

SB130

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled
Committee Substitute
for
Senate Bill 130

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2020 MAR 25 P 3:45

FILED

SENATORS TRUMP, IHLENFELD, AND FACEMIRE, *original*

sponsors

[Passed March 6, 2020; in effect 90 days from
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1 AN ACT to amend and reenact §17C-5-2, §17C-5-2a, §17C-5-2b, §17C-5-4, §17C-5-7, and
2 §17C-5-12 of the Code of West Virginia, 1931, as amended; to amend said code by adding
3 thereto a new section, designated §17C-5-7a; to amend and reenact §17C-5A-1,
4 §17C-5A-1a, and §17C-5A-3 of said code; to amend said code by adding thereto a new
5 section, designated §17C-5A-2b; and to amend said code by adding thereto a new
6 section, designated §17C-5C-1a, all relating generally to offenses involving operating a
7 motor vehicle while under the influence of alcohol, controlled substances, or drugs and
8 the administrative process for revocation or suspension of a person's license to operate a
9 motor vehicle based on such offenses; defining terms; transferring authority for hearing
10 certain matters related to revocations or suspensions of licenses from the Office of
11 Administrative Hearings to the courts; establishing mandatory license revocation or
12 suspension periods for individuals convicted of certain offenses; authorizing alternate
13 revocation or suspension periods conditioned upon participation in Motor Vehicle Alcohol
14 Test and Lock Program for certain offenses; establishing mandatory license revocation or
15 suspension periods for individuals upon second and subsequent convictions for certain
16 offenses; clarifying what constitutes a second or subsequent offense for purposes of
17 criminal penalties and license revocations and suspensions; clarifying that certain
18 offenses involving driving under the influence take place only when the operator is upon
19 a public highway or private road; clarifying the term "in this state" for purposes of
20 enforcement of certain serious traffic crimes; requiring the Commissioner of the Division
21 of Motor Vehicles to revoke a person's license upon conviction of certain offenses or for
22 refusal to submit to a secondary chemical test in certain circumstances; requiring
23 individuals whose licenses have been revoked or suspended upon conviction of certain
24 offenses to complete the comprehensive safety and treatment program before the license
25 can be reinstated; requiring driver consent to participation in Motor Vehicle Alcohol Test

26 and Lock Program; requiring deferral program for certain first offenses to be completed
27 within one year; prohibiting a secondary test of blood without consent absent issuance of
28 a search warrant; requiring that a person arrested for driving under the influence be
29 provided with certain verbal and written warnings prior to submitting to a secondary
30 chemical test; requiring an officer to 15 minutes before a refusal to submit to a secondary
31 chemical test is considered final; requiring that, following an individual's refusal to submit
32 to a secondary chemical test, an arresting officer submit a sworn statement containing
33 certain information to Commissioner of the Division of Motor Vehicles and the court;
34 providing for a hearing before the court to contest a documented refusal to submit to a
35 secondary chemical test; providing minimum license revocation periods for refusal to
36 submit to a secondary chemical test; directing the Bureau for Public Health to make reports
37 and recommendations on the levels of drugs and controlled substances to be used as
38 evidence in certain criminal proceedings; limiting the administrative jurisdiction of Division
39 of Motor Vehicles and Office of Administrative Hearings to offenses occurring on or before
40 June 30, 2020; eliminating all statutory provisions authorizing or requiring the
41 Commissioner of the Division of Motor Vehicles to take administrative action upon an
42 individual's license on the basis of driving under the influence or refusal to submit to a
43 secondary test absent direction from court; requiring the Commissioner of the Division of
44 Motor Vehicles to provide certain records to the court following a person's arrest; providing
45 a procedure to correct a license revocation or suspension based on mistaken driver
46 identity; providing that a plea of no contest constitutes a conviction; requiring the clerk of
47 the court to transmit a copy of an order related to revoking or suspending a person's
48 license to the Division of Motor Vehicles; directing that a copy of a license revocation or
49 suspension order to be sent to the person whose license is being revoked or suspended
50 by certified mail; providing that revocation for refusal to submit to secondary chemical test

51 run concurrently with other revocation or suspension imposed as a result of an offense
52 that led to the arrest; making persons convicted of driving under the influence eligible for
53 participation in comprehensive safety and treatment program and related reductions in
54 length of revocation for successful completion thereof; requiring the Office of
55 Administrative Hearings to dispose of all matters pending before it by a certain date;
56 establishing a timeline for jurisdiction of matters currently filed in the Office of
57 Administrative Hearings to transfer to the courts; requiring that matters related to license
58 suspension or revocation for driving under the influence, pending before the Office of
59 Administrative Hearings on its termination, be dismissed; requiring that matters not related
60 to license suspension or revocation for driving under the influence, pending before the
61 Office of Administrative Hearings on its termination, be transferred to a circuit court
62 according to certain procedures; terminating the Office of Administrative Hearings by a
63 certain date; eliminating obsolete language; providing internal effective dates; and making
64 technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

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

1 (a) *Definitions.* —

2 (1) “Impaired state” means a person:

3 (A) Is under the influence of alcohol;

4 (B) Is under the influence of any controlled substance;

5 (C) Is under the influence of any other drug or inhalant substance;

6 (D) Is under the combined influence of alcohol and any controlled substance or any other
7 drug; or

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

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

12 (3) "Controlled substance" has the meaning provided in §60A-1-101 of this code.

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

16 (5) "Test and lock program" means the Motor Vehicle Test and Lock Program, established
17 in §17C-5A-3a and administered by the Division of Motor Vehicles.

18 (b) Any person who drives a vehicle in this state while he or she is in an impaired state,
19 and such impaired state proximately causes the death of any person, is guilty of a felony and,
20 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three
21 nor more than 15 years and shall be fined not less than \$1,000 nor more than \$3,000, and shall
22 have his or her license to operate a motor vehicle revoked by the Commissioner of the Division
23 of Motor Vehicles for a period of 10 years or for a period of time conditioned on participation in
24 the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That any death
25 charged under this subsection must occur within one year of the offense: *Provided, however*, That
26 if the person has previously been convicted under this section, the person shall have his or her
27 license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles
28 for life or for a period of time conditioned on participation in the test and lock program in
29 accordance with §17C-5A-3a of this code.

30 (c) Any person who drives a vehicle in this state while he or she is in an impaired state,
31 and such impaired state proximately causes serious bodily injury to any person other than himself
32 or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state

33 correctional facility for not less than two nor more than 10 years and shall be fined not less than
34 \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor vehicle revoked
35 by the Commissioner of the Division of Motor Vehicles for a period of five years or for a period of
36 time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of
37 this code: *Provided*, That if the person has previously been convicted under this section, the
38 person shall have his or her license to operate a motor vehicle revoked by the Commissioner of
39 the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test
40 and lock program in accordance with §17C-5A-3a of this code.

