

E N R O L L E D

H. B. 2664

(BY DELEGATE(S) SOBONYA, BUTLER, MCCUSKEY,
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[Passed March 14, 2015;
in effect ninety days from passage.]

AN ACT to to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-5A-2 of said code, all relating to creating “Andrea, Willy and Nelson’s Law”; making driving under the influence of alcohol, controlled substances or drugs causing death a felony in all instances; eliminating the misdemeanor offense of driving under the influence of alcohol, controlled substances or drugs; creating a new felony offense of driving while under the influence of alcohol, controlled substances or drugs causing serious bodily injury; providing definitions of “bodily injury” and “serious bodily injury”; and providing that the West Virginia Rules of Evidence apply to administrative proceedings concerning license revocation for driving under the influence.

Be it enacted by the Legislature of West Virginia:

That §17C-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and to amend and reenact §17C-5A-2 all to read as follows:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

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

1 (a) Any person who:

2 (1) Drives a vehicle in this state while he or she:

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;

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

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

10 (2) Whose impaired state proximately causes the death of
11 any person within one year next following the act or failure , is
12 guilty of a felony and, upon conviction thereof, shall be
13 imprisoned in a state correctional facility for not less than three
14 years nor more than fifteen years and shall be fined not less than
15 \$1,000 nor more than \$3,000.

16 (b) Any person who:

17 (1) Drives a vehicle in this state while he or she:

18 (A) Is under the influence of alcohol;

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

20 (C) Is under the influence of any other drug;

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

23 (E) Has an alcohol concentration in his or her blood of eight
24 hundredths of one percent or more, by weight; and

25 (2) Whose impaired state proximately causes serious bodily
26 injury to any person other than himself or herself, is guilty of a
27 felony and, upon conviction thereof, shall be imprisoned in a
28 state correctional facility for not less than two nor more than ten
29 years and shall be fined not less than \$1,000 nor more than
30 \$3,000 dollars.

31 (3) As used in this subsection, the words “serious bodily
32 injury” mean bodily injury that creates a substantial risk of
33 death, that causes serious or prolonged disfigurement, prolonged
34 impairment of health, or prolonged loss or impairment.

35 (c) Any person who:

36 (1) Drives a vehicle in this state while he or she:

37 (A) Is under the influence of alcohol;

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

39 (C) Is under the influence of any other drug;

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

42 (E) Has an alcohol concentration in his or her blood of eight
43 hundredths of one percent or more, by weight; and

44 (2) Whose impaired state proximately causes bodily injury
45 to any person other than himself or herself, is guilty of a
46 misdemeanor and, upon conviction thereof, shall be confined in
47 jail for not less than one day nor more than one year, which jail
48 term is to include actual confinement of not less than
49 twenty-four hours, and shall be fined not less than \$200 nor more
50 than \$1,000.

51 (3) As used in this subsection, the words “bodily injury”
52 mean bodily injury that causes substantial pain, illness or any
53 impairment of physical condition.

54 (d) Any person who:

55 (1) Drives a vehicle in this state while he or she:

56 (A) Is under the influence of alcohol;

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

58 (C) Is under the influence of any other drug;

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

61 (E) Has an alcohol concentration in his or her blood of eight
62 hundredths of one percent or more, by weight, but less than
63 fifteen hundredths of one percent, by weight;

64 (2) Is guilty of a misdemeanor and, upon conviction thereof,
65 except as provided in section two-b of this article, shall be
66 confined in jail for up to six months and shall be fined not less
67 than \$100 nor more than \$500. A person sentenced pursuant to
68 this subdivision shall receive credit for any period of actual
69 confinement he or she served upon arrest for the subject offense.

70 (e) Any person who drives a vehicle in this state while he or
71 she has an alcohol concentration in his or her blood of fifteen

72 hundredths of one percent or more, by weight, is guilty of a
73 misdemeanor and, upon conviction thereof, shall be confined in
74 jail for not less than two days nor more than six months, which
75 jail term is to include actual confinement of not less than
76 twenty-four hours, and shall be fined not less than \$200 nor more
77 than \$1,000. A person sentenced pursuant to this subdivision
78 shall receive credit for any period of actual confinement he or
79 she served upon arrest for the subject offense.

