

# WEST VIRGINIA LEGISLATURE

## 2019 REGULAR SESSION

Introduced

### House Bill 2060

FISCAL  
NOTE

BY DELEGATE SPONAUGLE

[Introduced January 9, 2019; Referred  
to the Committee on Technology and Infrastructure  
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:*

## **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 Refusal to submit to tests; revocation of license or privilege; consent not withdrawn if person arrested is incapable of refusal; hearing.**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 §17C-5-4 of this code refuses to submit to  
2 any secondary chemical test, the tests shall not be given: *Provided*, That prior to the refusal, the  
3 person is given ~~an oral warning and~~ a written statement ~~advising him or her that~~ containing the  
4 warnings contained in §17C-5-4(e) of this code, and an oral warning that his or her refusal to  
5 submit to the secondary test finally designated will result in the revocation of his or her license to  
6 operate a motor vehicle in this state for a period of at least 45 days and up to life and after that,  
7 15 minutes following the receipt of these warnings by the person under arrest the refusal is  
8 considered final. The arresting officer after that period of time expires has no further duty to  
9 provide the person with an opportunity to take the secondary test. The officer shall, within 48  
10 hours of the refusal, sign and submit to the Commissioner of Motor Vehicles a written statement  
11 of the officer that: (1) He or she had probable cause to believe the person had been driving a  
12 motor vehicle in this state while under the influence of alcohol, controlled substances or drugs;  
13 (2) the person was lawfully placed under arrest for an offense relating to driving a motor vehicle  
14 in this state while under the influence of alcohol, controlled substances or drugs; (3) the person  
15 refused to submit to the secondary chemical test finally designated in the manner provided in  
16 §17C-5-4 of this code; and (4) the person was given a written statement advising him or her that  
17 his or her license to operate a motor vehicle in this state would be revoked for a period of at least  
18 45 days and up to life if he or she refused to submit to the secondary test finally designated in the  
19 manner provided in §17-C-4 of this code. The signing of the statement required to be signed by  
20 §17C-5-7 of this code constitutes an oath or affirmation by the person signing the statement that  
21 the statements contained in the statement are true and that any copy filed is a true copy. The  
22 statement shall contain upon its face a warning to the officer signing that to willfully sign a  
23 statement containing false information concerning any matter or thing, material or not material, is  
24 false swearing and is a misdemeanor. ~~Upon receiving the statement the commissioner shall make~~  
25 ~~and enter an order revoking the person's license to operate a motor vehicle in this state for the~~  
26 ~~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 §17C-5-2 of this code for conduct which occurred on  
 62 or after June 10, 1983; and

63 (2) Any revocation under the provisions of §17C-5A-1 or §17C-5A-2 of this code for  
 64 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 §17C-5-2b of this  
 2 code, or is convicted for an offense defined in §17C-5-2 of this code or for an offense described

