

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 293**

BY SENATORS RUCKER, AZINGER, CLEMENTS, GAUNCH,

MAYNARD, AND CLINE

[Originating in the Committee on Health and Human

Resources; Reported on February 14, 2018]

1 A BILL to amend and reenact §17C-5A-3 of the Code of West Virginia, 1931, as amended, relating  
2 to the addition of grievance and appellate procedures and judicial review for individuals  
3 participating, or who have participated, in the Department of Health and Human  
4 Resources' safety and treatment program; and authorizing the Secretary of the  
5 Department of Health and Human Resources to promulgate rules to add such procedures  
6 and judicial review for participants of the safety and treatment program.

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

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND  
REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF  
ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.**

**§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3 licenses have been revoked under the provisions of this article or §17C-5-7 or §17B-3-5(6) and  
4 shall also establish the minimum qualifications for mental health facilities, day report centers,  
5 community correction centers, or other public agencies or private entities conducting the safety  
6 and treatment program: *Provided*, That the Department of Health and Human Resources, Division  
7 of Alcoholism and Drug Abuse may establish standards whereby the division will accept or  
8 approve participation by violators in another treatment program which provides the same or  
9 substantially similar benefits as the safety and treatment program established pursuant to this  
10 section.

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

15 (c) The Department of Health and Human Resources, Division of Alcoholism and Drug  
16 Abuse shall provide for the preparation of an educational and treatment ~~the~~ program for each  
17 person whose license has been revoked under the provisions of this article, ~~or~~ §17C-5-7, or §17B-  
18 3-5(6), which shall contain the following: (1) A listing and evaluation of the offender's prior traffic  
19 record; (2) the characteristics and history of alcohol or drug use, if any; (3) his or her amenability  
20 to rehabilitation through the alcohol safety program; and (4) a recommendation as to treatment or  
21 rehabilitation and the terms and conditions of the treatment or rehabilitation. The program shall  
22 be prepared by persons knowledgeable in the diagnosis of alcohol or drug abuse and treatment.

23 (d) There is ~~hereby~~ created a special revenue account within the State Treasury known  
24 as the Department of Health and Human Resources Safety and Treatment Fund. The account  
25 shall be administered by the Secretary of the Department of Health and Human Resources for  
26 the purpose of administering the comprehensive safety and treatment program established by  
27 ~~subsection (a) of this section~~ §17C-5A-3 (a) of this code. The account may be invested, and all  
28 earnings and interest accruing shall be retained in the account. The Auditor shall conduct an audit  
29 of the fund at least every three fiscal years.

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

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

36 (2) If the department determined that a participant is an indigent based upon criteria  
37 established pursuant to the legislative rule authorized by this section, the department shall provide  
38 the applicant with proof of its determination regarding indigence, which proof the applicant shall  
39 present to the interlock provider as part of the application process provided in ~~section three-a~~  
40 §17C-5A-3a of this ~~article~~ code and/or the rules promulgated pursuant thereto.

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

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

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

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

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

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

54 (g) The Commissioner of the Division of Motor Vehicles, after giving due consideration to  
55 the program developed for the offender, shall prescribe the necessary terms and conditions for  
56 the reissuance of the license to operate a motor vehicle in this state revoked under this article or  
57 §17C-5-7, or §17B-3-5(6), which shall include successful completion of the educational,  
58 treatment, or rehabilitation program, subject to the following:

59 (1) When the period of revocation is 6 months, the license to operate a motor vehicle in  
60 this state may not be reissued until: (A) At least 90 days have elapsed from the date of the initial  
61 revocation, during which time the revocation was actually in effect; (B) the offender has  
62 successfully completed the program; (C) all costs of the program and administration have been  
63 paid; and (D) all costs assessed as a result of a revocation hearing have been paid.

64 (2) When the period of revocation is for a period of 1 year or for more than a year, the  
65 license to operate a motor vehicle in this state may not be reissued until: (A) At least one-half of  
66 the time period has elapsed from the date of the initial revocation, during which time the revocation

67 was actually in effect; (B) the offender has successfully completed the program; (C) all costs of  
68 the program and administration have been paid; and (D) all costs assessed as a result of a  
69 revocation hearing have been paid. Notwithstanding any provision in this code, a person whose  
70 license is revoked for refusing to take a chemical test as required by ~~section seven, article five of~~  
71 ~~this chapter~~ §17C-5-7 of this code for a first offense is not eligible to reduce the revocation period  
72 by completing the safety and treatment program.

73 (3) When the period of revocation is for life, the license to operate a motor vehicle in this  
74 state may not be reissued until: (A) At least 10 years have elapsed from the date of the initial  
75 revocation, during which time the revocation was actually in effect; (B) the offender has  
76 successfully completed the program; (C) all costs of the program and administration have been  
77 paid; and (D) all costs assessed as a result of a revocation hearing have been paid.