80 (f) Any person who, being an habitual user of narcotic drugs
81 or amphetamine or any derivative thereof, drives a vehicle in this
82 state is guilty of a misdemeanor and, upon conviction thereof,
83 shall be confined in jail for not less than one day nor more than
84 six months, which jail term is to include actual confinement of
85 not less than twenty-four hours, and shall be fined not less than
86 \$100 nor more than \$500. A person sentenced pursuant to this
87 subdivision shall receive credit for any period of actual
88 confinement he or she served upon arrest for the subject offense.

89 (g) Any person who:

90 (1) Knowingly permits his or her vehicle to be driven in this
91 state by any other person who:

92 (A) Is under the influence of alcohol;

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

94 (C) Is under the influence of any other drug;

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

97 (E) Has an alcohol concentration in his or her blood of eight
98 hundredths of one percent or more, by weight;

99 (2) Is guilty of a misdemeanor and, upon conviction thereof,
100 shall be confined in jail for not more than six months and shall
101 be fined not less than \$100 nor more than \$500.

102 (h) Any person who knowingly permits his or her vehicle to
103 be driven in this state by any other person who is an habitual
104 user of narcotic drugs or amphetamine or any derivative thereof
105 is guilty of a misdemeanor and, upon conviction thereof, shall be
106 confined in jail for not more than six months and shall be fined
107 not less than \$100 nor more than \$500.

108 (i) Any person under the age of twenty-one years who drives
109 a vehicle in this state while he or she has an alcohol
110 concentration in his or her blood of two hundredths of one
111 percent or more, by weight, but less than eight hundredths of one
112 percent, by weight, for a first offense under this subsection is
113 guilty of a misdemeanor and, upon conviction thereof, shall be
114 fined not less than \$25 nor more than \$100. For a second or
115 subsequent offense under this subsection, the person is guilty of
116 a misdemeanor and, upon conviction thereof, shall be confined
117 in jail for twenty-four hours and shall be fined not less than \$100
118 nor more than \$500. A person who is charged with a first offense
119 under the provisions of this subsection may move for a
120 continuance of the proceedings, from time to time, to allow the
121 person to participate in the Motor Vehicle Alcohol Test and
122 Lock Program as provided in section three-a, article five-a of this
123 chapter. Upon successful completion of the program, the court
124 shall dismiss the charge against the person and expunge the
125 person's record as it relates to the alleged offense. In the event
126 the person fails to successfully complete the program, the court
127 shall proceed to an adjudication of the alleged offense. A motion
128 for a continuance under this subsection may not be construed as
129 an admission or be used as evidence. A person arrested and
130 charged with an offense under the provisions of this subsection
131 or subsection (a), (b), (c), (d), (e), (f),(g) or (h) of this section
132 may not also be charged with an offense under this subsection
133 arising out of the same transaction or occurrence.

134 (j) Any person who:

- 135 (1) Drives a vehicle in this state while he or she:
- 136 (A) Is under the influence of alcohol;
- 137 (B) Is under the influence of any controlled substance;
- 138 (C) Is under the influence of any other drug;
- 139 (D) Is under the combined influence of alcohol and any
140 controlled substance or any other drug; or
- 141 (E) Has an alcohol concentration in his or her blood of eight
142 hundredths of one percent or more, by weight; and
- 143 (2) The person while driving has on or within the motor
144 vehicle one or more other persons who are unemancipated
145 minors who have not reached their sixteenth birthday is guilty of
146 a misdemeanor and, upon conviction thereof, shall be confined
147 in jail for not less than two days nor more than twelve months,
148 which jail term is to include actual confinement of not less than
149 forty-eight hours and shall be fined not less than \$200 nor more
150 than \$1,000.
- 151 (k) A person violating any provision of subsection (b), (c),
152 (d), (e), (f), (g) or (i) of this section, for the second offense under
153 this section, is guilty of a misdemeanor and, upon conviction
154 thereof, shall be confined in jail for not less than six months nor
155 more than one year and the court may, in its discretion, impose
156 a fine of not less than \$1,000 nor more than \$3,000.
- 157 (l) A person violating any provision of subsection (b), (c),
158 (d), (e), (f), (g) or (i) of this section, for the third or any
159 subsequent offense under this section, is guilty of a felony and,
160 upon conviction thereof, shall be imprisoned in a state
161 correctional facility for not less than two nor more than five
162 years and the court may, in its discretion, impose a fine of not
163 less than \$3,000 nor more than \$5,000.