3 in a municipal ordinance which has the same elements as an offense described in said section  
4 because the person did drive a motor vehicle while under the influence of alcohol, controlled  
5 substances or drugs, or the combined influence of alcohol or controlled substances or drugs, or  
6 did drive a motor vehicle while having an alcohol concentration in his or her blood of eight  
7 hundredths of one percent or more, by weight, or did drive a motor vehicle while under the age of  
8 21 years with an alcohol concentration in his or her blood of two hundredths of one percent or  
9 more, by weight, but less than eight-hundredths of one percent, by weight, and if the person does  
10 not act to appeal the conviction within the time periods described in §17C-5-1b of this code, the  
11 person's license to operate a motor vehicle in this state shall be revoked or suspended in  
12 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 §17C-5-2b of this code, or is convicted for an offense described in §17C-5-  
15 2 of this code or for an offense described in a municipal ordinance which has the same elements  
16 as an offense described in said section shall forward to the Commissioner of the Division of Motor  
17 Vehicles, a transcript of the judgment of conviction. If the conviction is the judgment of a  
18 magistrate court, the magistrate court clerk shall forward the transcript when the person convicted  
19 has not requested an appeal within 20 days of the sentencing for such conviction. If the term of  
20 conditional probation is the act of a magistrate court, the magistrate court clerk shall forward the  
21 transcript when the order imposing the term of conditional probation is entered. If the conviction  
22 is the judgment of a mayor or police court judge or municipal court judge, the clerk or recorder  
23 shall forward the transcript when the person convicted has not perfected an appeal within 10 days  
24 from and after the date upon which the sentence is imposed. If the conviction is the judgment of  
25 a circuit court, the circuit clerk shall forward the transcript when the person convicted has not filed  
26 a notice of intent to file a petition for appeal or writ of error within 30 days after the judgment was  
27 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 §17C-5-2b of this code, the Commissioner of the Division  
30 of Motor Vehicles determines that the person was convicted for an offense described in §17C-5-  
31 2 of this code or an ordinance of a municipality of this state which has the same elements as an  
32 offense described in §17C-5-2 of this code, or had a period of conditional probation imposed  
33 pursuant to §17C-5-2b of this code, ~~or for an offense described in a municipal ordinance which~~  
34 ~~has the same elements as an offense described in said section~~ because the person did drive a  
35 motor vehicle while under the influence of alcohol, controlled substances or drugs, or the  
36 combined influence of alcohol or controlled substances or drugs, or did drive a motor vehicle while  
37 having an alcohol concentration in his or her blood of eight-hundredths of one percent or more,  
38 by weight, the commissioner shall make and enter an order revoking the person's license to  
39 operate a motor vehicle in this state. If the commissioner determines that the person was  
40 convicted of driving a motor vehicle while under the age of 21 years with an alcohol concentration  
41 in his or her blood of two hundredths of one percent or more, by weight, but less than eight  
42 hundredths of one percent, by weight, the commissioner shall make and enter an order  
43 suspending the person's license to operate a motor vehicle in this state. The order shall contain  
44 the reasons for the revocation or suspension and the revocation or suspension periods provided  
45 for in §17C-5-2 of this code. ~~Further, the order shall give the procedures for requesting a hearing~~  
46 ~~which is to be held in accordance with the provisions of said section. The person shall be advised~~  
47 ~~in the order that because of the receipt of a transcript of the judgment of conviction by the~~  
48 ~~commissioner a presumption exists that the person named in the transcript of the judgment of~~  
49 ~~conviction is the person named in the commissioner's order and such constitutes sufficient~~  
50 ~~evidence to support revocation or suspension and that the sole purpose for the hearing held under~~  
51 ~~this section is for the person requesting the hearing to present evidence that he or she is not the~~  
52 ~~person named in the transcript of the judgment of conviction. A copy of the order shall be~~  
53 ~~forwarded to the person by registered or certified mail, return receipt requested. No revocation or~~  
54 ~~suspension shall become effective until ten days after receipt of a copy of the order.~~

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

58 (d) If a person receives an order advising him or her that his or her license has been  
59 suspended or revoked following receipt by the commissioner of a transcript of a judgment of  
60 conviction, and the person believes that he or she is not the person named in the commissioner's  
61 order, the person should notify the commissioner. Upon receipt of this notification, the  
62 commissioner shall immediately review the contents of the judgment of conviction and the  
63 information provided by the person in question and determine if an error has been made. If such  
64 an error is discovered, the commissioner shall immediately reverse the suspension or revocation  
65 of the person's license and take steps to correctly identify the individual against whom the  
66 judgment of conviction has been entered, and immediately suspend his or her license pursuant  
67 to §17C-5A-1a(c) of this code.

68 (e) For the purposes of this section, a person is convicted when the person enters a plea  
69 of guilty or is found guilty by a court or jury. A plea of no contest does not constitute a conviction  
70 for purposes of this section except where the person holds a commercial drivers license or  
71 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 §17C-5A-1 *et seq.* or §17C-5-7, or §17B-3-  
4 5(b) of this code and shall also establish the minimum qualifications for mental health facilities,  
5 day report centers, community correction centers or other public agencies or private entities  
6 conducting the safety and treatment program: *Provided*, That the Department of Health and  
7 Human Resources, Division of Alcoholism and Drug Abuse may establish standards whereby the  
8 division will accept or approve participation by violators in another treatment program which



9 provides the same or substantially similar benefits as the safety and treatment program  
10 established pursuant to this 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 §17C-5A-1 *et seq.*, ~~or section~~  
18 ~~seven, article five of this chapter~~ or §17B-3-5(6) of this code which shall contain the following: (1)  
19 A listing and evaluation of the offender's prior traffic record; (2) the characteristics and history of  
20 alcohol or drug use, if any; (3) his or her amenability to rehabilitation through the alcohol safety  
21 program; and (4) a recommendation as to treatment or rehabilitation and the terms and conditions  
22 of the treatment or rehabilitation. The program shall be prepared by persons knowledgeable in  
23 the diagnosis of alcohol or drug abuse and treatment.

