

ENROLLED

H. B. 2664

(By Delegates Sobonya, Butler, McCuskey, Stansbury, E. Nelson, Ihle,
Householder, Ellington, Westfall, Marcum and Byrd)

[Passed March 14, 2015; in effect ninety days from passage.]

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

19 *Be it enacted by the Legislature of West Virginia:*

20 That §17C-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted;

21 and to amend and reenact §17C-5A-2 all to read as follows:

22 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES**

23 **§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 controlled substance or any other
7 drug; or

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

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

14 (b) Any person who:

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

16 (A) Is under the influence of alcohol;

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

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

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

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

1 (2) Whose impaired state proximately causes serious bodily injury to any person other than
2 himself or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state
3 correctional facility for not less than two nor more than ten years and shall be fined not less than
4 \$1,000 nor more than \$3,000 dollars.

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

8 (c) Any person who:

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

10 (A) Is under the influence of alcohol;

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

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

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

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

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

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

1 (d) 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 controlled substance or any other
7 drug; or

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

10 (2) Is guilty of a misdemeanor and, upon conviction thereof, except as provided in section
11 two-b of this article, shall be confined in jail for up to six months and shall be fined not less than
12 \$100 nor more than \$500. A person sentenced pursuant to this subdivision shall receive credit for
13 any period of actual confinement he or she served upon arrest for the subject offense.

14 (e) Any person who drives a vehicle in this state while he or she has an alcohol concentration
15 in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty of a
16 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor
17 more than six months, which jail term is to include actual confinement of not less than twenty-four
18 hours, and shall be fined not less than \$200 nor more than \$1,000. A person sentenced pursuant to
19 this subdivision shall receive credit for any period of actual confinement he or she served upon arrest
20 for the subject offense.

21 (f) Any person who, being an habitual user of narcotic drugs or amphetamine or any
22 derivative thereof, drives a vehicle in this state is guilty of a misdemeanor and, upon conviction

1 thereof, shall be confined in jail for not less than one day nor more than six months, which jail term
2 is to include actual confinement of not less than twenty-four hours, and shall be fined not less than
3 \$100 nor more than \$500. A person sentenced pursuant to this subdivision shall receive credit for
4 any period of actual confinement he or she served upon arrest for the subject offense.

5 (g) Any person who:

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

7 (A) Is under the influence of alcohol;

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

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

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

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

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

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

20 (i) Any person under the age of twenty-one years who drives a vehicle in this state while he
21 or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by
22 weight, but less than eight hundredths of one percent, by weight, for a first offense under this

1 subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25
2 nor more than \$100. For a second or subsequent offense under this subsection, the person is guilty
3 of a misdemeanor and, upon conviction thereof, shall be confined in jail for twenty-four hours and
4 shall be fined not less than \$100 nor more than \$500. A person who is charged with a first offense
5 under the provisions of this subsection may move for a continuance of the proceedings, from time
6 to time, to allow the person to participate in the Motor Vehicle Alcohol Test and Lock Program as
7 provided in section three-a, article five-a of this chapter. Upon successful completion of the
8 program, the court shall dismiss the charge against the person and expunge the person's record as it
9 relates to the alleged offense. In the event the person fails to successfully complete the program, the
10 court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this
11 subsection may not be construed as an admission or be used as evidence. A person arrested and
12 charged with an offense under the provisions of this subsection or subsection (a), (b), (c), (d), (e),
13 (f),(g) or (h) of this section may not also be charged with an offense under this subsection arising out
14 of the same transaction or occurrence.

15 (j) Any person who:

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

17 (A) Is under the influence of alcohol;

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

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

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

22 (E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or

1 more, by weight; and

2 (2) The person while driving has on or within the motor vehicle one or more other persons
3 who are unemancipated minors who have not reached their sixteenth birthday is guilty of a
4 misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor
5 more than twelve months, which jail term is to include actual confinement of not less than forty-eight
6 hours and shall be fined not less than \$200 nor more than \$1,000.

7 (k) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this
8 section, for the second offense under this section, is guilty of a misdemeanor and, upon conviction
9 thereof, shall be confined in jail for not less than six months nor more than one year and the court
10 may, in its discretion, impose a fine of not less than \$1,000 nor more than \$3,000.

11 (l) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this
12 section, for the third or any subsequent offense under this section, is guilty of a felony and, upon
13 conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more
14 than five years and the court may, in its discretion, impose a fine of not less than \$3,000 nor more
15 than \$5,000.