164 (m) For purposes of subsections (k) and (l) of this section
165 relating to second, third and subsequent offenses, the following
166 events shall be regarded as offenses under this section:

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

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

179 (3) Any period of conditional probation imposed pursuant
180 section two-b of this article for violation of subsection (d) of this
181 article, which violation occurred within the ten-year period
182 immediately preceding the date of arrest in the current
183 proceeding.

184 (n) A person may be charged in a warrant or indictment or
185 information for a second or subsequent offense under this section
186 if the person has been previously arrested for or charged with a
187 violation of this section which is alleged to have occurred within
188 the applicable time period for prior offenses, notwithstanding the
189 fact that there has not been a final adjudication of the charges for
190 the alleged previous offense. In that case, the warrant or
191 indictment or information must set forth the date, location and
192 particulars of the previous offense or offenses. No person may
193 be convicted of a second or subsequent offense under this section
194 unless the conviction for the previous offense has become final,

195 or the person has previously had a period of conditional
196 probation imposed pursuant to section two-b of this article.

197 (o) The fact that any person charged with a violation of
198 subsection (a), (b), (c), (d), (e) or (f) of this section, or any
199 person permitted to drive as described under subsection (g) or
200 (h) of this section, is or has been legally entitled to use alcohol,
201 a controlled substance or a drug does not constitute a defense
202 against any charge of violating subsection (a), (b), (c), (d), (e),
203 (f), (g) or (h) of this section.

204 (p) For purposes of this section, the term “controlled
205 substance” has the meaning ascribed to it in chapter sixty-a of
206 this code.

207 (q) The sentences provided in this section upon conviction
208 for a violation of this article are mandatory and are not subject
209 to suspension or probation: *Provided*, That the court may apply
210 the provisions of article eleven-a, chapter sixty-two of this code
211 to a person sentenced or committed to a term of one year or less
212 for a first offense under this section: *Provided further*, That the
213 court may impose a term of conditional probation pursuant to
214 section two-b of this article to persons adjudicated thereunder.
215 An order for home detention by the court pursuant to the
216 provisions of article eleven-b of said chapter may be used as an
217 alternative sentence to any period of incarceration required by
218 this section for a first or subsequent offense: *Provided, however*,
219 That for any period of home incarceration ordered for a person
220 convicted of second offense under this section, electronic
221 monitoring shall be required for no fewer than five days of the
222 total period of home confinement ordered and the offender may
223 not leave home for those five days notwithstanding the
224 provisions of section five, article eleven-b, chapter sixty-two of
225 this code: *Provided further*, That for any period of home
226 incarceration ordered for a person convicted of a third or
227 subsequent violation of this section, electronic monitoring shall

228 be included for no fewer than ten days of the total period of
229 home confinement ordered and the offender may not leave home
230 for those ten days notwithstanding section five, article eleven-b,
231 chapter sixty-two of this code.

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

§17C-5A-2. Hearing; revocation; review.

1 (a) Written objections to an order of revocation or
2 suspension under the provisions of section one of this article or
3 section seven, article five of this chapter shall be filed with the
4 Office of Administrative Hearings. Upon the receipt of an
5 objection, the Office of Administrative Hearings shall notify the
6 Commissioner of the Division of Motor Vehicles, who shall stay
7 the imposition of the period of revocation or suspension and
8 afford the person an opportunity to be heard by the Office of
9 Administrative Hearings. The written objection must be filed
10 with Office of Administrative Hearings in person, by registered
11 or certified mail, return receipt requested, or by facsimile
12 transmission or electronic mail within thirty calendar days after
13 receipt of a copy of the order of revocation or suspension or no
14 hearing will be granted: *Provided*, That a successful transmittal
15 sheet shall be necessary for proof of written objection in the case
16 of filing by fax. The hearing shall be before a hearing examiner
17 employed by the Office of Administrative Hearings who shall
18 rule on evidentiary issues. The West Virginia Rules of Evidence
19 shall apply to all proceedings before the hearing examiner. Upon
20 consideration of the designated record, the hearing examiner
21 shall, based on the determination of the facts of the case and
22 applicable law, render a decision affirming, reversing or
23 modifying the action protested. The decision shall contain
24 findings of fact and conclusions of law and shall be provided to
25 all parties by registered or certified mail, return receipt

26 requested, or with a party's written consent, by facsimile or
27 electronic mail.