41 (d) Any person who drives a vehicle in this state while he or she is in an impaired state,
42 and such impaired state proximately causes a bodily injury to any person other than himself or
43 herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not
44 less than one day nor more than one year and shall be fined not less than \$200 nor more than
45 \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner
46 of the Division of Motor Vehicles for a period of two years or for a period of time conditioned on
47 participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*,
48 That if the person has previously been convicted under this section, the person shall have his or
49 her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor
50 Vehicles for life or for a period of time conditioned on participation in the test and lock program in
51 accordance with §17C-5A-3a of this code. Any jail term imposed pursuant to this subsection shall
52 include actual confinement of not less than 24 hours: *Provided, however*, That a person
53 sentenced pursuant to this subsection shall receive credit for any period of actual confinement he
54 or she served upon arrest for the subject offense.

55 (e) Any person who drives a vehicle on any public highway or private road in this state:
56 (1) while he or she is in an impaired state; or (2) while he or she is in an impaired state but has
57 an alcohol concentration in his or her blood of less than fifteen hundredths of one percent, by

58 weight, is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for up to
59 six months and shall be fined not less than \$100 nor more than \$500, and shall have his or her
60 license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles
61 for a period of six months or for a period of time conditioned on participation in the test and lock
62 program in accordance with §17C-5A-3a of this code: *Provided*, That a person sentenced
63 pursuant to this subsection shall receive credit for any period of actual confinement he or she
64 served upon arrest for the subject offense.

65 (f) Any person who drives a vehicle on any public highway or private road in this state
66 while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one
67 percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be
68 confined in jail for not less than two days nor more than six months, which jail term is to include
69 actual confinement of not less than 24 hours, and shall be fined not less than \$200 nor more than
70 \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner
71 of the Division of Motor Vehicles for a period of one year or for a period of time conditioned on
72 participation in the test and lock program in accordance with §17C-5A-3a of this code. A person
73 sentenced pursuant to this subsection shall receive credit for any period of actual confinement he
74 or she served upon arrest for the subject offense.

75 (g) Any person who, being a habitual user of narcotic drugs or amphetamines, or any
76 derivative thereof, drives a vehicle on any public highway or private road in this state is guilty of
77 a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day
78 nor more than six months, which jail term is to include actual confinement of not less than 24
79 hours, and shall be fined not less than \$100 nor more than \$500, and shall have his or her license
80 to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a
81 period of six months. A person sentenced pursuant to this subsection shall receive credit for any
82 period of actual confinement he or she served upon arrest for the subject offense.

83 (h) Any person who knowingly permits his or her vehicle to be driven on any public highway
84 or private road in this state by any other person who is in an impaired state is guilty of a
85 misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months
86 and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to
87 operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a
88 period of six months or for a period of time conditioned on participation in the test and lock
89 program in accordance with §17C-5A-3a of this code.

90 (i) Any person who knowingly permits his or her vehicle to be driven on any public highway
91 or private road in this state by any other person who is a habitual user of narcotic drugs or
92 amphetamines, or any derivative thereof, is guilty of a misdemeanor and, upon conviction thereof,
93 shall be confined in jail for not more than six months and shall be fined not less than \$100 nor
94 more than \$500, and shall have his or her license to operate a motor vehicle revoked by the
95 Commissioner of the Division of Motor Vehicles for a period of six months.

96 (j) (1) Any person under the age of 21 years who drives a vehicle on any public highway
97 or private road in this state while he or she has an alcohol concentration in his or her blood of two
98 hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by
99 weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction
100 thereof, shall be fined not less than \$25 nor more than \$100, and have his or her license to operate
101 a motor vehicle suspended by the Commissioner of the Division of Motor Vehicles for a period of
102 60 days or for a period of time conditioned on participation in the test and lock program in
103 accordance with §17C-5A-3a of this code. For a second or subsequent offense under this
104 subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined
105 in jail for 24 hours and shall be fined not less than \$100 nor more than \$500, and shall have his
106 or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor
107 Vehicles for a period of one year or until the person's 21st birthday, whichever period is longer,

108 or for a period of time conditioned on participation in the test and lock program in accordance with
109 §17C-5A-3a of this code. A person who is charged with a first offense under the provisions of this
110 subsection may move for a continuance of the proceedings, from time to time, to allow the person
111 to participate in the test and lock program as provided in §17C-5A-3a of this code. Upon
112 successful completion of the program, the court shall dismiss the charge against the person and
113 expunge the person's record as it relates to the alleged offense. In the event the person fails to
114 successfully complete the program, the court shall proceed to an adjudication of the alleged
115 offense. A motion for a continuance under this subsection may not be construed as an admission
116 or be used as evidence.

117 (2) (A) Notwithstanding subdivision (1) of this subsection, a person shall have his or her
118 license to operate a motor vehicle suspended or revoked for a minimum period of one year or for
119 a period of time conditioned on participation in the test and lock program in accordance with
120 §17C-5A-3a of this code, if the person:

121 (i) Has previously been convicted under this subsection and is subsequently convicted of
122 an offense under another subsection of this section; or

123 (ii) Is convicted under this subsection and has previously been convicted of an offense
124 under another subsection of this section.

125 (B) Nothing in this subdivision permits a shorter period of license revocation, license
126 suspension, or participation in the test and lock program than is mandatory for the specific offense
127 for which the person is convicted.

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

131 (k) Any person who drives a vehicle on any public highway or private road in this state
132 while he or she is in an impaired state and has within the vehicle one or more other persons who
133 are unemancipated minors who have not yet reached their 16th birthday is guilty of a

134 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor
135 more than 12 months, and shall be fined not less than \$200 nor more than \$1,000, and shall have
136 his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor
137 Vehicles for a period of one year or for a period of time conditioned on participation in the test and
138 lock program in accordance with §17C-5A-3a of this code: *Provided*, That such jail term shall
139 include actual confinement of not less than 48 hours: *Provided, however*, That a person
140 sentenced pursuant to this subsection shall receive credit for any period of actual confinement he
141 or she served upon arrest for the subject offense.

142 (l) A person convicted of an offense under this section, who has previously been convicted
143 of any offense under this section on one occasion, is guilty of a misdemeanor and, upon conviction
144 thereof, shall be confined in jail for not less than six months nor more than one year, may be fined
145 not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor
146 vehicle revoked by the Commissioner of the Division of Motor Vehicles for 10 years or for a period
147 of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a
148 of this code: *Provided*, That if the second conviction is for an offense as described in subsections
149 (b), (c), or (d) of this section and the subsection creating the offense requires a period of
150 incarceration, period of license revocation, or fine that is greater than what is required for a
151 conviction under this subsection, the greater period of incarceration, period of revocation, or fine
152 shall be imposed: *Provided, however*, That this section does not apply to a second conviction that
153 is subject to a period of license revocation under subsection (j) of this section.