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

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

21 (2) Any conviction under a municipal ordinance of this state or any other state or a statute
22 of the United States or of any other state of an offense which has the same elements as an offense

1 described in subsection (a), (b), (c), (d), (e), (f), (g) or (h) of this section, which offense occurred
2 within the ten-year period immediately preceding the date of arrest in the current proceeding; and,

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

6 (n) A person may be charged in a warrant or indictment or
7 information for a second or subsequent offense under this section if the person has been previously
8 arrested for or charged with a violation of this section which is alleged to have occurred within the
9 applicable time period for prior offenses, notwithstanding the fact that there has not been a final
10 adjudication of the charges for the alleged previous offense. In that case, the warrant or indictment
11 or information must set forth the date, location and particulars of the previous offense or offenses.
12 No person may be convicted of a second or subsequent offense under this section unless the
13 conviction for the previous offense has become final, or the person has previously had a period of
14 conditional probation imposed pursuant to section two-b of this article.

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

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

22 (q) The sentences provided in this section upon conviction for a violation of this article are

1 mandatory and are not subject to suspension or probation: *Provided*, That the court may apply the
 2 provisions of article eleven-a, chapter sixty-two of this code to a person sentenced or committed to
 3 a term of one year or less for a first offense under this section: *Provided further*, That the court may
 4 impose a term of conditional probation pursuant to section two-b of this article to persons
 5 adjudicated thereunder. An order for home detention by the court pursuant to the provisions of
 6 article eleven-b of said chapter may be used as an alternative sentence to any period of incarceration
 7 required by this section for a first or subsequent offense: *Provided, however*, That for any period of
 8 home incarceration ordered for a person convicted of second offense under this section, electronic
 9 monitoring shall be required for no fewer than five days of the total period of home confinement
 10 ordered and the offender may not leave home for those five days notwithstanding the provisions of
 11 section five, article eleven-b, chapter sixty-two of this code: *Provided further*, That for any period
 12 of home incarceration ordered for a person convicted of a third or subsequent violation of this
 13 section, electronic monitoring shall be included for no fewer than ten days of the total period of
 14 home confinement ordered and the offender may not leave home for those ten days notwithstanding
 15 section five, article eleven-b, chapter sixty-two of this code.

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

20 **§17C-5A-2. Hearing; revocation; review.**

21 (a) Written objections to an order of revocation or suspension under the provisions of section
 22 one of this article or section seven, article five of this chapter shall be filed with the Office of

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

16 (b) The hearing shall be held at an office of the Division of Motor Vehicles suitable for
17 hearing purposes located in or near the county in which the arrest was made in this state or at some
18 other suitable place in the county in which the arrest was made if an office of the division is not
19 available. At the discretion of the Office of Administrative Hearings, the hearing may also be held
20 at an office of the Office of Administrative Hearings located in or near the county in which the arrest
21 was made in this state. The Office of Administrative Hearings shall send a notice of hearing to the
22 person whose driving privileges are at issue and the person's legal counsel if the person is

1 represented by legal counsel, by regular mail, or with the written consent of the person whose driving
2 privileges are at issue or their legal counsel, by facsimile or electronic mail. The Office of
3 Administrative Hearings shall also send a notice of hearing by regular mail, facsimile or electronic
4 mail to the Division of Motor Vehicles, and the Attorney General's Office, if the Attorney General
5 has filed a notice of appearance of counsel on behalf of the Division of Motor Vehicles.

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

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

12 (3) The Office of Administrative Hearings may issue subpoenas commanding the appearance
13 of witnesses and subpoenas duces tecum commanding the submission of documents, items or other
14 things. Subpoenas duces tecum shall be returnable on the date of the next scheduled hearing unless
15 otherwise specified. The Office of Administrative hearings shall issue subpoenas and subpoenas
16 duces tecum at the request of a party or the party's legal representative. The party requesting the
17 subpoena shall be responsible for service of the subpoena upon the appropriate individual. Every
18 subpoena or subpoena duces tecum shall be served at least five days before the return date thereof,
19 either by personal service made by a person over eighteen years of age or by registered or certified
20 mail, return receipt requested, and received by the party responsible for serving the subpoena or
21 subpoena duces tecum: *Provided*, That the Division of Motor Vehicles may serve subpoenas to
22 law-enforcement officers through electronic mail to the department of his or her employer. If a

1 person does not obey the subpoena or fails to appear, the party who issued the subpoena to the person
2 may petition the circuit court wherein the action lies for enforcement of the subpoena.

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

7 (e) The principal question at the hearing shall be whether the person did drive a motor vehicle
8 while under the influence of alcohol, controlled substances or drugs, or did drive a motor vehicle
9 while having an alcohol concentration in the person's blood of eight hundredths of one percent or
10 more, by weight, or did refuse to submit to the designated secondary chemical test, or did drive a
11 motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her
12 blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one
13 percent, by weight.

