or offenders; and
- 112 (E) Other information relating to the impact of alcohol and drug-related offenses upon

113 victims or offenders.

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

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

127 ~~(2) The Legislature finds that an emergency exists and, therefore, the Secretary shall file~~
128 ~~by July 1, 2010, an emergency rule to implement this section pursuant to the provisions of section~~
129 ~~fifteen, article three, chapter twenty-nine-a of this code.~~

130 ~~(k)~~ (i) Nothing in this section may be construed to prohibit day report or community
131 correction programs, authorized pursuant to article eleven-c, chapter sixty-two of this code, from
132 administering a comprehensive safety and treatment program pursuant to this section.

§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 and regulate a Motor Vehicle Alcohol
2 Test and Lock Program for persons whose licenses have been revoked pursuant to this article ~~or~~
3 ~~the provisions of article five of this chapter or who~~ have been convicted under section two, article
4 five of this chapter for driving under the influence of alcohol, or who are serving a term of a

5 conditional probation pursuant to section two-b, article five of this chapter.

6 (2) The program shall include the establishment of a users fee for persons participating in
7 the program which shall be paid in advance and deposited into the ~~Driver's Rehabilitation Fund:~~
8 ~~Provided, That on and after July 1, 2007, any unexpended balance remaining in the Driver's~~
9 ~~Rehabilitation Fund shall be transferred to the Motor Vehicle Fees Fund. created under the~~
10 ~~provisions of section twenty-one, article two, chapter seventeen-a of this code and all further fees~~
11 ~~collected shall be deposited in that fund.~~

12 (3) (A) Except where specified otherwise, the use of the term "program" in this section
13 refers to the Motor Vehicle Alcohol Test and Lock Program.

14 (B) The Commissioner of the Division of Motor Vehicles shall propose legislative rules for
15 promulgation in accordance with the provisions of chapter twenty-nine-a of this code for the
16 purpose of implementing the provisions of this section. The rules shall also prescribe those
17 requirements which, in addition to the requirements specified by this section for eligibility to
18 participate in the program, the commissioner determines must be met to obtain the
19 commissioner's approval to operate a motor vehicle equipped with a motor vehicle alcohol test
20 and lock system.

21 (C) Nothing in this section may be construed to prohibit day report or community correction
22 programs authorized pursuant to article eleven-c, chapter sixty-two of this code, or a home
23 incarceration program authorized pursuant to article eleven-b, chapter sixty-two of this code, from
24 being a provider of motor vehicle alcohol test and lock systems for eligible participants as
25 authorized by this section.

26 (4) For purposes of this section, a "motor vehicle alcohol test and lock system" means a
27 mechanical or computerized system which, in the opinion of the commissioner, prevents the
28 operation of a motor vehicle when, through the system's assessment of the blood alcohol content
29 of the person operating or attempting to operate the vehicle, the person is determined to be under
30 the influence of alcohol.

31 (5) The fee for installation and removal of ignition interlock devices shall be waived for
32 persons determined to be indigent by the Department of Health and Human Resources pursuant
33 to section three, article five-a, chapter seventeen-c of this code. The commissioner shall establish
34 by legislative rule, proposed pursuant to article three, chapter twenty-nine-a of this code,
35 procedures to be followed with regard to persons determined by the Department of Health and
36 Human Resources to be indigent. The rule shall include, but is not limited to, promulgation of
37 application forms; establishment of procedures for the review of applications; and the
38 establishment of a mechanism for the payment of installations for eligible offenders.

39 (6) On or before January 15 of each year, the Commissioner of the Division of Motor
40 Vehicles shall report to the Legislature on:

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

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

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

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

46 (b) (1) Any person whose license is revoked for the first time pursuant to this article or the
47 provisions of article five of this chapter is eligible to participate in the program when the person's
48 minimum revocation period as specified by subsection (c) of this section has expired and the
49 person is enrolled in or has successfully completed the safety and treatment program or presents
50 proof to the commissioner within sixty days of receiving approval to participate by the
51 commissioner that he or she is enrolled in a safety and treatment program: *Provided*, That anyone
52 whose license is revoked for the first time for driving with a blood alcohol concentration of fifteen
53 hundredths of one percent or more, by weight, must participate in the program when the person's
54 minimum revocation period as specified by subsection (c) of this section has expired and the
55 person is enrolled in or has successfully completed the safety and treatment program or presents
56 proof to the commissioner within sixty days of receiving approval to participate by the

57 commissioner that he or she is enrolled in a safety and treatment program.