28 (b) The hearing shall be held at an office of the Division of
29 Motor Vehicles suitable for hearing purposes located in or near
30 the county in which the arrest was made in this state or at some
31 other suitable place in the county in which the arrest was made
32 if an office of the division is not available. At the discretion of
33 the Office of Administrative Hearings, the hearing may also be
34 held at an office of the Office of Administrative Hearings
35 located in or near the county in which the arrest was made in this
36 state. The Office of Administrative Hearings shall send a notice
37 of hearing to the person whose driving privileges are at issue and
38 the person's legal counsel if the person is represented by legal
39 counsel, by regular mail, or with the written consent of the
40 person whose driving privileges are at issue or their legal
41 counsel, by facsimile or electronic mail. The Office of
42 Administrative Hearings shall also send a notice of hearing by
43 regular mail, facsimile or electronic mail to the Division of
44 Motor Vehicles, and the Attorney General's Office, if the
45 Attorney General has filed a notice of appearance of counsel on
46 behalf of the Division of Motor Vehicles.

47 (c) (1) Any hearing shall be held within one hundred eighty
48 days after the date upon which the Office of Administrative
49 Hearings received the timely written objection unless there is a
50 postponement or continuance.

51 (2) The Office of Administrative Hearings may postpone or
52 continue any hearing on its own motion or upon application by
53 the party whose license is at issue in that hearing or by the
54 commissioner for good cause shown.

55 (3) The Office of Administrative Hearings may issue
56 subpoenas commanding the appearance of witnesses and
57 subpoenas duces tecum commanding the submission of

58 documents, items or other things. Subpoenas duces tecum shall
59 be returnable on the date of the next scheduled hearing unless
60 otherwise specified. The Office of Administrative hearings shall
61 issue subpoenas and subpoenas duces tecum at the request of a
62 party or the party's legal representative. The party requesting the
63 subpoena shall be responsible for service of the subpoena upon
64 the appropriate individual. Every subpoena or subpoena duces
65 tecum shall be served at least five days before the return date
66 thereof, either by personal service made by a person over
67 eighteen years of age or by registered or certified mail, return
68 receipt requested, and received by the party responsible for
69 serving the subpoena or subpoena duces tecum: *Provided*, That
70 the Division of Motor Vehicles may serve subpoenas to
71 law-enforcement officers through electronic mail to the
72 department of his or her employer. If a person does not obey the
73 subpoena or fails to appear, the party who issued the subpoena
74 to the person may petition the circuit court wherein the action
75 lies for enforcement of the subpoena.

76 (d) Law-enforcement officers shall be compensated for the
77 time expended in their travel and appearance before the Office
78 of Administrative Hearings by the law-enforcement agency by
79 whom they are employed at their regular rate if they are
80 scheduled to be on duty during said time or at their regular
81 overtime rate if they are scheduled to be off duty during said
82 time.

83 (e) The principal question at the hearing shall be whether the
84 person did drive a motor vehicle while under the influence of
85 alcohol, controlled substances or drugs, or did drive a motor
86 vehicle while having an alcohol concentration in the person's
87 blood of eight hundredths of one percent or more, by weight, or
88 did refuse to submit to the designated secondary chemical test,
89 or did drive a motor vehicle while under the age of twenty-one
90 years with an alcohol concentration in his or her blood of two

91 hundredths of one percent or more, by weight, but less than eight
92 hundredths of one percent, by weight.