154 (m) A person convicted of an offense under this section, who has previously been
155 convicted of any offense under this section on two or more occasions, is guilty of a felony and,
156 upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two
157 nor more than five years, shall have his or her license to operate a motor vehicle revoked by the
158 Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on
159 participation in the test and lock program in accordance with §17C-5A-3a of this code, and the

160 court may, in its discretion, impose a fine of not less than \$3,000 nor more than \$5,000: *Provided,*
161 That if the third or subsequent conviction is for an offense as described in subsections (b), (c), or
162 (d) of this section and the subsection creating the offense requires a period of incarceration, period
163 of license revocation, or fine that is greater than what is required for a conviction under this
164 subsection, the greater period of incarceration, period of revocation, and fine shall be imposed:
165 *Provided, however,* That this section does not apply to a third or subsequent conviction that is
166 subject to a period of license revocation under subsection (j) of this section.

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

170 (1) Any conviction under the provisions of subsection (b), (c), (d), (e), (f), (g), (h), or (i) of
171 this section, or under a prior enactment of this section, for an offense which occurred within the
172 10-year period immediately preceding the date of arrest in the current proceeding;

173 (2) Any conviction under a municipal ordinance of this state or any other state or a statute
174 of the United States or of any other state of an offense which has the same elements as an offense
175 described in subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section, which offense occurred
176 within the 10-year period immediately preceding the date of arrest in the current proceeding; and

177 (3) Any period of conditional probation imposed pursuant to §17C-5-2b of this code for
178 violation of subsection (e) of this section, which violation occurred within the 10-year period
179 immediately preceding the date of arrest in the current proceeding.

180 (o) A person may be charged in a warrant, indictment, or information for a second or
181 subsequent offense, as described in subsection (j), (l), or (m) of this section, if the person has
182 been previously arrested for, or charged with, a violation of this section which is alleged to have
183 occurred within the applicable time period for prior offenses, notwithstanding the fact that there
184 has not been a final adjudication of the charges for the alleged previous offense. In that case, the

185 warrant or indictment or information must set forth the date, location, and particulars of the
186 previous offense or offenses. No person may be convicted of a second or subsequent offense
187 under this section unless the conviction for the previous offense has become final, or the person
188 has previously had a period of conditional probation imposed pursuant to §17C-5-2b of this code.

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

194 (q) The sentences provided in this section upon conviction for a violation of this article are
195 mandatory and are not subject to suspension or probation: *Provided*, That the court may apply
196 the provisions of §62-11A-1 *et seq.* of this code to a person sentenced or committed to a term of
197 one year or less for a first offense under this section: *Provided, however*, That the court may
198 impose a term of conditional probation pursuant to §17C-5-2b of this code to persons adjudicated
199 thereunder. An order for home detention by the court pursuant to the provisions of §62-11B-1 *et*
200 *seq.* of this code may be used as an alternative sentence to any period of incarceration required
201 by this section for a first or subsequent offense: *Provided further*, That for any period of home
202 incarceration ordered for a person convicted of a second offense under this section, electronic
203 monitoring shall be required for no fewer than five days of the total period of home confinement
204 ordered and the offender may not leave home for those five days notwithstanding the provisions
205 of §62-11B-5 of this code: *And provided further*, That for any period of home incarceration ordered
206 for a person convicted of a third or subsequent violation of this section, electronic monitoring shall
207 be included for no fewer than 10 days of the total period of home confinement ordered and the
208 offender may not leave home for those 10 days notwithstanding §62-11B-5 of this code.

209 (r) A person whose license to operate a motor vehicle has been revoked or suspended
210 by the Commissioner of the Division of Motor Vehicles pursuant to this section must complete a
211 comprehensive safety and treatment program as set forth in §17C-5A-3 of this code before his or
212 her license to operate a motor vehicle can be reinstated and his or her driving privileges restored.

213 (s) For any offense for which an alternative revocation period is permitted conditioned
214 upon participation in the test and lock program, an alternative sentence may not be imposed
215 without the consent of the driver.

216 (t) Upon entering the order of conviction for an offense under this section, or the imposition
217 of conditional probation as provided in §17C-5-2b of this code, the clerk of the court shall
218 immediately transmit the order to the Commissioner of the Division of Motor Vehicles.

219 (u) The amendments made to this section during the 2020 regular session of the
220 Legislature shall become effective on July 1, 2020.

**§17C-5-2a. Definition of phrase “in this state”; phrases synonymous with driving under the
influence of alcohol; validation of warrants and indictments.**

1 (a) For purposes of this article and §17C-5A-1 *et seq.* of this code, the phrase “in this
2 state” shall mean anywhere within the physical boundaries of this state, including, but not limited
3 to, publicly maintained streets and highways, and subdivision streets or other areas not publicly
4 maintained but nonetheless open to the use of the public for purposes of vehicular travel, but as
5 used in §17C-5-2(e), §17C-5-2(f), §17C-5-2(g), §17C-5-2(h), §17C-5-2(i), §17C-5-2(j), and
6 §17C-5-2(k) of this code, the term does not mean or include driving or operating a vehicle solely
7 and exclusively on one’s own property in an area not open to the use of the public for purposes
8 of vehicular travel.

9 (b) When used in this code, the terms or phrases “driving under the influence of
10 intoxicating liquor”, “driving or operating a motor vehicle while intoxicated”, “for any person who
11 is under the influence of intoxicating liquor to drive any vehicle”, or any similar term or phrase

12 shall be construed to mean and be synonymous with the term or phrase “while under the influence
13 of alcohol ... drives a vehicle” as the latter term or phrase is used in §17C-5-2 of this code.

14 (c) From and after the effective date of this section, a warrant or indictment which charges
15 or alleges an offense, prohibited by §17C-5-2 of this code, and which warrant or indictment uses
16 any of the terms or phrases set forth in subsection (b) of this section, shall not thereby be fatally
17 defective if such warrant or indictment otherwise informs the person so accused of the charges
18 against said person.

§17C-5-2b. Deferral of further proceedings for certain first offenses upon condition of participation in Motor Vehicle Alcohol Test and Lock Program; procedure on charge of violation of conditions.