14 (f) In the case of a hearing in which a person is accused of driving a motor vehicle while
15 under the influence of alcohol, controlled substances or drugs, or accused of driving a motor vehicle
16 while having an alcohol concentration in the person's blood of eight hundredths of one percent or
17 more, by weight, or accused of driving a motor vehicle while under the age of twenty-one years with
18 an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight,
19 but less than eight hundredths of one percent, by weight, the Office of Administrative Hearings shall
20 make specific findings as to: (1) Whether the investigating law-enforcement officer had reasonable
21 grounds to believe the person to have been driving while under the influence of alcohol, controlled
22 substances or drugs, or while having an alcohol concentration in the person's blood of eight

1 hundredths of one percent or more, by weight, or to have been driving a motor vehicle while under
2 the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of
3 one percent or more, by weight, but less than eight hundredths of one percent, by weight; (2) whether
4 the person was lawfully placed under arrest for an offense involving driving under the influence of
5 alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of
6 administering a secondary test: *Provided*, That this element shall be waived in cases where no arrest
7 occurred due to driver incapacitation; (3) whether the person committed an offense involving driving
8 under the influence of alcohol, controlled substances or drugs; and (4) whether the tests, if any, were
9 administered in accordance with the provisions of this article and article five of this chapter.

10 (g) If, in addition to a finding that the person did drive a motor vehicle while under the
11 influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an
12 alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight,
13 or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration
14 in his or her blood of two hundredths of one percent or more, by weight, but less than eight
15 hundredths of one percent, by weight, the Office of Administrative Hearings also finds by a
16 preponderance of the evidence that the person when driving did an act forbidden by law or failed to
17 perform a duty imposed by law, which act or failure proximately caused the death of a person and
18 was committed in reckless disregard of the safety of others and if the Office of Administrative
19 Hearings further finds that the influence of alcohol, controlled substances or drugs or the alcohol
20 concentration in the blood was a contributing cause to the death, the commissioner shall revoke the
21 person's license for a period of ten years: *Provided*, That if the person's license has previously been
22 suspended or revoked under the provisions of this section or section one of this article within the ten

1 years immediately preceding the date of arrest, the period of revocation shall be for the life of the
2 person.

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

12 (i) If, in addition to a finding that the person did drive a motor vehicle while under the
13 influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an
14 alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight,
15 the Office of Administrative Hearings also finds by a preponderance of the evidence that the person
16 when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or
17 failure proximately caused bodily injury to a person other than himself or herself, the commissioner
18 shall revoke the person's license for a period of two years: *Provided*, That if the license has
19 previously been suspended or revoked under the provisions of this section or section one of this
20 article within the ten years immediately preceding the date of arrest, the period of revocation shall
21 be ten years: *Provided, however*, That if the person's license has previously been suspended or
22 revoked more than once under the provisions of this section or section one of this article within the

1 ten years immediately preceding the date of arrest, the period of revocation shall be for the life of
2 the person.

3 (j) If the Office of Administrative Hearings finds by a preponderance of the evidence that the
4 person did drive a motor vehicle while under the influence of alcohol, controlled substances or drugs,
5 or did drive a motor vehicle while having an alcohol concentration in the person's blood of eight
6 hundredths of one percent or more, by weight, but less than fifteen hundredths of one percent or
7 more, by weight, or finds that the person knowingly permitted the persons vehicle to be driven by
8 another person who was under the influence of alcohol, controlled substances or drugs, or knowingly
9 permitted the person's vehicle to be driven by another person who had an alcohol concentration in
10 his or her blood of eight hundredths of one percent or more, by weight the commissioner shall revoke
11 the person's license for a period of six months or a period of fifteen days with an additional one
12 hundred and twenty days of participation in the Motor Vehicle Alcohol Test and Lock Program in
13 accordance with the provisions of section three-a of this article: *Provided*, That any period of
14 participation in the Motor Vehicle Alcohol Test and Lock Program that has been imposed by a court
15 pursuant to section two-b, article five of this chapter shall be credited against any period of
16 participation imposed by the commissioner: *Provided*, however, That a person whose license is
17 revoked for driving while under the influence of drugs is not eligible to participate in the Motor
18 Vehicle Alcohol Test and Lock Program: *Provided* further, That if the person's license has
19 previously been suspended or revoked under the provisions of this section or section one of this
20 article within the ten years immediately preceding the date of arrest, the period of revocation shall
21 be ten years: *And provided further*, That if the person's license has previously been suspended or
22 revoked more than once under the provisions of this section or section one of this article within the

1 ten years immediately preceding the date of arrest, the period of revocation shall be for the life of
2 the person.