93 (f) In the case of a hearing in which a person is accused of
94 driving a motor vehicle while under the influence of alcohol,
95 controlled substances or drugs, or accused of driving a motor
96 vehicle while having an alcohol concentration in the person's
97 blood of eight hundredths of one percent or more, by weight, or
98 accused of driving a motor vehicle while under the age of
99 twenty-one years with an alcohol concentration in his or her
100 blood of two hundredths of one percent or more, by weight, but
101 less than eight hundredths of one percent, by weight, the Office
102 of Administrative Hearings shall make specific findings as to:
103 (1) Whether the investigating law-enforcement officer had
104 reasonable grounds to believe the person to have been driving
105 while under the influence of alcohol, controlled substances or
106 drugs, or while having an alcohol concentration in the person's
107 blood of eight hundredths of one percent or more, by weight, or
108 to have been driving a motor vehicle while under the age of
109 twenty-one years with an alcohol concentration in his or her
110 blood of two hundredths of one percent or more, by weight, but
111 less than eight hundredths of one percent, by weight; (2) whether
112 the person was lawfully placed under arrest for an offense
113 involving driving under the influence of alcohol, controlled
114 substances or drugs, or was lawfully taken into custody for the
115 purpose of administering a secondary test: *Provided*, That this
116 element shall be waived in cases where no arrest occurred due to
117 driver incapacitation; (3) whether the person committed an
118 offense involving driving under the influence of alcohol,
119 controlled substances or drugs; and (4) whether the tests, if any,
120 were administered in accordance with the provisions of this
121 article and article five of this chapter.

122 (g) If, in addition to a finding that the person did drive a
123 motor vehicle while under the influence of alcohol, controlled
124 substances or drugs, or did drive a motor vehicle while having an

125 alcohol concentration in the person's blood of eight hundredths
126 of one percent or more, by weight, or did drive a motor vehicle
127 while under the age of twenty-one years with an alcohol
128 concentration in his or her blood of two hundredths of one
129 percent or more, by weight, but less than eight hundredths of one
130 percent, by weight, the Office of Administrative Hearings also
131 finds by a preponderance of the evidence that the person when
132 driving did an act forbidden by law or failed to perform a duty
133 imposed by law, which act or failure proximately caused the
134 death of a person and was committed in reckless disregard of the
135 safety of others and if the Office of Administrative Hearings
136 further finds that the influence of alcohol, controlled substances
137 or drugs or the alcohol concentration in the blood was a
138 contributing cause to the death, the commissioner shall revoke
139 the person's license for a period of ten years: *Provided*, That if
140 the person's license has previously been suspended or revoked
141 under the provisions of this section or section one of this article
142 within the ten years immediately preceding the date of arrest, the
143 period of revocation shall be for the life of the person.

144 (h) If, in addition to a finding that the person did drive a
145 motor vehicle while under the influence of alcohol, controlled
146 substances or drugs, or did drive a motor vehicle while having an
147 alcohol concentration in the person's blood of eight hundredths
148 of one percent or more, by weight, the Office of Administrative
149 Hearings also finds by a preponderance of the evidence that the
150 person when driving did an act forbidden by law or failed to
151 perform a duty imposed by law, which act or failure proximately
152 caused the death of a person, the commissioner shall revoke the
153 person's license for a period of five years: *Provided*, That if the
154 person's license has previously been suspended or revoked under
155 the provisions of this section or section one of this article within
156 the ten years immediately preceding the date of arrest, the period
157 of revocation shall be for the life of the person.

158 (i) If, in addition to a finding that the person did drive a
159 motor vehicle while under the influence of alcohol, controlled
160 substances or drugs, or did drive a motor vehicle while having an
161 alcohol concentration in the person's blood of eight hundredths
162 of one percent or more, by weight, the Office of Administrative
163 Hearings also finds by a preponderance of the evidence that the
164 person when driving did an act forbidden by law or failed to
165 perform a duty imposed by law, which act or failure proximately
166 caused bodily injury to a person other than himself or herself, the
167 commissioner shall revoke the person's license for a period of
168 two years: *Provided*, That if the license has previously been
169 suspended or revoked under the provisions of this section or
170 section one of this article within the ten years immediately
171 preceding the date of arrest, the period of revocation shall be ten
172 years: *Provided, however*, That if the person's license has
173 previously been suspended or revoked more than once under the
174 provisions of this section or section one of this article within the
175 ten years immediately preceding the date of arrest, the period of
176 revocation shall be for the life of the person.