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

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

34 (e) (1) The program provider shall collect the established fee from each participant upon

35 enrollment unless the department has determined that the participant is an indigent based upon  
36 criteria established pursuant to legislative rule authorized in this section.

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

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

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

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

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

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

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

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

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

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

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

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

84 ~~(h) (1) The Department of Health and Human Resources, Division of Alcoholism and Drug~~  
85 ~~Abuse shall provide for the preparation of an educational program for each person whose license~~  
86 ~~has been suspended for sixty days pursuant to the provisions of subsection (n), section two,~~

87 ~~article five-a of this chapter. The educational program shall consist of not less than twelve nor~~  
88 ~~more than eighteen hours of actual classroom time.~~

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

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

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

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

116 ~~(j)~~(h) The Secretary of the Department of Health and Human Resources shall promulgate  
 117 a rule for legislative approval in accordance with §29A-3-1 *et seq.* of this code to administer the  
 118 provisions of this section and establish a fee to be collected from each offender enrolled in the  
 119 safety and treatment program. The rule shall include: (A) A reimbursement mechanism to program  
 120 providers of required fees for the safety and treatment program for indigent offenders, criteria for  
 121 determining eligibility of indigent offenders, and any necessary application forms; and (B) program  
 122 standards that encompass provider criteria including minimum professional training requirements  
 123 for providers, curriculum approval, minimum course length requirements and other items that may  
 124 be necessary to properly implement the provisions of this section.

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

128 ~~(k)~~ (i) Nothing in this section may be construed to prohibit day report or community  
 129 correction programs, authorized pursuant to §62-11C-1 *et seq.* of this code, from administering a  
 130 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 §17C-5-2 of this  
 4 code for driving under the influence of alcohol, or who are serving a term of a conditional probation  
 5 pursuant to §17C-5-2b of this code.

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 §29A of this code for the purpose of  
16 implementing the provisions of this section. The rules shall also prescribe those requirements  
17 which, in addition to the requirements specified by this section for eligibility to participate in the  
18 program, the commissioner determines must be met to obtain the commissioner's approval to  
19 operate a motor vehicle equipped with a motor vehicle alcohol test and lock system.

20 (C) Nothing in this section may be construed to prohibit day report or community correction  
21 programs authorized pursuant to §62-11C-1 *et seq.* of this code, or a home incarceration program  
22 authorized pursuant to §62-11B-1 *et seq.* of this code, from being a provider of motor vehicle  
23 alcohol test and lock systems for eligible participants as authorized by this section.

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

29 (5) The fee for installation and removal of ignition interlock devices shall be waived for  
30 persons determined to be indigent by the Department of Health and Human Resources pursuant  
31 to §17C-5A-3 of this code. The commissioner shall establish by legislative rule, proposed  
32 pursuant to §29A-3-1 *et seq.* of this code, procedures to be followed with regard to persons

33 determined by the Department of Health and Human Resources to be indigent. The rule shall  
34 include, but is not limited to, promulgation of application forms; establishment of procedures for  
35 the review of applications; and the establishment of a mechanism for the payment of installations  
36 for eligible offenders.

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

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

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

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

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

44 (b) (1) Any person whose license is revoked for the first time pursuant to §17C-5A-1 *et*  
45 *seq.*, or the provisions of §17C-5-1 *et seq.* of this code is eligible to participate in the program  
46 when the person's minimum revocation period as specified by §17C-5A-3a(c) of this code has  
47 expired and the person is enrolled in or has successfully completed the safety and treatment  
48 program or presents proof to the commissioner within 60 days of receiving approval to participate  
49 by the commissioner that he or she is enrolled in a safety and treatment program: *Provided, That*  
50 anyone whose license is revoked for the first time for driving with a blood alcohol concentration  
51 of fifteen hundredths of one percent or more, by weight, must participate in the program when the  
52 person's minimum revocation period as specified by §17C-5A-3a(c) of this code has expired and  
53 the person is enrolled in or has successfully completed the safety and treatment program or  
54 presents proof to the commissioner within 60 days of receiving approval to participate by the  
55 commissioner that he or she is enrolled in a safety and treatment program.