1 (a) (1) Except as provided in subsection (f) of this section, the court, without entering a
2 judgment of guilt and with the consent of the accused, shall defer further proceedings and impose
3 probation, when:

4 (A) The person pleads to or is found guilty of the offense defined in §17C-5-2(e) of this
5 code;

6 (B) The person has not previously been convicted of any offense under this article or under
7 any statute of the United States or of any state relating to driving under the influence of alcohol,
8 any controlled substance, or any other drug; and

9 (C) The person notifies the court within 30 days of his or her arrest of his or her intention
10 to participate in a deferral pursuant to this section.

11 (2) If all the requirements in subdivision (1) of this subsection are met, the court, without
12 entering a judgment of guilt, shall defer further proceedings and place the person on probation,
13 the conditions of which shall include that he or she successfully completes the Motor Vehicle
14 Alcohol Test and Lock Program as provided in §17C-5A-3a of this code. Participation therein shall

15 be for a period of at least 165 days after a 15-day suspension of his or her license to operate a
16 motor vehicle and shall be completed within one year thereafter.

17 (b) (1) If the prosecuting attorney files a motion alleging that the defendant during the
18 period of the Motor Vehicle Alcohol Test and Lock Program has been removed therefrom by the
19 Division of Motor Vehicles, or has failed to successfully complete the program before making a
20 motion for dismissal pursuant to subsection (c) of this section, the court may issue such process
21 as is necessary to bring the defendant before the court.

22 (2) A motion alleging a violation filed pursuant in subdivision (1) of this subsection must
23 be filed during the period of the Motor Vehicle Alcohol Test and Lock Program or, if filed thereafter,
24 must be filed within a reasonable time after the alleged violation was committed.

25 (3) When the defendant is brought before the court, the court shall afford the defendant
26 an opportunity to be heard. If the court finds that the defendant has been rightfully removed from
27 the Motor Vehicle Alcohol Test and Lock Program by the Division of Motor Vehicles, the court
28 may order, when appropriate, that the deferral be terminated, and thereupon enter an adjudication
29 of guilt and proceed as otherwise provided.

30 (4) Should the defendant fail to complete or be removed from the Motor Vehicle Alcohol
31 Test and Lock Program, the defendant waives the appropriate statute of limitations and the
32 defendant's right to a speedy trial under any applicable federal or state constitutional provisions,
33 statutes, or rules of court during the period of enrollment in the program.

34 (c) When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol Test
35 and Lock Program and complied with its conditions, the defendant may move the court for an
36 order dismissing the charges. This motion shall be supported by affidavit of the defendant and by
37 certification of the Division of Motor Vehicles that the defendant has successfully completed the
38 Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the
39 prosecuting attorney who shall within 30 days after service advise the judge of any objections to

40 the motion, serving a copy of such objections on the defendant or the defendant's attorney. If
41 there are no objections filed within the 30-day period, the court shall thereafter dismiss the
42 charges against the defendant. If there are objections filed with regard to the dismissal of charges,
43 the court shall proceed as set forth in subsection (b) of this section.

44 (d) Except as provided herein, unless a defendant adjudicated pursuant to this subsection
45 is convicted of a subsequent violation of this article, discharge and dismissal under this section
46 shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or
47 disabilities imposed by law upon conviction of a crime, except for those provided in §17C-5A-1 *et*
48 *seq.* of this code. Except as provided in §17C-5-2 of this code regarding subsequent offenses,
49 the effect of the dismissal and discharge shall be to restore the person in contemplation of law to
50 the status he or she occupied prior to arrest and trial. No person as to whom a dismissal and
51 discharge have been effected shall be thereafter held to be guilty of perjury, false swearing, or
52 otherwise giving a false statement by reason of his or her failure to disclose or acknowledge his
53 or her arrest or trial in response to any inquiry made of him or her for any purpose other than any
54 inquiry made in connection with any subsequent offense as provided in §17C-5-2 of this code.

55 (e) There may be only one discharge and dismissal under this section with respect to any
56 person.

57 (f) No person shall be eligible for dismissal and discharge under this section: (1) In any
58 prosecution in which any violation of any other provision of this article has been charged; (2) if
59 the person holds a commercial driver's license or operates commercial motor vehicles; (3) if the
60 person has previously had his or her license to operate a motor vehicle revoked for any offense
61 under a municipal ordinance of this state or any other state or a statute of the United States or of
62 any other state which has the same elements as an offense described in this article; or (4) if a
63 court entered an order finding that the person refused the secondary chemical test pursuant to
64 §17C-5-7a of this code.

65 (g) (1) After a period of not less than one year, which shall begin to run immediately upon
66 the expiration of a term of probation imposed upon any person under this section, the person may
67 apply to the court for an order to expunge all official records of his or her arrest, trial, and
68 conviction, pursuant to this section except for those maintained by the Division of Motor Vehicles:
69 *Provided*, That any person who has previously been convicted of a felony may not make a motion
70 for expungement pursuant to this section.

71 (2) If the prosecuting attorney objects to the expungement, the objections shall be filed
72 with the court within 30 days after service of a motion for expungement, and copies of the
73 objections shall be served on the defendant or the defendant's attorney.

74 (3) If the objections are filed, the court shall hold a hearing on the objections, affording all
75 parties an opportunity to be heard. If the court determines after a hearing that the person during
76 the period of his or her probation and during the period of time prior to his or her application to
77 the court under this subsection has not been guilty of any serious or repeated violation of the
78 conditions of his or her probation, it shall order the expungement.

79 (h) A person prosecuted for an offense under §17C-5-2(e) of this code, whose case is
80 disposed of pursuant to the provisions of this section, shall be required to pay the amount of court
81 costs that could be assessed against a person convicted of the offense. Payment of such costs
82 may be made a condition of probation. The costs assessed pursuant to this subsection, whether
83 as a term of probation or not, shall be distributed as other court costs in accordance with §50-3-2
84 of this code; §14-2A-4 of this code; §30-29-4 of this code; and §62-5-2, §62-5-7, and §62-5-10 of
85 this code.

86 (i) The amendments made to this section during the 2020 regular session of the
87 Legislature shall become effective on July 1, 2020.

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

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

6 (b) A preliminary breath analysis may be administered in accordance with the provisions
7 of §17C-5-5 of this code whenever a law-enforcement officer has reasonable cause to believe a
8 person has committed an offense prohibited by §17C-5-2 of this code or by an ordinance of a
9 municipality of this state which has the same elements as an offense described in §17C-5-2 of
10 this code.

11 (c) A secondary test of blood or breath is incidental to a lawful arrest and is to be
12 administered at the direction of the arresting law-enforcement officer having probable cause to
13 believe the person has committed an offense prohibited by §17C-5-2 of this code or by an
14 ordinance of a municipality of this state which has the same elements as an offense described in
15 said section: *Provided*, That absent written consent of the person, a secondary test of blood may
16 not be performed without issuance of a warrant signed by a magistrate or a circuit judge.

