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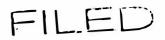
FOR

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Senate Bill No. 512

(SENATORS PALUMBO AND BEACH, ORIGINAL SPONSORS)

[PASSED MARCH 8, 2012; IN EFFECT NINETY DAYS FROM PASSAGE.]



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OFFICE WEST VIRGINIA SECRETARY OF STATE

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FOR

Senate Bill No. 512

(SENATORS PALUMBO AND BEACH, original sponsors)

[Passed March 8, 2012; in effect nincty 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.

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

arrest was made in this state or at some other suitable place in the county in which the arrest was made if an office of the division is not available. The Office of Administrative Hearings shall send a notice of hearing to the person whose driving privileges are at issue and the person's legal counsel if the person is represented by legal counsel, the investigating or arresting law-enforcement officers, the Division of Motor Vehicles, and the Attorney General's Office, if the Attorney General has filed a notice of appearance of counsel on behalf 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 Adminis40 trative Hearings received the timely written objection unless
41 there is a postponement or continuance.

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

46 (3) The Office of Administrative Hearings may issue 47 subpoenas commanding the appearance of witnesses and subpoenas duces tecum commanding the submission of 48 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 subpoena or subpoena duces tecum shall be served at least five 56 days before the return date thereof, either by personal service 57 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

who issued the subpoena to the person may petition the circuitcourt 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.

(e) The principal question at the hearing shall be whether
the person did drive a motor vehicle while under the influence
of alcohol, controlled substances or drugs, or did drive a motor
vehicle while having an alcohol concentration in the person's
blood of eight hundredths of one percent or more, by weight,
or did refuse to submit to the designated secondary chemical
test, or did drive a motor vehicle while under the age of
twenty-one years with an alcohol concentration in his or her
blood of two hundredths of one percent or more, by weight,
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 vehicle while having an alcohol concentration in the person's 87 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 substances or drugs, or while having an alcohol concentration 97 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 an alcohol concentration in the person's blood of eight 118 119 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 in reckless disregard of the safety of others and if the Office of 128 129 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 commissioner shall revoke the person's license for a period of 132 133 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 preceding the date of arrest, the period of revocation shall be 136 for the life of the person. 137

(h) If, in addition to a finding that the person did drive a
motor vehicle while under the influence of alcohol, controlled
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.

(j) If the Office of Administrative Hearings finds by a preponderance of the evidence that the person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight 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 period of participation in the Motor Vehicle Alcohol Test and 191 192 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.

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

Lock Program in accordance with the provisions of article three-a, article five-a, chapter seventeen-c of this code: *Provided*, That if the person's license has previously been suspended or revoked under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided*, *however*, That if the person's license has previously been suspended or revoked the person's license more than once under the provisions of this section or section one of this article within the ten years immediately preceding the date of arrest, the period of revocation shall be for the life 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 the alcohol test and lock device may be installed or is other-233 234 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 person's license has previously been suspended or revoked 241 242 more than once under the provisions of this section or section 243 one of this article within the ten years immediately preceding 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 alcohol concentration in his or her blood of two hundredths of 248 249 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 to perform a duty imposed by law, which act or failure 253 proximately caused the death of a person, and if the Office of 254 255 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 ten years: Provided, however, That if the person's license has 280 281 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.

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

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article, the period of revocation shall be for one year, or untilthe 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.

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

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

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

(3) Any revocation under the provisions of section seven,
article five of this chapter for conduct which occurred within
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 Administrative Hearings shall make specific findings as to: (1) 335 336 Whether the arresting law-enforcement officer had reasonable grounds to believe the person had been driving a motor vehicle 337 338 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 at least forty-five days and up to life if the person refused to 353 354 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 element shall be waived in cases where no arrest occurred due 365 to driver incapacitation; (3) the person committed an offense 366 relating to driving a motor vehicle in this state while under the 367

368 influence of alcohol, controlled substances or drugs; (4) the person refused to submit to the secondary test finally desig-369 370 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 submit to the test finally designated, the commissioner shall 375 376 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 shall rescind his or her earlier order of revocation or shall 387 388 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 upon the person whose license is at issue or upon the person's 393 394 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 operate a motor vehicle in this state shall be staved. 399

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.

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

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

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

..... Senate Committee Chairma Chairman House Committee 2012 MAR 30 Originated in the Senate. In effect ninety days from passage. PM 5: 24 Clerk of the Senate Clerk of the House of Delegates he Senate Speaker of the House of Delegates The within is approved this the 30th Day of Manch - hmlel

PRESENTED TO THE GOVERNOR

MAR 2 7 2012

Time 3120 pm