56 (2) Any person whose license has been suspended for driving a motor vehicle while under  
57 the age of 21 years with an alcohol concentration in his or her blood of two hundredths of one  
58 percent or more, by weight, but less than eight-hundredths of one percent, by weight, is eligible

59 to participate in the program after 30 days have elapsed from the date of the initial suspension,  
60 during which time the suspension was actually in effect: *Provided*, That in the case of a person  
61 under the age of 18, the person is eligible to participate in the program after 30 days have elapsed  
62 from the date of the initial suspension, during which time the suspension was actually in effect or  
63 after the person's 18th birthday, whichever is later. Before the commissioner approves a person  
64 to operate a motor vehicle equipped with a motor vehicle alcohol test and lock system, the person  
65 must agree to comply with the following conditions:

66 (A) If not already enrolled, the person shall enroll in and complete the educational program  
67 provided in §17C-5A-3a(d) of this code at the earliest time that placement in the educational  
68 program is available, unless good cause is demonstrated to the commissioner as to why  
69 placement should be postponed;

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

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

75 (c) A person who participates in the program under §17C-5A-3a(b)(1) of this code is  
76 subject to a minimum revocation period and minimum period for the use of the ignition interlock  
77 device as follows:

78 (1) For a person whose license has been revoked for a first offense for six months for  
79 driving under the influence of alcohol, or a combination of alcohol and any controlled substance  
80 or other drug, or with a blood alcohol concentration of eight hundredths of one percent, by weight,  
81 but less than fifteen hundredths, by weight, the minimum period of revocation for participation in  
82 the test and lock program is 15 days and the minimum period for the use of the ignition interlock  
83 device is 125 days;

84 (2) For a person whose license has been revoked for a first offense for refusing a



85 secondary chemical test, the minimum period of revocation for participation in the test and lock  
86 program is 45 days and the minimum period for the use of the ignition interlock device is one year;

87 (3) For a person whose license has been revoked for a first offense for driving with a blood  
88 alcohol concentration of fifteen hundredths of one percent or more, by weight, the minimum period  
89 of revocation for participation in the test and lock program is 45 days and the minimum period for  
90 the use of the ignition interlock device is 270 days;

91 (4) For a person whose license has been revoked for a first offense for driving under the  
92 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or  
93 with a blood alcohol concentration of eight hundredths of one percent or more, by weight, or did  
94 drive a motor vehicle while under the age of 21 years with an alcohol concentration in his or her  
95 blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one  
96 percent, by weight, and while driving does any act forbidden by law or fails to perform any duty  
97 imposed by law, which act or failure proximately causes the death of any person within one year  
98 next following the act or failure, and commits the act or failure in reckless disregard of the safety  
99 of others and when the influence of alcohol, controlled substances or drugs is shown to be a  
100 contributing cause to the death, the minimum period of revocation before the person is eligible for  
101 participation in the test and lock program is 12 months and the minimum period for the use of the  
102 ignition interlock device is two years;

103 (5) For a person whose license has been revoked for a first offense for driving under the  
104 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or  
105 with a blood alcohol concentration of eight hundredths of one percent or more, by weight, and  
106 while driving does any act forbidden by law or fails to perform any duty imposed by law in the  
107 driving of the vehicle, which act or failure proximately causes the death of any person within one  
108 year next following the act or failure, the minimum period of revocation is six months and the  
109 minimum period for the use of the ignition interlock device is two years;

110 (6) For a person whose license has been revoked for a first offense for driving under the

111 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or  
112 with a blood alcohol concentration of eight hundredths of one percent or more, by weight, and  
113 while driving does any act forbidden by law or fails to perform any duty imposed by law in the  
114 driving of the vehicle, which act or failure proximately causes bodily injury to any person other  
115 than himself or herself, the minimum period of revocation for participation in the program is two  
116 months and the minimum period for the use of the ignition interlock device is one year;

117 (7) For a person whose license has been revoked for a first offense for driving under the  
118 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or  
119 with a blood alcohol concentration of eight hundredths of one percent or more, by weight, and  
120 while driving has on or within the motor vehicle one or more other persons who are  
121 unemancipated minors who have not reached their 16th birthday, the minimum period of  
122 revocation for participation in the program is two months and the minimum period for the use of  
123 the ignition interlock device is 10 months.