177 (j) If the Office of Administrative Hearings finds by a
178 preponderance of the evidence that the person did drive a motor
179 vehicle while under the influence of alcohol, controlled
180 substances or drugs, or did drive a motor vehicle while having an
181 alcohol concentration in the person's blood of eight hundredths
182 of one percent or more, by weight, but less than fifteen
183 hundredths of one percent or more, by weight, or finds that the
184 person knowingly permitted the persons vehicle to be driven by
185 another person who was under the influence of alcohol,
186 controlled substances or drugs, or knowingly permitted the
187 person's vehicle to be driven by another person who had an
188 alcohol concentration in his or her blood of eight hundredths of
189 one percent or more, by weight the commissioner shall revoke
190 the person's license for a period of six months or a period of
191 fifteen days with an additional one hundred and twenty days of

192 participation in the Motor Vehicle Alcohol Test and Lock
193 Program in accordance with the provisions of section three-a of
194 this article: *Provided*, That any period of participation in the
195 Motor Vehicle Alcohol Test and Lock Program that has been
196 imposed by a court pursuant to section two-b, article five of this
197 chapter shall be credited against any period of participation
198 imposed by the commissioner: *Provided, however*, That a person
199 whose license is revoked for driving while under the influence
200 of drugs is not eligible to participate in the Motor Vehicle
201 Alcohol Test and Lock Program: *Provided further*, That if the
202 person's license has previously been suspended or revoked under
203 the provisions of this section or section one of this article within
204 the ten years immediately preceding the date of arrest, the period
205 of revocation shall be ten years: *And provided further*, That if the
206 person's license has previously been suspended or revoked more
207 than once under the provisions of this section or section one of
208 this article within the ten years immediately preceding the date
209 of arrest, the period of revocation shall be for the life of the
210 person.

211 (k) (1) If in addition to finding by a preponderance of the
212 evidence that the person did drive a motor vehicle while under
213 the influence of alcohol, controlled substance or drugs, the
214 Office of Administrative Hearings also finds by a preponderance
215 of the evidence that the person did drive a motor vehicle while
216 having an alcohol concentration in the person's blood of fifteen
217 hundredths of one percent or more, by weight, the commissioner
218 shall revoke the person's license for a period of forty-five days
219 with an additional two hundred and seventy days of participation
220 in the Motor Vehicle Alcohol Test and Lock Program in
221 accordance with the provisions of section three-a, article five-a,
222 chapter seventeen-c of this code: *Provided*, That if the person's
223 license has previously been suspended or revoked under the
224 provisions of this section or section one of this article within the
225 ten years immediately preceding the date of arrest, the period of

226 revocation shall be ten years: *Provided, however,* That if the
227 person's license has previously been suspended or revoked the
228 person's license more than once under the provisions of this
229 section or section one of this article within the ten years
230 immediately preceding the date of arrest, the period of
231 revocation shall be for the life of the person.

232 (2) If a person whose license is revoked pursuant to
233 subdivision (1) of this subsection proves by clear and convincing
234 evidence that they do not own a motor vehicle upon which the
235 alcohol test and lock device may be installed or is otherwise
236 incapable of participating in the Motor Vehicle Alcohol Test and
237 Lock Program, the period of revocation shall be one hundred
238 eighty days: *Provided,* That if the person's license has
239 previously been suspended or revoked under the provisions of
240 this section or section one of this article within the ten years
241 immediately preceding the date of arrest, the period of
242 revocation shall be ten years: *Provided, however,* That if the
243 person's license has previously been suspended or revoked more
244 than once under the provisions of this section or section one of
245 this article within the ten years immediately preceding the date
246 of arrest, the period of revocation shall be for the life of the
247 person.

248 (1) If, in addition to a finding that the person did drive a
249 motor vehicle while under the age of twenty-one years with an
250 alcohol concentration in his or her blood of two hundredths of
251 one percent or more, by weight, but less than eight hundredths of
252 one percent, by weight, the Office of Administrative Hearings
253 also finds by a preponderance of the evidence that the person
254 when driving did an act forbidden by law or failed to perform a
255 duty imposed by law, which act or failure proximately caused
256 the death of a person, and if the Office of Administrative
257 Hearings further finds that the alcohol concentration in the blood
258 was a contributing cause to the death, the commissioner shall
259 revoke the person's license for a period of five years: *Provided,*

260 That if the person's license has previously been suspended or
261 revoked under the provisions of this section or section one of this
262 article within the ten years immediately preceding the date of
263 arrest, the period of revocation shall be for the life of the person.