3 (k) (1) If in addition to finding by a preponderance of the evidence that the person did drive
4 a motor vehicle while under the influence of alcohol, controlled substance or drugs, the Office of
5 Administrative Hearings also finds by a preponderance of the evidence that the person did drive a
6 motor vehicle while having an alcohol concentration in the person's blood of fifteen hundredths of
7 one percent or more, by weight, the commissioner shall revoke the person's license for a period of
8 forty-five days with an additional two hundred and seventy days of participation in the Motor
9 Vehicle Alcohol Test and Lock Program in accordance with the provisions of section three-a, article
10 five-a, chapter seventeen-c of this code: *Provided*, That if the person's license has previously been
11 suspended or revoked under the provisions of this section or section one of this article within the ten
12 years immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided*,
13 *however*, That if the person's license has previously been suspended or revoked the person's license
14 more than once under the provisions of this section or section one of this article within the ten years
15 immediately preceding the date of arrest, the period of revocation shall be for the life of the person.

16 (2) If a person whose license is revoked pursuant to subdivision (1) of this subsection proves
17 by clear and convincing evidence that they do not own a motor vehicle upon which the alcohol test
18 and lock device may be installed or is otherwise incapable of participating in the Motor Vehicle
19 Alcohol Test and Lock Program, the period of revocation shall be one hundred eighty days:
20 *Provided*, That if the person's license has previously been suspended or revoked under the provisions
21 of this section or section one of this article within the ten years immediately preceding the date of
22 arrest, the period of revocation shall be ten years: *Provided, however*, That if the person's license

1 has previously been suspended or revoked more than once under the provisions of this section or
2 section one of this article within the ten years immediately preceding the date of arrest, the period
3 of revocation shall be for the life of the person.

4 (l) If, in addition to a finding that the person did drive a motor vehicle while under the age
5 of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one
6 percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of
7 Administrative Hearings also finds by a preponderance of the evidence that the person when driving
8 did an act forbidden by law or failed to perform a duty imposed by law, which act or failure
9 proximately caused the death of a person, and if the Office of Administrative Hearings further finds
10 that the alcohol concentration in the blood was a contributing cause to the death, the commissioner
11 shall revoke the person's license for a period of five years: *Provided*, That if the person's license has
12 previously been suspended or revoked under the provisions of this section or section one of this
13 article within the ten years immediately preceding the date of arrest, the period of revocation shall
14 be for the life of the person.

15 (m) If, in addition to a finding that the person did drive a motor vehicle while under the age
16 of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one
17 percent or more, by weight, but less than eight hundredths of one percent, by weight, the Office of
18 Administrative Hearings also finds by a preponderance of the evidence that the person when driving
19 did an act forbidden by law or failed to perform a duty imposed by law, which act or failure
20 proximately caused bodily injury to a person other than himself or herself, and if the Office of
21 Administrative Hearings further finds that the alcohol concentration in the blood was a contributing
22 cause to the bodily injury, the commissioner shall revoke the person's license for a period of two

1 years: *Provided*, That if the person's license has previously been suspended or revoked under the
2 provisions of this section or section one of this article within the ten years immediately preceding
3 the date of arrest, the period of revocation shall be ten years: *Provided, however*, That if the person's
4 license has previously been suspended or revoked more than once under the provisions of this
5 section or section one of this article within the ten years immediately preceding the date of arrest,
6 the period of revocation shall be for the life of the person.

7 (n) If the Office of Administrative Hearings finds by a preponderance of the evidence that
8 the person did drive a motor vehicle while under the age of twenty-one years with an alcohol
9 concentration in his or her blood of two hundredths of one percent or more, by weight, but less than
10 eight hundredths of one percent, by weight, the commissioner shall suspend the person's license for
11 a period of sixty days: *Provided*, That if the person's license has previously been suspended or
12 revoked under the provisions of this section or section one of this article, the period of revocation
13 shall be for one year, or until the person's twenty-first birthday, whichever period is longer.

14 (o) If, in addition to a finding that the person did drive a motor vehicle while under the
15 influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an
16 alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight,
17 the Office of Administrative Hearings also finds by a preponderance of the evidence that the person
18 when driving did have on or within the Motor vehicle another person who has not reached his or her
19 sixteenth birthday, the commissioner shall revoke the person's license for a period of one year:
20 *Provided*, That if the person's license has previously been suspended or revoked under the provisions
21 of this section or section one of this article within the ten years immediately preceding the date of
22 arrest, the period of revocation shall be ten years: *Provided, however*, That if the person's license

1 has previously been suspended or revoked more than once under the provisions of this section or
2 section one of this article within the ten years immediately preceding the date of arrest, the period
3 of revocation shall be for the life of the person.

