

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 512

(SENATORS PALUMBO AND BEACH, *original sponsors*)

[Passed March 8, 2012; in effect ninety days from passage.]

AN ACT to amend and reenact §17C-5A-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §17C-5C-4a and §17C-5C-4b, all relating to updating statutory provisions relating to procedures of the Office of Administrative Hearings; providing written objections to revocation notices may be filed by facsimile or e-mail; providing notices of hearing are sent to the parties and their legal counsel; providing that the Office of Administrative Hearings has subpoena authority; providing that parties may enforce Office of Administrative Hearings subpoenas in circuit court; providing that the Division of Motor Vehicles may serve subpoenas to law-enforcement officers by electronic mail; deleting language indicating that a notice of hearing sent by certified or registered mail to a law-enforcement officer constitutes a subpoena to appear; authorizing the Office of Administrative Hearings to propose legislative rules to implement the provisions of this article and to carry out the duties prescribed therein; and requiring persons with pending contested matters to provide notice of change of address.

Be it enacted by the Legislature of West Virginia:

That §17C-5A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §17C-5C-4a and §17C-5C-4b, all to read as follows:

**ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION
AND REVOCATION OF LICENSES FOR DRIVING
UNDER THE INFLUENCE OF ALCOHOL, CON-
TROLLED 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
3 or section seven, article five of this chapter shall be filed
4 with the Office of Administrative Hearings. Upon the receipt
5 of an objection, the Office of Administrative Hearings shall
6 notify the Commissioner of the Division of Motor Vehicles,
7 who shall stay the imposition of the period of revocation or
8 suspension and afford the person an opportunity to be heard by
9 the Office of Administrative Hearings. The written objec-
10 tion must be filed with Office of Administrative Hearings in
11 person, by registered or certified mail, return receipt re-
12 quested, or by facsimile transmission or electronic mail within
13 thirty calendar days after receipt of a copy of the order of
14 revocation or suspension or no hearing will be granted:
15 *Provided*, That a successful transmittal sheet shall be
16 necessary for proof of written objection in the case of filing
17 by fax. The hearing shall be before a hearing examiner
18 employed by the Office of Administrative Hearings who
19 shall rule on evidentiary issues. Upon consideration of the
20 designated record, the hearing examiner shall, based on the
21 determination of the facts of the case and applicable law,
22 render a decision affirming, reversing or modifying the
23 action protested. The decision shall contain findings of fact
24 and conclusions of law and shall be provided to all parties by
25 registered or certified mail, return receipt requested.

26 (b) The hearing shall be held at an office of the Division of
27 Motor Vehicles located in or near the county in which the

28 arrest was made in this state or at some other suitable place in
29 the county in which the arrest was made if an office of the
30 division is not available. The Office of Administrative Hear-
31 ings shall send a notice of hearing to the person whose driving
32 privileges are at issue and the person's legal counsel if the
33 person is represented by legal counsel, the investigating or
34 arresting law-enforcement officers, the Division of Motor
35 Vehicles, and the Attorney General's Office, if the Attorney
36 General has filed a notice of appearance of counsel on behalf
37 of the Division of Motor Vehicles.

38 (c) (1) Any hearing shall be held within one hundred
39 eighty days after the date upon which the Office of Adminis-
40 trative Hearings received the timely written objection unless
41 there is a postponement or continuance.

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

46 (3) The Office of Administrative Hearings may issue
47 subpoenas commanding the appearance of witnesses and
48 subpoenas duces tecum commanding the submission of
49 documents, items or other things. Subpoenas duces tecum
50 shall be returnable on the date of the next scheduled hearing
51 unless otherwise specified. The Office of Administrative
52 hearings shall issue subpoenas and subpoenas duces tecum at
53 the request of a party or the party's legal representative. The
54 party requesting the subpoena shall be responsible for service
55 of the subpoena upon the appropriate individual. Every
56 subpoena or subpoena duces tecum shall be served at least five
57 days before the return date thereof, either by personal service
58 made by a person over eighteen years of age or by registered
59 or certified mail, return receipt requested, and received by the
60 party responsible for serving the subpoena or subpoena duces
61 tecum: *Provided*, That the Division of Motor Vehicles may
62 serve subpoenas to law-enforcement officers through elec-
63 tronic mail to the department of his or her employer. If a
64 person does not obey the subpoena or fails to appear, the party

65 who issued the subpoena to the person may petition the circuit
66 court wherein the action lies for enforcement of the subpoena.