264 (m) If, in addition to a finding that the person did drive a
265 motor vehicle while under the age of twenty-one years with an
266 alcohol concentration in his or her blood of two hundredths of
267 one percent or more, by weight, but less than eight hundredths of
268 one percent, by weight, the Office of Administrative Hearings
269 also finds by a preponderance of the evidence that the person
270 when driving did an act forbidden by law or failed to perform a
271 duty imposed by law, which act or failure proximately caused
272 bodily injury to a person other than himself or herself, and if the
273 Office of Administrative Hearings further finds that the alcohol
274 concentration in the blood was a contributing cause to the bodily
275 injury, the commissioner shall revoke the person's license for a
276 period of two years: *Provided*, That if the person's license has
277 previously been suspended or revoked under the provisions of
278 this section or section one of this article within the ten years
279 immediately preceding the date of arrest, the period of
280 revocation shall be ten years: *Provided, however*, That if the
281 person's license has previously been suspended or revoked more
282 than once under the provisions of this section or section one of
283 this article within the ten years immediately preceding the date
284 of arrest, the period of revocation shall be for the life of the
285 person.

286 (n) If the Office of Administrative Hearings finds by a
287 preponderance of the evidence that the person did drive a motor
288 vehicle while under the age of twenty-one years with an alcohol
289 concentration in his or her blood of two hundredths of one
290 percent or more, by weight, but less than eight hundredths of one
291 percent, by weight, the commissioner shall suspend the person's
292 license for a period of sixty days: *Provided*, That if the person's
293 license has previously been suspended or revoked under the

294 provisions of this section or section one of this article, the period
295 of revocation shall be for one year, or until the person's
296 twenty-first birthday, whichever period is longer.

297 (o) If, in addition to a finding that the person did drive a
298 motor vehicle while under the influence of alcohol, controlled
299 substances or drugs, or did drive a motor vehicle while having an
300 alcohol concentration in the person's blood of eight hundredths
301 of one percent or more, by weight, the Office of Administrative
302 Hearings also finds by a preponderance of the evidence that the
303 person when driving did have on or within the Motor vehicle
304 another person who has not reached his or her sixteenth birthday,
305 the commissioner shall revoke the person's license for a period
306 of one year: *Provided*, That if the person's license has previously
307 been suspended or revoked under the provisions of this section
308 or section one of this article within the ten years immediately
309 preceding the date of arrest, the period of revocation shall be ten
310 years: *Provided, however*, That if the person's license has
311 previously been suspended or revoked more than once under the
312 provisions of this section or section one of this article within the
313 ten years immediately preceding the date of arrest, the period of
314 revocation shall be for the life of the person.

315 (p) For purposes of this section, where reference is made to
316 previous suspensions or revocations under this section, the
317 following types of criminal convictions or administrative
318 suspensions or revocations shall also be regarded as suspensions
319 or revocations under this section or section one of this article:

320 (1) Any administrative revocation under the provisions of
321 the prior enactment of this section for conduct which occurred
322 within the ten years immediately preceding the date of arrest;

323 (2) Any suspension or revocation on the basis of a
324 conviction under a municipal ordinance of another state or a
325 statute of the United States or of any other state of an offense

326 which has the same elements as an offense described in section
327 two, article five of this chapter for conduct which occurred
328 within the ten years immediately preceding the date of arrest; or

329 (3) Any revocation under the provisions of section seven,
330 article five of this chapter for conduct which occurred within the
331 ten years immediately preceding the date of arrest.

332 (q) In the case of a hearing in which a person is accused of
333 refusing to submit to a designated secondary test, the Office of
334 Administrative Hearings shall make specific findings as to: (1)
335 Whether the arresting law-enforcement officer had reasonable
336 grounds to believe the person had been driving a motor vehicle
337 in this state while under the influence of alcohol, controlled
338 substances or drugs; (2) whether the person was lawfully placed
339 under arrest for an offense involving driving under the influence
340 of alcohol, controlled substances or drugs, or was lawfully taken
341 into custody for the purpose of administering a secondary test:
342 *Provided*, That this element shall be waived in cases where no
343 arrest occurred due to driver incapacitation; (3) whether the
344 person committed an offense relating to driving a motor vehicle
345 in this state while under the influence of alcohol, controlled
346 substances or drugs; (4) whether the person refused to submit to
347 the secondary test finally designated in the manner provided in
348 section four, article five of this chapter; and (5) whether the
349 person had been given a written statement advising the person
350 that the person's license to operate a motor vehicle in this state
351 would be revoked for at least forty-five days and up to life if the
352 person refused to submit to the test finally designated in the
353 manner provided in said section.