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

82 (h) (1) The Department of Health and Human Resources, Division of Alcoholism and Drug  
83 Abuse shall provide for the preparation of an educational program for each person whose license  
84 has been suspended for 60 days pursuant to the provisions of §17C-5A-2(n). The educational  
85 program shall consist of not less than 12 nor more than 18 hours of actual classroom time.

86 (2) When a 60-day period of suspension has been ordered, the license to operate a motor  
87 vehicle may not be reinstated until: (A) At least 60 days have elapsed from the date of the initial  
88 suspension, during which time the suspension was actually in effect; (B) the offender has  
89 successfully completed the educational program; (C) all costs of the program and administration  
90 have been paid; and (D) all costs assessed as a result of a suspension hearing have been paid.

91 (i) A required component of the treatment program provided in ~~subsection (b) of this~~  
92 ~~section~~ §17C-5A-3 (b) of this code and the education program provided for in ~~subsection (c) of~~

93 ~~this section~~ §17C-5A-3 (c) of this code shall be participation by the violator with a victim impact  
94 panel program providing a forum for victims of alcohol and drug-related offenses and offenders  
95 to share first-hand experiences on the impact of alcohol and drug-related offenses in their lives.  
96 The Department of Health and Human Resources, Division of Alcoholism and Drug Abuse  
97 shall propose and implement a plan for victim impact panels where appropriate numbers of  
98 victims are available and willing to participate and shall establish guidelines for other innovative  
99 programs which may be substituted where the victims are not available to assist persons whose  
100 licenses have been suspended or revoked for alcohol and drug-related offenses to gain a full  
101 understanding of the severity of their offenses in terms of the impact of the offenses on victims  
102 and offenders. The plan shall require, at a minimum, discussion and consideration of the following:

- 103        ~~(A)~~ (1) Economic losses suffered by victims or offenders;
- 104        ~~(B)~~ (2) Death or physical injuries suffered by victims or offenders;
- 105        ~~(C)~~ (3) Psychological injuries suffered by victims or offenders;
- 106        ~~(D)~~ (4) Changes in the personal welfare or familial relationships of victims or offenders;
- 107 and
- 108        ~~(E)~~ (5) Other information relating to the impact of alcohol and drug-related offenses upon  
109 victims or offenders.

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

113        ~~(j)(4)~~The Secretary of the Department of Health and Human Resources shall promulgate  
114 a rule for legislative approval in accordance with ~~article three, chapter twenty-nine-a~~ §29A-3-1 *et*  
115 *seq.* of this code to administer the provisions of this section and establish a fee to be collected  
116 from each offender enrolled in the safety and treatment program. The rule shall include: ~~(A)~~ (1) A  
117 reimbursement mechanism to program providers of required fees for the safety and treatment  
118 program for indigent offenders, criteria for determining eligibility of indigent offenders, and any

119 necessary application forms; and ~~(B)~~ (1) program standards that encompass provider criteria  
120 including minimum professional training requirements for providers, curriculum approval,  
121 minimum course length requirements, and other items that may be necessary to properly  
122 implement the provisions of this section.

123 ~~(2) The Legislature finds that an emergency exists and, therefore, the secretary shall file~~  
124 ~~by July 1, 2010, an emergency rule to implement this section pursuant to the provisions of §29A-~~  
125 ~~3-15.~~

126 (k) (1) The Department of Health and Human Resources shall provide fair, impartial, and  
127 expeditious grievance and appellate procedures for participants of the safety and treatment  
128 program to challenge an adverse decision or decisions by the department or other entity with  
129 whom the department has contracted to operate the program. The purpose of these procedures  
130 would be to allow a person to challenge decisions which negatively affect, or unnecessarily delay,  
131 the participant's outcome in the program.

132 (2) After all administrative remedies provided by this section or any rules promulgated  
133 hereunder have been exhausted, participants who have been deemed unsuccessful in the  
134 program, rendering them ineligible for license reinstatement, or whose outcomes in the program  
135 have been unnecessarily delayed, are entitled to judicial review of the adverse decision or  
136 decisions, pursuant to § 29A-5-4 of this code.

137 (3) The Secretary of the Department of Health and Human Resources shall promulgate  
138 rules pursuant to the provisions of §29A-3-1 et seq. of this code related to the grievance and  
139 appellate procedures referenced in this section.

140 ~~(k)~~ (l) Nothing in this section may be construed to prohibit day report or community  
141 correction programs, authorized pursuant to §62-11C-1 et seq. of this code, from administering a  
142 comprehensive safety and treatment program pursuant to this section.