67 (d) Law-enforcement officers shall be compensated for the
68 time expended in their travel and appearance before the
69 Office of Administrative Hearings by the law-enforcement
70 agency by whom they are employed at their regular rate if
71 they are scheduled to be on duty during said time or at their
72 regular overtime rate if they are scheduled to be off duty
73 during said time.

74 (e) The principal question at the hearing shall be whether
75 the person did drive a motor vehicle while under the influence
76 of alcohol, controlled substances or drugs, or did drive a motor
77 vehicle while having an alcohol concentration in the person's
78 blood of eight hundredths of one percent or more, by weight,
79 or did refuse to submit to the designated secondary chemical
80 test, or did drive a motor vehicle while under the age of
81 twenty-one years with an alcohol concentration in his or her
82 blood of two hundredths of one percent or more, by weight,
83 but less than eight hundredths of one percent, by weight.

84 (f) In the case of a hearing in which a person is accused of
85 driving a motor vehicle while under the influence of alcohol,
86 controlled substances or drugs, or accused of driving a motor
87 vehicle while having an alcohol concentration in the person's
88 blood of eight hundredths of one percent or more, by weight,
89 or accused of driving a motor vehicle while under the age of
90 twenty-one years with an alcohol concentration in his or her
91 blood of two hundredths of one percent or more, by weight,
92 but less than eight hundredths of one percent, by weight, the
93 Office of Administrative Hearings shall make specific findings
94 as to: (1) Whether the investigating law-enforcement officer
95 had reasonable grounds to believe the person to have been
96 driving while under the influence of alcohol, controlled
97 substances or drugs, or while having an alcohol concentration
98 in the person's blood of eight hundredths of one percent or
99 more, by weight, or to have been driving a motor vehicle while
100 under the age of twenty-one years with an alcohol concentra-
101 tion in his or her blood of two hundredths of one percent or
102 more, by weight, but less than eight hundredths of one

103 percent, by weight; (2) whether the person was lawfully placed
104 under arrest for an offense involving driving under the
105 influence of alcohol, controlled substances or drugs, or was
106 lawfully taken into custody for the purpose of administering
107 a secondary test: *Provided*, That this element shall be waived
108 in cases where no arrest occurred due to driver incapacitation;
109 (3) whether the person committed an offense involving driving
110 under the influence of alcohol, controlled substances or drugs,
111 or was lawfully taken into custody for the purpose of adminis-
112 tering a secondary test; and (4) whether the tests, if any, were
113 administered in accordance with the provisions of this article
114 and article five of this chapter.

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

138 (h) If, in addition to a finding that the person did drive a
139 motor vehicle while under the influence of alcohol, controlled
140 substances or drugs, or did drive a motor vehicle while having

141 an alcohol concentration in the person's blood of eight
142 hundredths of one percent or more, by weight, the Office of
143 Administrative Hearings also finds by a preponderance of the
144 evidence that the person when driving did an act forbidden by
145 law or failed to perform a duty imposed by law, which act or
146 failure proximately caused the death of a person, the commis-
147 sioner shall revoke the person's license for a period of five
148 years: *Provided*, That if the person's license has previously
149 been suspended or revoked under the provisions of this section
150 or section one of this article within the ten years immediately
151 preceding the date of arrest, the period of revocation shall be
152 for the life of the person.

