

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4525**

BY DELEGATES FOLK, MCGEEHAN, SHAFFER, MARCUM,  
FAST, FAIRCLOTH, SHOTT, E. NELSON, HANSHAW,  
SKINNER AND MANCHIN

[Introduced February 12, 2016; Referred  
to the Committee on Roads and Transportation then  
the Judiciary.]

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

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

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

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

**ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

**§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: (I) 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 three-~~  
38 ~~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  
 REVOCATION 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, and if the person does not act to appeal the conviction within the time periods  
11 described in subsection (b) of this section, the person's license to operate a motor vehicle in this  
12 state shall be revoked or suspended in accordance with the provisions of this section.

13 (b) The clerk of the court in which a person has had a term of conditional probation  
14 imposed pursuant to section two-b, article five of this chapter, or is convicted for an offense  
15 described in section two, article five of this chapter or for an offense described in a municipal  
16 ordinance which has the same elements as an offense described in said section shall forward to  
17 the Commissioner of the Division of Motor Vehicles a transcript of the judgment of conviction. If  
18 the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the  
19 transcript when the person convicted has not requested an appeal within twenty days of the  
20 sentencing for such conviction. If the term of conditional probation is the act of a magistrate court,  
21 the magistrate court clerk shall forward the transcript when the order imposing the term of  
22 conditional probation is entered. If the conviction is the judgment of a mayor or police court judge  
23 or municipal court judge, the clerk or recorder shall forward the transcript when the person  
24 convicted has not perfected an appeal within ten days from and after the date upon which the  
25 sentence is imposed. If the conviction is the judgment of a circuit court, the circuit clerk shall  
26 forward the transcript when the person convicted has not filed a notice of intent to file a petition  
27 for appeal or writ of error within thirty days after the judgment was entered.

28 (c) If, upon examination of the transcript of the judgment of conviction, or imposition of a  
29 term of conditional probation pursuant to section two-b, article five of this chapter, the  
30 Commissioner of the Division of Motor Vehicles determines that the person was convicted for an  
31 offense described in section two, article five of this chapter or an ordinance of a municipality of  
32 this state which has the same elements as an offense described in section two of this article, or  
33 had a period of conditional probation imposed pursuant to section two-b, article five of this chapter,  
34 ~~or for an offense described in a municipal ordinance which has the same elements as an offense~~  
35 ~~described in said section~~ because the person did drive a motor vehicle while under the influence

36 of alcohol, controlled substances or drugs, or the combined influence of alcohol or controlled  
37 substances or drugs, or did drive a motor vehicle while having an alcohol concentration in his or  
38 her blood of eight-hundredths of one percent or more, by weight, the commissioner shall make  
39 and enter an order revoking the person's license to operate a motor vehicle in this state. If the  
40 commissioner determines that the person was convicted of driving a motor vehicle while under  
41 the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths  
42 of one percent or more, by weight, but less than eight hundredths of one percent, by weight, the  
43 commissioner shall make and enter an order suspending the person's license to operate a motor  
44 vehicle in this state. The order shall contain the reasons for the revocation or suspension and the  
45 revocation or suspension periods provided for in section two of this article. ~~Further, the order shall~~  
46 ~~give the procedures for requesting a hearing which is to be held in accordance with the provisions~~  
47 ~~of said section. The person shall be advised in the order that because of the receipt of a transcript~~  
48 ~~of the judgment of conviction by the commissioner a presumption exists that the person named~~  
49 ~~in the transcript of the judgment of conviction is the person named in the commissioner's order~~  
50 ~~and such constitutes sufficient evidence to support revocation or suspension and that the sole~~  
51 ~~purpose for the hearing held under this section is for the person requesting the hearing to present~~  
52 ~~evidence that he or she is not the person named in the transcript of the judgment of conviction. A~~  
53 ~~copy of the order shall be forwarded to the person by registered or certified mail, return receipt~~  
54 ~~requested. No revocation or suspension shall become effective until ten days after receipt of a~~  
55 ~~copy of the order.~~

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

59 (d) If a person receives an order advising him or her that his or her license has been  
60 suspended or revoked following receipt by the commissioner of a transcript of a judgment of  
61 conviction, and the person believes that he or she is not the person named in the commissioner's

62 order, the person should notify the commissioner. Upon receipt of this notification, the  
63 commissioner shall immediately review the contents of the judgment of conviction and the  
64 information provided by the person in question and determine if an error has been made. If such  
65 an error is discovered, the commissioner shall immediately reverse the suspension or revocation  
66 of the person's license and take steps to correctly identify the individual against whom the  
67 judgment of conviction has been entered, and immediately suspend his or her license pursuant  
68 to subsection (c) of this section.

69 (e) For the purposes of this section, a person is convicted when the person enters a plea  
70 of guilty or is found guilty by a court or jury. A plea of no contest does not constitute a conviction  
71 for purposes of this section except where the person holds a commercial drivers license or  
72 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) Has been convicted of one or more prior offenses as described in subsection (n),  
8 section two, article five of this chapter or has had his or her driver's license revoked or suspended  
9 on one or more occasions for refusing to take an alcohol concentration or substance test, in the  
10 five year period immediately preceding his or her arrest;

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

14 (4) Refused to submit to a secondary chemical test as required by section four, article five

15 of this chapter.

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

21 (c) A person whose license has been suspended pursuant to this section may file a motion  
22 for judicial review of the suspension, and the court shall conduct the review in accordance with  
23 this article within thirty days after the filing of the motion. The court shall, at the time of the  
24 suspension, advise the defendant of his or her right to the review.

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

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

38 (f) Any person whose driver's license has been suspended pursuant to this section shall  
39 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 ~~(†) (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 twenty-  
135 one with a blood alcohol concentration of two hundredths of one percent, or more, by weight, but  
136 less than eight hundredths of one percent, or more, by weight, is two months and the minimum  
137 period of participation is one year. The division shall add an additional two months to the minimum  
138 period for the use of the ignition interlock device if the offense was committed while a minor was  
139 in the vehicle. The division shall add an additional six months to the minimum period for the use  
140 of the ignition interlock device if a person other than the driver received injuries. The division shall  
141 add an additional two years to the minimum period for the use of the ignition interlock device if a  
142 person other than the driver is injured and the injuries result in that person's death. The division  
143 shall add one year to the minimum period for the use of the ignition interlock device for each  
144 additional previous conviction or revocation within the past ten years. Any person required to  
145 participate under this subsection must have an ignition interlock device installed on every vehicle  
146 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, "job 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 D.U.I.; to eliminate all statutory provisions authorizing or requiring the division to take action upon an individual's driver's license based on D.U.I., in the absence of a conviction or court order; to establish new procedures for courts with criminal jurisdiction to suspend and revoke driver's licenses based on D.U.I., and to require certain warnings concerning blood and breath tests during D.U.I. 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, and are therefore completely underscored.