58 (2) Any person whose license has been suspended for driving a motor vehicle while under
59 the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths
60 of one percent or more, by weight, but less than eight-hundredths of one percent, by weight, is
61 eligible to participate in the program after thirty days have elapsed from the date of the initial
62 suspension, during which time the suspension was actually in effect: *Provided*, That in the case
63 of a person under the age of eighteen, the person is eligible to participate in the program after
64 thirty days have elapsed from the date of the initial suspension, during which time the suspension
65 was actually in effect or after the person's eighteenth birthday, whichever is later. Before the
66 commissioner approves a person to operate a motor vehicle equipped with a motor vehicle
67 alcohol test and lock system, the person must agree to comply with the following conditions:

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

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

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

77 (c) A person who participates in the program under subdivision (1), subsection (b) of this
78 section is subject to a minimum revocation period and minimum period for the use of the ignition
79 interlock device as follows:

80 (1) For a person whose license has been revoked for a first offense for six months for
81 driving under the influence of alcohol, or a combination of alcohol and any controlled substance
82 or other drug, or with a blood alcohol concentration of eight hundredths of one percent, by weight,

83 but less than fifteen hundredths, by weight, the minimum period of revocation for participation in
84 the test and lock program is fifteen days and the minimum period for the use of the ignition
85 interlock device is one hundred twenty-five days;

86 (2) For a person whose license has been revoked for a first offense for refusing a
87 secondary chemical test, the minimum period of revocation for participation in the test and lock
88 program is forty-five days and the minimum period for the use of the ignition interlock device is
89 one year;

90 (3) For a person whose license has been revoked for a first offense for driving with a blood
91 alcohol concentration of fifteen hundredths of one percent or more, by weight, the minimum period
92 of revocation for participation in the test and lock program is forty-five days and the minimum
93 period for the use of the ignition interlock device is two hundred seventy days;

94 (4) For a person whose license has been revoked for a first offense for driving under the
95 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or
96 with a blood alcohol concentration of eight hundredths of one percent or more, by weight, or did
97 drive a motor vehicle while under the age of twenty-one years with an alcohol concentration in his
98 or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths
99 of one percent, by weight, and while driving does any act forbidden by law or fails to perform any
100 duty imposed by law, which act or failure proximately causes the death of any person within one
101 year next following the act or failure, and commits the act or failure in reckless disregard of the
102 safety of others and when the influence of alcohol, controlled substances or drugs is shown to be
103 a contributing cause to the death, the minimum period of revocation before the person is eligible
104 for participation in the test and lock program is twelve months and the minimum period for the use
105 of the ignition interlock device is two years;

106 (5) For a person whose license has been revoked for a first offense for driving under the
107 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or
108 with a blood alcohol concentration of eight hundredths of one percent or more, by weight, and

109 while driving does any act forbidden by law or fails to perform any duty imposed by law in the
110 driving of the vehicle, which act or failure proximately causes the death of any person within one
111 year next following the act or failure, the minimum period of revocation is six months and the
112 minimum period for the use of the ignition interlock device is two years;

113 (6) For a person whose license has been revoked for a first offense for driving under the
114 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or
115 with a blood alcohol concentration of eight hundredths of one percent or more, by weight, and
116 while driving does any act forbidden by law or fails to perform any duty imposed by law in the
117 driving of the vehicle, which act or failure proximately causes bodily injury to any person other
118 than himself or herself, the minimum period of revocation for participation in the program is two
119 months and the minimum period for the use of the ignition interlock device is one year;

120 (7) For a person whose license has been revoked for a first offense for driving under the
121 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or
122 with a blood alcohol concentration of eight hundredths of one percent or more, by weight, and
123 while driving has on or within the motor vehicle one or more other persons who are
124 unemancipated minors who have not reached their sixteenth birthday, the minimum period of
125 revocation for participation in the program is two months and the minimum period for the use of
126 the ignition interlock device is ten months.