124 (d) Notwithstanding any provision of the code to the contrary, a person shall participate in  
125 the program if the person is convicted under §17C-5-2 of this code or the person's license is  
126 ~~revoked under section two of this article or section seven, article five of this chapter~~ and the person  
127 was previously either convicted or his or her license was revoked under any provision cited in this  
128 subsection within the past 10 years. The minimum revocation period for a person required to  
129 participate in the program under §17C-5A-3a(d) of this code is one year and the minimum period  
130 for the use of the ignition interlock device is two years, except that the minimum revocation period  
131 for a person required to participate because of a violation for driving while under the age of 21  
132 with a blood alcohol concentration of two hundredths of one percent, or more, by weight, but less  
133 than eight hundredths of one percent, or more, by weight, is two months and the minimum period  
134 of participation is one year. The division shall add an additional two months to the minimum period  
135 for the use of the ignition interlock device if the offense was committed while a minor was in the  
136 vehicle. The division shall add an additional six months to the minimum period for the use of the

137 ignition interlock device if a person other than the driver received injuries. The division shall add  
138 an additional two years to the minimum period for the use of the ignition interlock device if a  
139 person other than the driver is injured and the injuries result in that person's death. The division  
140 shall add one year to the minimum period for the use of the ignition interlock device for each  
141 additional previous conviction or revocation within the past 10 years. Any person required to  
142 participate under this subsection must have an ignition interlock device installed on every vehicle  
143 he or she owns or operates.

144 (e) If a person applies for and is accepted into the Motor Vehicle Alcohol Test and Lock  
145 Program prior to the effective date of the revocation, the commissioner shall defer the revocation  
146 period of such person under the provisions of this section. Such deferral shall continue throughout  
147 the applicable minimum period for the use of the ignition interlock device plus an additional period  
148 equal to the applicable minimum revocation period. If a person successfully completes all terms  
149 of the Motor Vehicle Alcohol Test and Lock Program for a period equal to the minimum period for  
150 the use of the ignition interlock device pursuant to §17C-5A-3a(c) of this code, plus any applicable  
151 minimum revocation period, the commissioner shall waive the revocation period.

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

157 (f) Notwithstanding any other provision in this code, a person whose license is revoked for  
158 driving under the influence of drugs is not eligible to participate in the Motor Vehicle Alcohol Test  
159 and Lock Program.

160 (g) An applicant for the test and lock program may not have been convicted of any violation  
161 of §17B-4-3 of this code for driving while the applicant's driver's license was suspended or revoked  
162 within the six-month period preceding the date of application for admission to the test and lock

163 program unless such is necessary for employment purposes.

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

168 (i) The commissioner may extend the minimum period of revocation and the minimum  
169 period of participation in the program for a person who violates the terms and conditions of  
170 participation in the program as found in this section, or legislative rule, or any agreement or  
171 contract between the participant and the division or program service provider. If the commissioner  
172 finds that any person participating in the program pursuant to §17C-5-2b of this code must be  
173 removed therefrom for violation(s) of the terms and conditions thereof, he or she shall notify the  
174 person, the court that imposed the term of participation in the program and the prosecuting  
175 attorney in the county wherein the order imposing participation in the program was entered.

176 (j) A person whose license has been suspended for a first offense of driving while under  
177 the age of 21 with a blood alcohol concentration of two hundredths of one percent, or more, by  
178 weight, but less than eight hundredths of one percent, or more, by weight, who has completed  
179 the educational program and who has not violated the terms required by the commissioner of the  
180 person's participation in the program is entitled to the reinstatement of his or her driver's license  
181 six months from the date the person is permitted to operate a motor vehicle ~~by the commissioner.~~  
182 When a license has been reinstated pursuant to ~~this~~ §17C-5A-3a(j) of this code, the records  
183 ordering the suspension, ~~records of any administrative hearing,~~ records of any blood alcohol test  
184 results, and all other records pertaining to the suspension shall be expunged by operation of law:  
185 *Provided,* That a person is entitled to expungement under the provisions of §17C-5A-3a(j) of this  
186 code only once. The expungement shall be accomplished by physically marking the records to  
187 show that the records have been expunged and by securely sealing and filing the records.  
188 Expungement has the legal effect as if the suspension never occurred. The records may not be

189 disclosed or made available for inspection and in response to a request for record information,  
190 the commissioner shall reply that no information is available. Information from the file may be  
191 used by the commissioner for research and statistical purposes so long as the use of the  
192 information does not divulge the identity of the person.

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