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

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

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

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

16 (q) In the case of a hearing in which a person is accused of refusing to submit to a designated
17 secondary test, the Office of Administrative Hearings shall make specific findings as to: (1) Whether
18 the arresting law-enforcement officer had reasonable grounds to believe the person had been driving
19 a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2)
20 whether the person was lawfully placed under arrest for an offense involving driving under the
21 influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the
22 purpose of administering a secondary test: *Provided*, That this element shall be waived in cases

1 where no arrest occurred due to driver incapacitation; (3) whether the person committed an offense
2 relating to driving a motor vehicle in this state while under the influence of alcohol, controlled
3 substances or drugs; (4) whether the person refused to submit to the secondary test finally designated
4 in the manner provided in section four, article five of this chapter; and (5) whether the person had
5 been given a written statement advising the person that the person's license to operate a motor
6 vehicle in this state would be revoked for at least forty-five days and up to life if the person refused
7 to submit to the test finally designated in the manner provided in said section.

8 (r) If the Office of Administrative Hearings finds by a preponderance of the evidence that:

9 (1) The investigating officer had reasonable grounds to believe the person had been driving a motor
10 vehicle in this state while under the influence of alcohol, controlled substances or drugs; (2) whether
11 the person was lawfully placed under arrest for an offense involving driving under the influence of
12 alcohol, controlled substances or drugs, or was lawfully taken into custody for the purpose of
13 administering a secondary test: *Provided*, That this element shall be waived in cases where no arrest
14 occurred due to driver incapacitation; (3) the person committed an offense relating to driving a motor
15 vehicle in this state while under the influence of alcohol, controlled substances or drugs; (4) the
16 person refused to submit to the secondary test finally designated in the manner provided in section
17 four, article five of this chapter; and (5) the person had been given a written statement advising the
18 person that the person's license to operate a motor vehicle in this state would be revoked for at least
19 forty-five days and up to life if the person refused to submit to the test finally designated, the
20 commissioner shall revoke the person's license to operate a motor vehicle in this state for the periods
21 specified in section seven, article five of this chapter. The revocation period prescribed in this
22 subsection shall run concurrently with any other revocation period ordered under this section or

1 section one of this article arising out of the same occurrence. The revocation period prescribed in
2 this subsection shall run concurrently with any other revocation period ordered under this section or
3 section one of this article arising out of the same occurrence.

4 (s) If the Office of Administrative Hearings finds to the contrary with respect to the above
5 issues, it shall rescind or modify the commissioner's order and, in the case of modification, the
6 commissioner shall reduce the order of revocation to the appropriate period of revocation under this
7 section or section seven, article five of this chapter. A copy of the Office of Administrative
8 Hearings' final order containing its findings of fact and conclusions of law made and entered
9 following the hearing shall be served upon the person whose license is at issue or upon the person's
10 legal counsel if the person is represented by legal counsel by registered or certified mail, return
11 receipt requested, or by facsimile or by electronic mail if available. The final order shall be served
12 upon the commissioner by electronic mail. During the pendency of any hearing, the revocation of
13 the person's license to operate a motor vehicle in this state shall be stayed.

14 A person whose license is at issue and the commissioner shall be entitled to judicial review
15 as set forth in chapter twenty-nine-a of this code. Neither the commissioner nor the Office of
16 Administrative Hearings may stay enforcement of the order. The court may grant a stay or supersede
17 as of the order only upon motion and hearing, and a finding by the court upon the evidence
18 presented, that there is a substantial probability that the appellant shall prevail upon the merits and
19 the appellant will suffer irreparable harm if the order is not stayed: *Provided*, That in no event shall
20 the stay or supersede as of the order exceed one hundred fifty days. The Office of Administrative
21 Hearings may not be made a party to an appeal. The party filing the appeal shall pay the Office of
22 Administrative Hearings for the production and transmission of the certified file copy and the

1 hearing transcript to the court. Notwithstanding the provisions of section four, article five of said
2 chapter, the Office of Administrative Hearings may not be compelled to transmit a certified copy of
3 the file or the transcript of the hearing to the circuit court in less than sixty days. Circuit clerk shall
4 provide a copy of the circuit court's final order on the appeal to the Office of Administrative
5 Hearings by regular mail, by facsimile, or by electronic mail if available.

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

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

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