127 (d) Notwithstanding any provision of the code to the contrary, a person shall participate in
128 the program if the person is convicted under section two, article five of this chapter or the person's
129 license is revoked under ~~section two of this article or section seven, article five of this chapter~~ and
130 the person was previously either convicted or his or her license was revoked under any provision
131 cited in this subsection within the past ten years. The minimum revocation period for a person
132 required to participate in the program under this subsection is one year and the minimum period
133 for the use of the ignition interlock device is two years, except that the minimum revocation period
134 for a person required to participate because of a violation for driving while under the age of

135 twenty-one with a blood alcohol concentration of two hundredths of one percent, or more, by
136 weight, but less than eight hundredths of one percent, or more, by weight, is two months and the
137 minimum period of participation is one year. The division shall add an additional two months to
138 the minimum period for the use of the ignition interlock device if the offense was committed while
139 a minor was in the vehicle. The division shall add an additional six months to the minimum period
140 for the use of the ignition interlock device if a person other than the driver received injuries. The
141 division shall add an additional two years to the minimum period for the use of the ignition interlock
142 device if a person other than the driver is injured and the injuries result in that person's death. The
143 division shall add one year to the minimum period for the use of the ignition interlock device for
144 each additional previous conviction or revocation within the past ten years. Any person required
145 to participate under this subsection must have an ignition interlock device installed on every
146 vehicle he or she owns or operates.

147 (e)(1) If a person applies for and is accepted into the Motor Vehicle Alcohol Test and Lock
148 Program prior to the effective date of the revocation, the commissioner shall defer the revocation
149 period of such person under the provisions of this section. Such deferral shall continue throughout
150 the applicable minimum period for the use of the ignition interlock device plus an additional period
151 equal to the applicable minimum revocation period. If a person successfully completes all terms
152 of the Motor Vehicle Alcohol Test and Lock Program for a period equal to the minimum period for
153 the use of the ignition interlock device pursuant to subsection (c) of this section, plus any
154 applicable minimum revocation period, the commissioner shall waive the revocation period.

155 ~~(2) The application and acceptance of a person into the Motor Vehicle Alcohol Test and~~
156 ~~Lock Program pursuant to this subdivision (1) constitutes an automatic waiver of their right to an~~
157 ~~administrative hearing. The Office of Administrative Hearings may not conduct a hearing on a~~
158 ~~matter which is the basis for a person actively participating in the Motor Vehicle Alcohol Test and~~
159 ~~Lock Program.~~

160 (f) Notwithstanding any other provision in this code, a person whose license is revoked for

161 driving under the influence of drugs is not eligible to participate in the Motor Vehicle Alcohol Test
162 and Lock Program.

163 (g) An applicant for the test and lock program may not have been convicted of any violation
164 of section three, article four, chapter seventeen-b of this code for driving while the applicant's
165 driver's license was suspended or revoked within the six-month period preceding the date of
166 application for admission to the test and lock program unless such is necessary for employment
167 purposes.

168 (h) Upon permitting an eligible person to participate in the program, the commissioner
169 shall issue to the person, and the person is required to exhibit on demand, a driver's license which
170 shall reflect that the person is restricted to the operation of a motor vehicle which is equipped with
171 an approved motor vehicle alcohol test and lock system.

172 (i) The commissioner may extend the minimum period of revocation and the minimum
173 period of participation in the program for a person who violates the terms and conditions of
174 participation in the program as found in this section, or legislative rule, or any agreement or
175 contract between the participant and the division or program service provider. If the commissioner
176 finds that any person participating in the program pursuant to section two-b, article five of this
177 chapter must be removed therefrom for violation(s) of the terms and conditions thereof, he or she
178 shall notify the person, the court that imposed the term of participation in the program and the
179 prosecuting attorney in the county wherein the order imposing participation in the program was
180 entered.