17 (d) The law-enforcement agency that employs the arresting law-enforcement officer shall
18 designate the secondary tests to be administered. Notwithstanding §17C-5-7a of this code, the
19 refusal to submit to a blood test only may not result in the revocation of the arrested person's
20 license to operate a motor vehicle in this state.

21 (e) Any person to whom a preliminary breath test is administered who is arrested shall be
22 advised verbally and given a written statement advising him or her of the following:

23 (1) That the person's refusal to submit to the secondary chemical test, designated
24 pursuant to subsection (d) of this section, will result in the revocation of his or her license to
25 operate a motor vehicle for a period of at least 45 days and up to life;

26 (2) That, if a designated secondary chemical test is taken, the results of the test may be
27 used against him or her in court as evidence of violating §17C-5-2 of this code or an ordinance of
28 a municipality of this state which has the same elements as an offense described in said section;
29 and

30 (3) That, if the person first submits to the requested secondary chemical test, the person
31 has the right to have a test or tests of his or her blood performed as provided in §17C-5-9 of this
32 code.

33 (f) Any law-enforcement officer who has been properly trained in the administration of any
34 secondary chemical test authorized by this article, including, but not limited to, certification by the
35 Bureau for Public Health in the operation of any equipment required for the collection and analysis
36 of a breath sample, may conduct the test at any location in the county wherein the arrest is made:
37 *Provided*, That the law-enforcement officer may conduct the test at the nearest available properly
38 functioning secondary chemical testing device located outside the county in which the arrest was
39 made, if: (1) There is no properly functioning secondary chemical testing device located within
40 the county the arrest was made; or (2) there is no magistrate available within the county the arrest
41 was made for the arraignment of the person arrested. A law-enforcement officer who is directing
42 that a secondary chemical test be conducted has the authority to transport the person arrested to
43 where the secondary chemical testing device is located.

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

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

53 (i) (1) For the purpose of this article, the term “law-enforcement officer” or “police officer”
54 means: (A) Any member of the West Virginia State Police; (B) any sheriff and any deputy sheriff
55 of any county; (C) any member of a police department in any municipality as defined in §8-1-2 of
56 this code; (D) any Natural Resources police officer of the Division of Natural Resources; and (E)
57 any special police officer appointed by the Governor pursuant to the provisions of §61-3-41 of this
58 code who has completed the course of instruction at a law-enforcement training academy as
59 provided for under the provisions of §30-29-9 of this code.

60 (2) In addition to standards promulgated by the Governor's Committee on Crime,
61 Delinquency, and Correction, pursuant to §30-29-3 of this code, governing the qualification of
62 law-enforcement officers and the entry-level law-enforcement training curricula, the Governor's
63 Committee on Crime, Delinquency, and Correction shall require the satisfactory completion of a
64 minimum of not less than six hours of training in the recognition of impairment in drivers who are
65 under the influence of controlled substances or drugs other than alcohol.

66 (3) In addition to standards promulgated by the Governor's Committee on Crime,
67 Delinquency, and Correction, pursuant to §30-29-3 of this code, establishing standards governing
68 in-service law-enforcement officer training curricula and in-service supervisory level training
69 curricula, the Governor's Committee on Crime, Delinquency, and Correction shall require the
70 satisfactory completion of a minimum of not less than six hours of training in the recognition of
71 impairment in drivers who are under the influence of controlled substances or drugs other than
72 alcohol.

73 (4) A law-enforcement officer who has not satisfactorily completed the minimum number
74 of hours of training in the recognition of impairment in drivers who are under the influence of
75 controlled substances or drugs other than alcohol, required by subdivisions (2) and (3) of this

76 subsection, may not require any person to submit to secondary chemical test of his or her blood
77 for the purposes of determining the concentration in the person's body of a controlled substance,
78 drug, or any combination thereof.

79 (j) A law-enforcement officer who has reasonable cause to believe that a person has
80 committed an offense prohibited by §20-7-18 of this code, relating to the operation of a motorboat,
81 jet ski, or other motorized vessel, shall follow the provisions of this section when administering,
82 or causing to be administered, a preliminary breath analysis and, incidental to a lawful arrest, a
83 secondary chemical test of the accused person's blood or breath to determine the alcohol
84 concentration in his or her blood, or the concentration in the person's body of a controlled
85 substance, drug, or any combination thereof.

**§17C-5-7. Refusal to submit to tests; revocation of license or privilege; consent not
withdrawn if person arrested is incapable of refusal; hearing.**

1 (a) If any person under arrest, as specified in §17C-5-4 of this code, refuses to submit to
2 a secondary chemical test, the test shall not be given.

3 (b) Upon requesting that a person submit to the secondary test, designated pursuant to
4 §17C-5-4 of this code, the person shall be given the written and verbal warnings set forth in
5 §17C-5-4(e) of this code. After the person under arrest is given the required written and verbal
6 warnings, the person shall have the opportunity to submit to, or refuse to submit to, the secondary
7 test. A refusal to submit to the secondary test is considered final after 15 minutes have passed
8 since the refusal: *Provided*, That during the 15 minutes following the refusal, the arresting officers
9 shall permit the person under arrest to revoke his or her refusal and shall provide the person with
10 the opportunity to submit to the test upon request. After the 15 minutes have passed following a
11 refusal to submit to the secondary test, the arresting officer has no further duty to provide the
12 person with an opportunity to take the secondary test.

13 (c) The officer shall, within 48 hours of the refusal, sign and submit to the Commissioner
14 of the Division of Motor Vehicles and the court having jurisdiction over the charge filed against
15 the person pursuant to §17C-5-2 of this code, a written statement that: (1) He or she had probable
16 cause to believe the person had been driving a motor vehicle in this state while under the influence
17 of alcohol, controlled substances, or drugs; (2) the person was lawfully placed under arrest for an
18 offense relating to driving a motor vehicle in this state while under the influence of alcohol,
19 controlled substances, or drugs; (3) the person refused to submit to the secondary chemical test
20 designated in the manner provided in §17C-5-4 of this code; and (4) the person was given the
21 verbal warnings and the written statement required by subsection (b) of this section and §17C-5-4
22 of this code. An officer, by signing the statement required by this subsection, makes an oath or
23 affirmation that the information contained in the statement is true and that any copy of the
24 statement that he or she files is a true copy. The form for the written statement required by this
25 section shall contain, upon its face, a warning to the officer signing that to willfully sign a statement
26 containing false information is false swearing and is a misdemeanor.

27 (d) Any person who is unconscious or who is otherwise in a condition rendering him or
28 her incapable of refusal shall be considered not to have withdrawn his or her consent for a test of
29 his or her blood or breath as provided in §17C-5-4 of this code and the test may be administered
30 although the person is not informed that his or her failure to submit to the test will result in the
31 revocation of his or her license to operate a motor vehicle in this state for the period provided for
32 in this section.

