

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 3033

**FISCAL
NOTE**

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FOLK

[Introduced March 14, 2017; Referred
to the Committee on Roads and Transportation then
the Judiciary.]

1 A BILL to amend and reenact §17C-5-7 of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §17C-5A-1a, §17C-5A-3 and §17C-5A-3a of said code; and to amend
3 said code by adding thereto a new section, designated §17C-5C-6, all relating to the
4 procedures for driver's license suspension and revocation in criminal proceedings for
5 driving under the influence of alcohol, controlled substances or drugs (D.U.I.); eliminating
6 all statutory provisions authorizing or requiring the Commissioner of the Division of Motor
7 Vehicles to take administrative action upon an individual's driver's license on the basis of
8 D.U.I. in the absence of a conviction or a court-ordered suspension or revocation;
9 eliminating all statutory provisions authorizing or requiring the commissioner to require an
10 individual to complete the Motor Vehicle Test and Lock program or other safety programs;;
11 creating a process by which an individual may notify the commissioner if his or her driver's
12 license has been incorrectly suspended or revoked based on mistaken identity of the
13 defendant in a transcript of judgment or conviction; requiring the commissioner to take
14 corrective action if a driver's license is incorrectly suspended or revoked based on
15 mistaken identity; completely transferring jurisdiction for suspension or revocation of a
16 driver's license based on D.U.I. to the court with jurisdiction over the criminal proceedings;
17 requiring a defendant to surrender his or her driver's license upon suspension by the court;
18 requiring the clerk of a court to transmit a copy of an order suspending or revoking a
19 driver's license; establishing procedures and a timeline for the Division of Motor Vehicles
20 to transfer jurisdiction of driver's license suspension and revocation to the courts; and
21 eliminating all statutory provisions authorizing or requiring the commissioner to prescribe
22 the terms and conditions of driver's license reissuance following D.U.I.

Be it enacted by the Legislature of West Virginia:

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

3 reenacted; and that said code be amended by adding thereto a new section, designated §17C-
4 5C-6, all to read as follows:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§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 and after that, fifteen minutes following the receipt of these warnings by the person under
8 arrest the refusal is considered final. The arresting officer after that period of time expires has no
9 further duty to provide the person with an opportunity to take the secondary test. The officer shall,
10 within forty-eight hours of the refusal, sign and submit to the Commissioner of Motor Vehicles a
11 written statement of the officer that: (1) He or she had probable cause to believe the person had
12 been driving a motor vehicle in this state while under the influence of alcohol, controlled
13 substances or drugs; (2) the person was lawfully placed under arrest for an offense relating to
14 driving a motor vehicle in this state while under the influence of alcohol, controlled substances or
15 drugs; (3) the person refused to submit to the secondary chemical test finally designated in the
16 manner provided in section four of this article; and (4) the person was given a written statement
17 advising him or her that his or her license to operate a motor vehicle in this state would be revoked
18 for a period of at least forty-five days and up to life if he or she refused to submit to the secondary
19 test finally designated in the manner provided in section four of this article. The signing of the
20 statement required to be signed by this section constitutes an oath or affirmation by the person
21 signing the statement that the statements contained in the statement are true and that any copy

22 filed is a true copy. The statement shall contain upon its face a warning to the officer signing that
23 to willfully sign a statement containing false information concerning any matter or thing, material
24 or not material, is false swearing and is a misdemeanor. ~~Upon receiving the statement the~~
25 ~~commissioner shall make and enter an order revoking the person's license to operate a motor~~
26 ~~vehicle in this state for the period prescribed by this section.~~

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

48 ~~a test of his or her blood or breath as provided in section four of this article and the test may be~~
49 ~~administered although the person is not informed that his or her failure to submit to the test will~~
50 ~~result in the revocation of his or her license to operate a motor vehicle in this state for the period~~
51 ~~provided for in this section. A revocation under this section shall run concurrently with the period~~
52 ~~of any suspension or revocation imposed in accordance with other provisions of this code and~~
53 ~~growing out of the same incident which gave rise to the arrest for driving a motor vehicle while~~
54 ~~under the influence of alcohol, controlled substances or drugs and the subsequent refusal to~~
55 ~~undergo the test finally designated in accordance with the provisions of section four of this article~~

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

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

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

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

68 ~~(d)~~ (c) The refusal to submit to a blood test may be admissible at the courts discretion in
69 a trial for the offense of driving a motor vehicle in this state while under the influence of alcohol a
70 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-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 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) 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; and providing for termination of the Office of Administrative Hearings.

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