181 (j) A person whose license has been suspended for a first offense of driving while under
182 the age of twenty-one with a blood alcohol concentration of two hundredths of one percent, or
183 more, by weight, but less than eight hundredths of one percent, or more, by weight, who has
184 completed the educational program and who has not violated the terms required by the
185 commissioner of the person's participation in the program is entitled to the reinstatement of his or
186 her driver's license six months from the date the person is permitted to operate a motor vehicle

187 ~~by the commissioner.~~ When a license has been reinstated pursuant to this subsection, the records
188 ordering the suspension, ~~records of any administrative hearing,~~ records of any blood alcohol test
189 results and all other records pertaining to the suspension shall be expunged by operation of law:
190 *Provided,* That a person is entitled to expungement under the provisions of this subsection only
191 once. The expungement shall be accomplished by physically marking the records to show that
192 the records have been expunged and by securely sealing and filing the records. Expungement
193 has the legal effect as if the suspension never occurred. The records may not be disclosed or
194 made available for inspection and in response to a request for record information, the
195 commissioner shall reply that no information is available. Information from the file may be used
196 by the commissioner for research and statistical purposes so long as the use of the information
197 does not divulge the identity of the person.

198 (k) In addition to any other penalty imposed by this code, any person who operates a motor
199 vehicle not equipped with an approved motor vehicle alcohol test and lock system during that
200 person's participation in the Motor Vehicle Alcohol Test and Lock Program is guilty of a
201 misdemeanor and, upon conviction thereof, shall be confined in jail for a period not less than one
202 month nor more than six months and fined not less than \$100 nor more than \$500. Any person
203 who attempts to bypass the alcohol test and lock system is guilty of a misdemeanor and, upon
204 conviction thereof, shall be confined in jail not more than six months and fined not less than \$100
205 nor more than \$1,000: *Provided,* That notwithstanding any provision of this code to the contrary,
206 a person enrolled and participating in the test and lock program may operate a motor vehicle
207 solely at his or her job site if the operation is a condition of his or her employment. For the purpose
208 of this section, Ajob site@ does not include any street or highway open to the use of the public for
209 purposes of vehicular traffic.

ARTICLE 5C. OFFICE OF ADMINISTRATIVE HEARINGS.

§17C-5C-6. Phase out and termination of Office of Administrative Hearings.

1 In order to transfer jurisdiction to the courts of this state for the conduct of the hearing
2 process in relation to contested cases involving license revocation, suspension or denial of
3 licensing by the Commissioner of the Division of Motor Vehicles, the Office of Administrative
4 Hearings, effective upon passage of this section, shall not retain jurisdiction for those matters set
5 forth under section three of this article. The Office of Administrative Hearings shall retain
6 jurisdiction of the matters pending before it prior to the date of the passage of this section and
7 shall in an orderly and efficient manner, bring disposition to all such matters pending before it.
8 Upon resolution of all such matters, the Office of Administrative Hearings shall be terminated. The
9 Secretary of the Department of Transportation may establish interim policies and procedures to
10 aid in the orderly and efficient process during the disposition of remaining cases before the Office
11 of Administrative Hearings during the phase-out period until termination, including the transfer of
12 employees from the Office of Administrative Hearings, if feasible, to other divisions under the
13 Department of Transportation.

NOTE: The purpose of this bill is to eliminate the Division of Motor Vehicle's administrative hearing process for suspending and revoking driver's licenses based on DUI; to establish new procedures for courts with criminal jurisdiction to suspend and revoke driver's licenses based on DUI, to require revocation of an individual's driver's license following a conviction of DUI for operating a vehicle with a blood concentration of five nanograms or more of delta 9-tetrahydrocannabinol; and to require certain warnings concerning blood and breath tests in DUI arrests

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added. §17C-5A-2 and §17C-5A-2a have been completely rewritten.