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

173 (j) If the Office of Administrative Hearings finds by a
174 preponderance of the evidence that the person did drive a
175 motor vehicle while under the influence of alcohol, controlled
176 substances or drugs, or did drive a motor vehicle while having
177 an alcohol concentration in the person's blood of eight
178 hundredths of one percent or more, by weight, but less than

179 fifteen hundredths of one percent or more, by weight, or finds
180 that the person knowingly permitted the persons vehicle to be
181 driven by another person who was under the influence of
182 alcohol, controlled substances or drugs, or knowingly permit-
183 ted the person's vehicle to be driven by another person who
184 had an alcohol concentration in his or her blood of eight
185 hundredths of one percent or more, by weight the commis-
186 sioner shall revoke the person's license for a period of six
187 months or a period of fifteen days with an additional one
188 hundred and twenty days of participation in the Motor Vehicle
189 Alcohol Test and Lock Program in accordance with the
190 provisions of section three-a of this article: *Provided*, That any
191 period of participation in the Motor Vehicle Alcohol Test and
192 Lock Program that has been imposed by a court pursuant to
193 section two-b, article five of this chapter shall be credited
194 against any period of participation imposed by the commis-
195 sioner: *Provided*, however, That a person whose license is
196 revoked for driving while under the influence of drugs is not
197 eligible to participate in the Motor Vehicle Alcohol Test and
198 Lock Program: *Provided* further, That if the person's license
199 has previously been suspended or revoked under the provi-
200 sions of this section or section one of this article within the ten
201 years immediately preceding the date of arrest, the period of
202 revocation shall be ten years: *And provided further*, That if the
203 person's license has previously been suspended or revoked
204 more than once under the provisions of this section or section
205 one of this article within the ten years immediately preceding
206 the date of arrest, the period of revocation shall be for the life
207 of the person.

208 (k) (1) If in addition to finding by a preponderance of the
209 evidence that the person did drive a motor vehicle while under
210 the influence of alcohol, controlled substance or drugs, the
211 Office of Administrative Hearings also finds by a preponder-
212 ance of the evidence that the person did drive a motor vehicle
213 while having an alcohol concentration in the person's blood of
214 fifteen hundredths of one percent or more, by weight, the
215 commissioner shall revoke the person's license for a period of
216 forty-five days with an additional two hundred and seventy
217 days of participation in the Motor Vehicle Alcohol Test and

218 Lock Program in accordance with the provisions of article
219 three-a, article five-a, chapter seventeen-c of this code:
220 *Provided*, That if the person's license has previously been
221 suspended or revoked under the provisions of this section or
222 section one of this article within the ten years immediately
223 preceding the date of arrest, the period of revocation shall be
224 ten years: *Provided, however*, That if the person's license has
225 previously been suspended or revoked the person's license
226 more than once under the provisions of this section or section
227 one of this article within the ten years immediately preceding
228 the date of arrest, the period of revocation shall be for the life
229 of the person.

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

246 (1) If, in addition to a finding that the person did drive a
247 motor vehicle while under the age of twenty-one years with an
248 alcohol concentration in his or her blood of two hundredths of
249 one percent or more, by weight, but less than eight hundredths
250 of one percent, by weight, the Office of Administrative
251 Hearings also finds by a preponderance of the evidence that
252 the person when driving did an act forbidden by law or failed
253 to perform a duty imposed by law, which act or failure
254 proximately caused the death of a person, and if the Office of
255 Administrative Hearings further finds that the alcohol

256 concentration in the blood was a contributing cause to the
257 death, the commissioner shall revoke the person's license for
258 a period of five years: *Provided*, That if the person's license
259 has previously been suspended or revoked under the provi-
260 sions of this section or section one of this article within the ten
261 years immediately preceding the date of arrest, the period of
262 revocation shall be for the life of the person.

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

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

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

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

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

324 (2) Any suspension or revocation on the basis of a convic-
325 tion under a municipal ordinance of another state or a statute
326 of the United States or of any other state of an offense which
327 has the same elements as an offense described in section two,
328 article five of this chapter for conduct which occurred within
329 the ten years immediately preceding the date of arrest; or