354 (r) If the Office of Administrative Hearings finds by a
355 preponderance of the evidence that: (1) The investigating officer
356 had reasonable grounds to believe the person had been driving
357 a motor vehicle in this state while under the influence of alcohol,
358 controlled substances or drugs; (2) whether the person was

359 lawfully placed under arrest for an offense involving driving
360 under the influence of alcohol, controlled substances or drugs, or
361 was lawfully taken into custody for the purpose of administering
362 a secondary test: *Provided*, That this element shall be waived in
363 cases where no arrest occurred due to driver incapacitation; (3)
364 the person committed an offense relating to driving a motor
365 vehicle in this state while under the influence of alcohol,
366 controlled substances or drugs; (4) the person refused to submit
367 to the secondary test finally designated in the manner provided
368 in section four, article five of this chapter; and (5) the person had
369 been given a written statement advising the person that the
370 person's license to operate a motor vehicle in this state would be
371 revoked for at least forty-five days and up to life if the person
372 refused to submit to the test finally designated, the commissioner
373 shall revoke the person's license to operate a motor vehicle in
374 this state for the periods specified in section seven, article five
375 of this chapter. The revocation period prescribed in this
376 subsection shall run concurrently with any other revocation
377 period ordered under this section or section one of this article
378 arising out of the same occurrence. The revocation period
379 prescribed in this subsection shall run concurrently with any
380 other revocation period ordered under this section or section one
381 of this article arising out of the same occurrence.

382 (s) If the Office of Administrative Hearings finds to the
383 contrary with respect to the above issues, it shall rescind or
384 modify the commissioner's order and, in the case of
385 modification, the commissioner shall reduce the order of
386 revocation to the appropriate period of revocation under this
387 section or section seven, article five of this chapter. A copy of
388 the Office of Administrative Hearings' final order containing its
389 findings of fact and conclusions of law made and entered
390 following the hearing shall be served upon the person whose
391 license is at issue or upon the person's legal counsel if the person
392 is represented by legal counsel by registered or certified mail,

393 return receipt requested, or by facsimile or by electronic mail if
394 available. The final order shall be served upon the commissioner
395 by electronic mail. During the pendency of any hearing, the
396 revocation of the person's license to operate a motor vehicle in
397 this state shall be stayed.

398 A person whose license is at issue and the commissioner
399 shall be entitled to judicial review as set forth in chapter
400 twenty-nine-a of this code. Neither the commissioner nor the
401 Office of Administrative Hearings may stay enforcement of the
402 order. The court may grant a stay or supersede as of the order
403 only upon motion and hearing, and a finding by the court upon
404 the evidence presented, that there is a substantial probability that
405 the appellant shall prevail upon the merits and the appellant will
406 suffer irreparable harm if the order is not stayed: *Provided*, That
407 in no event shall the stay or supersede as of the order exceed one
408 hundred fifty days. The Office of Administrative Hearings may
409 not be made a party to an appeal. The party filing the appeal
410 shall pay the Office of Administrative Hearings for the
411 production and transmission of the certified file copy and the
412 hearing transcript to the court. Notwithstanding the provisions of
413 section four, article five of said chapter, the Office of
414 Administrative Hearings may not be compelled to transmit a
415 certified copy of the file or the transcript of the hearing to the
416 circuit court in less than sixty days. Circuit clerk shall provide a
417 copy of the circuit court's final order on the appeal to the Office
418 of Administrative Hearings by regular mail, by facsimile, or by
419 electronic mail if available.

420 (t) In any revocation or suspension pursuant to this section,
421 if the driver whose license is revoked or suspended had not
422 reached the driver's eighteenth birthday at the time of the
423 conduct for which the license is revoked or suspended, the
424 driver's license shall be revoked or suspended until the driver's
425 eighteenth birthday or the applicable statutory period of

426 revocation or suspension prescribed by this section, whichever
427 is longer.

428 (u) Funds for this section's hearing and appeal process may
429 be provided from the Drunk Driving Prevention Fund, as created
430 by section forty-one, article two, chapter fifteen of this code,
431 upon application for the funds to the Commission on Drunk
432 Driving Prevention.

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within _____ this the _____
day of _____, 2015.

Governor