33 (e) The amendments made to this section during the 2020 regular session of the
34 Legislature shall become effective on July 1, 2020.

**§17C-5-7a. Suspension of license to operate a motor vehicle for refusal of secondary test;
refusal review hearing.**

1 (a) For the purposes of this section, the term “refusal review hearing” refers to a hearing
2 to review a person's alleged refusal to submit to a secondary chemical test, as documented in a
3 statement submitted to the court by a law-enforcement officer pursuant to §17C-5-7 of this code.

4 (b) Effective July 1, 2020, the court shall enter an order finding that a person charged with
5 a violation of §17C-5-2 of this code did refuse to submit to a secondary chemical test, as required
6 by §17C-5-4 of this code, subject to the following:

7 (1) At the person's first appearance before the court, the court shall advise the person that
8 his or her license to operate a motor vehicle shall be revoked for the applicable period provided
9 in subsection (e) of this section, unless the person requests a refusal review hearing within the
10 30 days following the first appearance;

11 (2) If the person does not request a refusal review hearing within 30 days following the
12 first appearance, the court shall enter an order finding that a person charged with a violation of
13 §17C-5-2 of this code did refuse to submit to a secondary chemical test; and

14 (3) If the person requests a refusal review hearing within 30 days following the first
15 appearance, the court shall conduct the review and enter the appropriate order, as provided in
16 subsection (c) of this section.

17 (c) *Refusal review hearing.* —

18 (1) The court shall schedule and conduct a refusal review hearing if the person, named in
19 a statement submitted to the court by a law-enforcement officer pursuant to §17C-5-7, requests
20 the hearing within 30 days following his or her first appearance before the court. During the refusal
21 review hearing, the court shall review the statement documenting the person's refusal to submit
22 to the secondary chemical test, along with any testimony or evidence presented by the person or
23 law-enforcement officer during the hearing.

24 (2) Based on the hearing, the court shall enter an order finding that the person did refuse
25 to submit to a secondary chemical test, if the court determines, by a preponderance of the
26 evidence, that:

27 (A) The arresting law-enforcement officer had reasonable grounds to believe the arrested
28 person had committed a violation of §17C-5-2 of this code;

29 (B) The law-enforcement officer requested the arrested person to submit to the chemical
30 test or tests designated pursuant to §17C-5-4 of this code;

31 (C) At the time the test was requested, the law-enforcement officer administered the
32 required written and verbal warnings required by §17C-5-4 and §17C-5-7 of this code; and

33 (D) The arrested person refused to submit to the chemical test or tests requested by the
34 law-enforcement officer.

35 (3) If the court determines, by a preponderance of the evidence, that one or more of the
36 required conditions listed in subdivision (2) of this subsection did not occur, the court shall enter
37 an order finding that the person did not refuse to submit to the secondary chemical test. If the
38 court enters such an order, the Commissioner of the Division of Motor Vehicles may not revoke
39 the person's license to operate a motor vehicle based on the alleged refusal to submit to a
40 secondary chemical test.

41 (d) The clerk of the court in which the charges are pending shall immediately transmit any
42 order entered pursuant to this section to the Commissioner of the Division of Motor Vehicles.

43 (e) Upon receipt of an order provided pursuant to this section finding that a person did
44 refuse to submit to a secondary chemical test, the Commissioner of the Division of Motor Vehicles
45 shall revoke the person's license to operate a motor vehicle as follows:

46 (1) For the first refusal to submit to the designated secondary chemical test, the
47 commissioner shall enter an order revoking the person's license to operate a motor vehicle in this
48 state for a period of one year or for a period of 45 days, with an additional one year of participation

49 in the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of
50 §17C-5A-3a of this code.

51 (2) If the person's license to operate a motor vehicle has previously been revoked under
52 the provisions of this section, the commissioner shall, for the refusal to submit to the designated
53 secondary chemical test, enter an order revoking the person's license to operate a motor vehicle
54 in this state for a period of 10 years: *Provided*, That the license may be reissued in five years in
55 accordance with the provisions of §17C-5A-3 of this code.

56 (3) If the person's license to operate a motor vehicle has previously been revoked more
57 than once under the provisions of this section, the commissioner shall, for the refusal to submit to
58 the designated secondary chemical test, enter an order revoking the person's license to operate
59 a motor vehicle in this state for a period of life.

60 (f) A copy of each order entered pursuant to this section shall be forwarded to the person
61 by registered or certified mail, return receipt requested, and shall contain the reasons for any
62 revocation and shall specify the revocation period imposed pursuant to this section.

63 (g) A revocation ordered pursuant to this section shall run concurrently with the period of
64 any suspension or revocation imposed in accordance with §17C-5A-2 of this code.

§17C-5-12. Report to the Legislature.

1 On or before December 31, 2020, the Bureau for Public Health shall submit to the Joint
2 Committee on Government and Finance a report that includes the following:

3 (1) Recommendations for the minimum levels of those drugs or controlled substances
4 contained in §17C-5-8(d) of this code, that must be present in a person's blood in order for the
5 test to be admitted as prima facie evidence that the person was under the influence of a controlled
6 substance or drug in a prosecution for the offense of driving a motor vehicle in this state; and

7 (2) Recommendations for the minimum levels of those drugs or controlled substances
8 contained in §17C-5-8(d) of this code, that laboratories approved to test blood for drug or

9 controlled substance content can reliably identify and measure for the concentrations of drugs,
10 controlled substances and their metabolites, in blood.

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

**§17C-5A-1. Report to be submitted to commissioner following arrest for driving under the
influence of alcohol, controlled substances, or drugs or refusal to submit to
secondary chemical test; report to the court.**

11 (a) Any law-enforcement officer investigating a person for an offense described in
12 §17C-5-2 of this code, or for an offense described in a municipal ordinance which has the same
13 elements as an offense described in said section, shall report to the Commissioner of the Division
14 of Motor Vehicles by written statement within 48 hours of the conclusion of the investigation the
15 name and address of the person believed to have committed the offense. The report shall include
16 the specific offense with which the person is charged and, if applicable, a copy of the results of
17 any secondary tests of blood, breath, or urine. The signing of the statement required to be signed
18 by this subsection constitutes an oath or affirmation by the person signing the statement that the
19 statements contained in the statement are true and that any copy filed is a true copy. The
20 statement shall contain upon its face a warning to the officer signing that to willfully sign a
21 statement containing false information concerning any matter or thing, material or not material, is
22 false swearing and is a misdemeanor.