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

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

356 (r) If the Office of Administrative Hearings finds by a
357 preponderance of the evidence that: (1) The investigating
358 officer had reasonable grounds to believe the person had been
359 driving a motor vehicle in this state while under the influence
360 of alcohol, controlled substances or drugs; (2) whether the
361 person was lawfully placed under arrest for an offense
362 involving driving under the influence of alcohol, controlled
363 substances or drugs, or was lawfully taken into custody for the
364 purpose of administering a secondary test: *Provided*, That this
365 element shall be waived in cases where no arrest occurred due
366 to driver incapacitation; (3) the person committed an offense
367 relating to driving a motor vehicle in this state while under the

368 influence of alcohol, controlled substances or drugs; (4) the
369 person refused to submit to the secondary test finally desig-
370 nated in the manner provided in section four, article five of
371 this chapter; and (5) the person had been given a written
372 statement advising the person that the person's license to
373 operate a motor vehicle in this state would be revoked for at
374 least forty-five days and up to life if the person refused to
375 submit to the test finally designated, the commissioner shall
376 revoke the person's license to operate a motor vehicle in this
377 state for the periods specified in section seven, article five of
378 this chapter. The revocation period prescribed in this subsec-
379 tion shall run concurrently with any other revocation period
380 ordered under this section or section one of this article arising
381 out of the same occurrence. The revocation period prescribed
382 in this subsection shall run concurrently with any other
383 revocation period ordered under this section or section one of
384 this article arising out of the same occurrence.

385 (s) If the Office of Administrative Hearings finds to the
386 contrary with respect to the above issues the commissioner
387 shall rescind his or her earlier order of revocation or shall
388 reduce the order of revocation to the appropriate period of
389 revocation under this section or section seven, article five of
390 this chapter. A copy of the Office of Administrative Hearings'
391 final order containing its findings of fact and conclusions of
392 law made and entered following the hearing shall be served
393 upon the person whose license is at issue or upon the person's
394 legal counsel if the person is represented by legal counsel by
395 registered or certified mail, return receipt requested or by
396 electronic mail if available. The final order shall be served
397 upon the commissioner by electronic mail. During the pen-
398 dency of any hearing, the revocation of the person's license to
399 operate a motor vehicle in this state shall be stayed.

400 A person whose license is at issue and the commissioner
401 shall be entitled to judicial review as set forth in chapter
402 twenty-nine-a of this code. Neither the Commissioner nor the
403 Office of Administrative Hearings may stay enforcement of the
404 order. The court may grant a stay or supersede as of the order
405 only upon motion and hearing, and a finding by the court upon

406 the evidence presented, that there is a substantial probability
407 that the appellant shall prevail upon the merits and the
408 appellant will suffer irreparable harm if the order is not
409 stayed: *Provided*, That in no event shall the stay or supersede
410 as of the order exceed one hundred fifty days. Notwithstand-
411 ing the provisions of section four, article five of said chapter,
412 the Office of Administrative Hearings may not be compelled
413 to transmit a certified copy of the file or the transcript of the
414 hearing to the circuit court in less than sixty days.

415 (t) In any revocation or suspension pursuant to this
416 section, if the driver whose license is revoked or suspended
417 had not reached the driver's eighteenth birthday at the time of
418 the conduct for which the license is revoked or suspended, the
419 driver's license shall be revoked or suspended until the
420 driver's eighteenth birthday or the applicable statutory period
421 of revocation or suspension prescribed by this section, which-
422 ever is longer.

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

ARTICLE 5C. OFFICE OF ADMINISTRATIVE HEARINGS.

§17C-5C-4a. Rule-making authority.

1 The Office of Administrative Hearings may propose
2 legislative and procedural rules in accordance with the
3 provisions of article three, chapter twenty-nine-a of this code
4 in order to implement the provisions of this article and to
5 carry out the duties prescribed therein.

§17C-5C-4b. Duty to provide notice of change of address.

1 Any person who has any pending contested matter before
2 the Office of Administrative Hearings is required to provide
3 written notice of a change in address by written notice at least
4 ten days prior to any scheduled hearing in which they are a
5 party. If the person's final hearing is held prior to the person's

6 change in address, then the person is required to provide the
7 written notice prior to the issuance of the final order in their
8 case. Written notice must be provided by certified mail, return
9 receipt requested, facsimile, or by electronic mail, to the Office
10 of Administrative Hearings.