23 (b) After receiving the report required by subsection (a) of this section, the Commissioner
24 of the Division of Motor Vehicles shall immediately submit, to the court with jurisdiction over the
25 criminal offense, a full and complete record of the following:

26 (1) Any prior suspensions or revocations of the person's license to operate a motor vehicle
27 under §17C-5-2, §17C-5-2b, or §17C-5-7a of this code; or

28 (2) Any conviction or term of conditional probation imposed under a municipal ordinance
29 of this state or any other state or a statute of the United States or of any other state of an offense
30 which has the same elements as an offense described in §17C-5-2 of this code.

31 (c) The amendments made to this section during the 2020 regular session of the
32 Legislature shall become effective on July 1, 2020.

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

1 (a) The Commissioner of the Division of Motor Vehicles shall revoke or suspend a
2 person's license to operate a motor vehicle in any of the following circumstances:

3 (1) The person is convicted of an offense defined in §17C-5-2 of this code, which requires
4 a minimum period of revocation or suspension of the person's license to operate a motor vehicle,
5 and the person does not appeal the conviction;

6 (2) The person is convicted of an offense described in a municipal ordinance which has
7 the same elements as an offense defined in §17C-5-2 of this code, which requires a minimum
8 period of revocation or suspension of the person's license to operate a motor vehicle for the
9 offense with the same elements as the municipal ordinance, and the person does not appeal the
10 conviction;

11 (3) The person has a term of conditional probation imposed pursuant to §17C-5-2b of this
12 code;

13 (4) A court enters an order, pursuant to §17C-5-7a of this code, finding that the person did
14 refuse to submit to a secondary chemical test; or

15 (5) The person is convicted of an offense, as provided in subdivision (1) or (2) of this
16 subsection, the person appeals the conviction, and the conviction is affirmed by the highest
17 appellate court in which an appeal in the matter is filed.

18 (b) The clerk of the court that has jurisdiction over a term of conditional probation or a
19 conviction described in subsection (a) of this section shall forward to the Commissioner of the
20 Division of Motor Vehicles the order imposing conditional probation or the judgment of conviction
21 and any related transcripts. If the conviction is the judgment of a magistrate court, the magistrate
22 court clerk shall forward the order and any related transcript when the person convicted has not
23 filed a notice of appeal within 20 days of the sentencing for such conviction. If the term of
24 conditional probation is the act of a magistrate court, the magistrate court clerk shall forward the
25 order and any related transcript when the order imposing the term of conditional probation is
26 entered. If the conviction is the judgment of a mayor or police court judge or municipal court judge,
27 the clerk or recorder shall forward the order and any related transcript when the person convicted
28 has not filed a notice of appeal within 10 days from and after the date upon which the sentence
29 is imposed. If the conviction is the judgment of a circuit court, the circuit clerk shall forward the
30 transcript when the person convicted has not filed a notice of intent to file a petition for appeal or
31 writ of error within 30 days after the judgment was entered.

32 (c) Upon receipt of an order of the court, as described in subsection (b) of this section, the
33 commissioner shall make and enter an order revoking or suspending the person's license to
34 operate a motor vehicle in this state as required by §17C-5-2, §17C-5-2b, or §17C-5-7a of this
35 code. The order of the commissioner, revoking or suspending the license, shall contain the
36 reasons for the revocation or suspension and the statutorily mandated revocation or suspension
37 period for the offense or the suspension period required as a condition of probation.

38 (d) If a person receives an order of the commissioner suspending or revoking his or her
39 license, as provided in subsection (c) of this section, and the person believes that he or she is not
40 the person named in the commissioner's order, the person may notify the commissioner of the
41 alleged error in writing. Upon receipt of this notification, the commissioner shall immediately
42 review the contents of the judgment of conviction and the information provided by the person in

43 question to determine whether or not the alleged error has been made. If the commissioner
44 determines that the alleged error has been made, the commissioner shall: (1) Immediately reverse
45 the suspension or revocation made in error; and (2) take all necessary steps to correctly identify
46 the person who should have been named in the order and suspend or revoke the license of the
47 correctly identified person, as required by this section.

§17C-5A-2b. Administrative hearing, revocation, and review process terminated on July 1, 2020.

1 Notwithstanding any other provision of this code:

2 (1) The provisions of §17C-5A-2 of this code apply only to proceedings arising from
3 offenses occurring on or before June 30, 2020; and

4 (2) The provisions of §17C-5A-2 of this code have no force or effect beginning on the date
5 when the Office of Administrative Hearings terminates, pursuant to §17C-5C-1a of this code.

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

1 (a) The Division of Motor Vehicles shall administer a comprehensive safety and treatment
2 program for persons whose licenses have been suspended or revoked under the provisions of
3 §17B-3-5(6), §17C-5-2, §17C-5-2a, or §17C-5-7a of this code and shall also establish the
4 minimum qualifications for mental health facilities, day report centers, community corrections
5 centers, or other public agencies or private entities conducting the safety and treatment program:
6 *Provided*, That the Division of Motor Vehicles may establish standards whereby the division will
7 accept or approve participation by violators in another treatment program which provides the
8 same or substantially similar benefits as the safety and treatment program established pursuant
9 to this section.

10 (b) The program shall include, but not be limited to, treatment of alcoholism, treatment of
11 alcohol and drug abuse, psychological counseling, educational courses on the dangers of alcohol
12 and drugs as they relate to driving, defensive driving, or other safety driving instruction, and other

13 programs designed to properly educate, train, and rehabilitate the offender: *Provided*, That
14 successful compliance with the substance abuse and counseling program prescribed in
15 §61-11-26a of this code is sufficient to meet the requirements of this section.

16 (c) The Division of Motor Vehicles shall provide for the preparation of an educational and
17 treatment program for each person whose license has been revoked under the provisions of
18 §17B-3-5(6), §17C-5-2, §17C-5-2a, or §17C-5-7a of this code, which shall contain the following:
19 (1) A listing and evaluation of the offender's prior traffic record; (2) the characteristics and history
20 of 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) A special revenue account is created within the State Treasury, known as the Division
25 of Motor Vehicles Safety and Treatment Fund. The Commissioner of the Division of Motor
26 Vehicles shall manage and expend moneys from the account for the purpose of administering the
27 comprehensive safety and treatment program established by subsection (a) of this section. The
28 moneys in the account may be invested and all earnings and interest accruing shall be retained
29 in the account. The Auditor shall conduct an audit of the account at least every three fiscal years.

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

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

38 (3) Program providers shall remit to the Division of Motor Vehicles a portion of the fee
39 collected, which shall be deposited by the Commissioner of the Division of Motor Vehicles into
40 the Division of Motor Vehicles Safety and Treatment Fund. The Division of Motor Vehicles shall
41 reimburse enrollment fees to program providers for each eligible indigent offender.

42 (f) On or before January 15 of each year, the Commissioner of the Division of Motor
43 Vehicles shall report to the Legislature on:

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

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

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

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

50 (g) The Commissioner of the Division of Motor Vehicles, after giving due consideration to
51 the program developed for the offender, shall prescribe the necessary terms and conditions for
52 the reissuance of the license to operate a motor vehicle in this state revoked under §17B-3-5(6),
53 §17C-5-2, §17C-5-2a, or §17C-5-7a of this code which shall include successful completion of the
54 educational, treatment, or rehabilitation program, subject to the following:

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

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

63 was actually in effect; (B) the offender has successfully completed the program; (C) all costs of
64 the program and administration have been paid; and (D) all court costs assessed as a result of a
65 criminal proceedings have been paid. Notwithstanding any provision in this code, a person whose
66 license is revoked for refusing to take a chemical test as required by §17C-5-4 of this code for a
67 first offense is not eligible to reduce the revocation period by completing the safety and treatment
68 program.

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

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

78 (h) (1) The Division of Motor Vehicles shall provide for the preparation of an educational
79 program for each person whose license has been suspended for 60 days pursuant to §17C-5-2(j)
80 of this code. The educational program shall consist of not less than 12 nor more than 18 hours of
81 actual classroom time.

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

87 (i) As a component of the programs required by subsections (b) and (c) of this section, the
88 offender shall attend a victim impact panel program. The victim impact panel program must
89 provide a forum for victims of alcohol and drug-related offenses and offenders to share first-hand
90 experiences on the impact of alcohol and drug-related offenses in their lives. The Division of Motor
91 Vehicles shall propose and implement a plan for victim impact panels where appropriate numbers
92 of victims are available and willing to participate and shall establish guidelines for other innovative
93 programs which may be substituted where the victims are not available to participate in an impact
94 panel. The plan shall require, at a minimum, discussion and consideration of the following:

- 95 (1) Economic losses suffered by victims and offenders;
96 (2) Death or physical injuries suffered by victims and offenders;
97 (3) Psychological injuries suffered by victims and offenders;
98 (4) Changes in the personal welfare or familial relationships of victims and offenders; and
99 (5) Other information relating to the impact of alcohol and drug-related offenses upon
100 victims and offenders.

101 The Division of Motor Vehicles shall ensure that any meetings between victims and
102 offenders shall be nonconfrontational and ensure the physical safety of the persons involved.

103 (j) The Commissioner of the Division of Motor Vehicles shall propose a rule for legislative
104 approval in accordance with §29A-3-1 *et seq.* of this code to administer the provisions of this
105 section and establish a fee to be collected from each offender enrolled in the safety and treatment
106 program. The rule shall include: (A) A reimbursement mechanism to program providers of
107 required fees for the safety and treatment program for indigent offenders, criteria for determining
108 eligibility of indigent offenders, and any necessary application forms; and (B) program standards
109 that encompass provider criteria including minimum professional training requirements for
110 providers, curriculum approval, minimum course length requirements, and other items that may
111 be necessary to properly implement the provisions of this section.

112 (k) A day report or community corrections program, authorized pursuant to §62-11C-1 *et*
113 *seq.* of this code, may provide the comprehensive safety and treatment program pursuant to this
114 section.

ARTICLE 5C. OFFICE OF ADMINISTRATIVE HEARINGS.

§17C-5C-1a. Termination of Office of Administrative Hearings; transfer of jurisdiction.

1 (a) The Office of Administrative Hearings shall retain jurisdiction over appeals described
2 in §17C-5C-3(3) of this code arising from offenses occurring on or before June 30, 2020. The
3 Office of Administrative Hearings has no jurisdiction over appeals described in said subdivision
4 arising from offenses occurring on or after July 1, 2020.

5 (b) Beginning on July 1, 2020, jurisdiction over appeals described in §17C-5C-3 of this
6 code, except for those described in §17C-5C-3(3) of this code, shall be transferred to the circuit
7 court for the circuit in which the event giving rise to the contested decision of the Commissioner
8 of the Division of Motor Vehicles occurred.

9 (c) The Office of Administrative Hearings shall, in an orderly and efficient manner, dispose
10 of all matters pending before it, subject to the following:

11 (1) If any appeal of a revocation or suspension order, described in §17C-5C-3(3) of this
12 code, is pending before the office on or after July 1, 2021, the underlying revocation or suspension
13 order shall be dismissed.

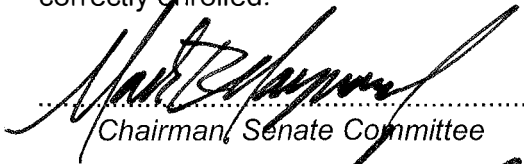
14 (2) If any appeal described in §17C-5C-3 of this code, except for an appeal described in
15 §17C-5C-3(3) of this code, is pending before the Office of Administrative Hearings on or after July
16 1, 2021, the appeal shall be transferred to the circuit court described in subsection (b) of this
17 section. For any appeal transferred pursuant to this subdivision, the circuit court shall adopt any
18 existing records of evidence and proceedings in the Office of Administrative Hearings, conduct
19 further proceedings as it considers necessary, and issue a final decision or otherwise dispose of

20 the case pursuant to the provisions governing the judicial review of contested administrative cases
21 in §29A-5-1 *et seq.* of this code.

22 (d) Upon resolution of all matters pending before the Office of Administrative Hearings or
23 on July 1, 2021, whichever occurs earlier, the Office of Administrative Hearings shall be
24 terminated.

25 (e) The Secretary of the Department of Transportation may establish interim policies and
26 procedures to aid in the orderly and efficient process during the disposition of remaining cases
27 before the Office of Administrative Hearings during the phase-out period until termination.

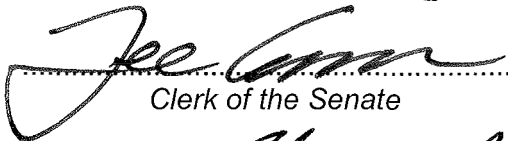
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman, Senate Committee


.....
Chairman, House Committee

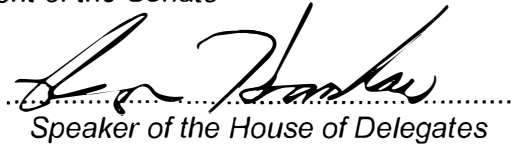
Originated in the Senate.

In effect 90 days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker of the House of Delegates

OFFICE, WEST VIRGINIA
SECRETARY OF STATE

2020 MAR 25 P 3:45

FILED

The within is approved this the 25th
Day of March 2020.


.....
Governor

PRESENTED TO THE GOVERNOR

MAR 18 2020

Time 3:15 pm