

**S E C O N D  
E N R O L L M E N T**

**H. B. 2664**

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(BY DELEGATE(S) SOBONYA, BUTLER, MCCUSKEY,  
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WESTFALL, MARCUM AND BYRD)

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[Amended and again passed March 18, 2015;  
as a result of the objections of the Governor;  
in effect ninety days from passage.]

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AN ACT to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-5A-2 of said code, all relating to offenses of driving under the influence of alcohol, controlled substances or drugs; defining terms; restating the elements of certain offenses of driving under the influence of alcohol, controlled substances or drugs; requiring that a person's impaired state proximately cause the injury or death in certain offenses; increasing the penalty for driving under the influence of alcohol, controlled substances or drugs causing death; requiring death to have occurred within one year of an offense of driving under the influence of alcohol, controlled substances or drugs causing death; eliminating the misdemeanor offense of driving

under the influence of alcohol, controlled substances or drugs causing death; creating felony offense and penalties for driving under the influence of alcohol, controlled substances or drugs causing serious bodily injury; increasing the penalty for certain subsequent offenses of driving under the influence of alcohol, controlled substances or drugs; and providing that the West Virginia Rules of Evidence apply to administrative proceedings concerning license revocation for driving under the influence.

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

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

**ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

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

1 (a) *Definitions* —

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

3 (A) Is under the influence of alcohol;

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

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

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

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

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

12 (3) “Serious Bodily Injury” means bodily injury that creates  
13 a substantial risk of death, that causes serious or prolonged  
14 disfigurement, prolonged impairment of health or prolonged loss  
15 or impairment of the function of any bodily organ.

16 (b) Any person who drives a vehicle in this state while he or  
17 she is in an impaired state and such impaired state proximately  
18 causes the death of any person is guilty of a felony and, upon  
19 conviction thereof, shall be imprisoned in a state correctional  
20 facility for not less than three nor more than fifteen years and  
21 shall be fined not less than \$1,000 nor more than \$3,000:  
22 *Provided*, That any death charged under this subsection must  
23 occur within one year of the offense.

24 (c) Any person who drives a vehicle in this state while he or  
25 she is in an impaired state and such impaired state proximately  
26 causes serious bodily injury to any person other than himself or  
27 herself, is guilty of a felony and, upon conviction thereof, shall  
28 be imprisoned in a state correctional facility for not less than two  
29 nor more than ten years and shall be fined not less than \$1,000  
30 nor more than \$3,000.

31 (d) Any person who drives a vehicle in this state while he or  
32 she is in an impaired state and such impaired state proximately  
33 causes a bodily injury to any person other than himself or  
34 herself, is guilty of a misdemeanor and, upon conviction thereof,  
35 shall be confined in jail for not less than one day more than one  
36 year and shall be fined not less than \$200 nor more than \$1,000:  
37 *Provided*, That such jail term shall include actual confinement of  
38 not less than twenty-four hours: *Provided, however*, That a  
39 person sentenced pursuant to this subsection shall receive credit  
40 for any period of actual confinement he or she served upon arrest  
41 for the subject offense.

42 (e) Any person who drives a vehicle in this state while he or  
43 she is in an impaired state, but has an alcohol concentration in  
44 his or her blood of less than fifteen hundredths of one percent by

45 weight, is guilty of a misdemeanor and, upon conviction thereof,  
46 shall be confined in jail for up to six months and shall be fined  
47 not less than \$100 nor more than \$500: *Provided*, That a person  
48 sentenced pursuant to this subsection shall receive credit for any  
49 period of actual confinement he or she served upon arrest for the  
50 subject offense.

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

61 (g) Any person who, being a habitual user of narcotic drugs  
62 or amphetamine or any derivative thereof, drives a vehicle in this  
63 state is guilty of a misdemeanor and, upon conviction thereof,  
64 shall be confined in jail for not less than one day nor more than  
65 six months, which jail term is to include actual confinement of  
66 not less than twenty-four hours, and shall be fined not less than  
67 \$100 nor more than \$500. A person sentenced pursuant to this  
68 subdivision shall receive credit for any period of actual  
69 confinement he or she served upon arrest for the subject offense.

70 (h) Any person who knowingly permits his or her vehicle to  
71 be driven in this state by any other person who is in an impaired  
72 state is guilty of a misdemeanor and, upon conviction thereof,  
73 shall be confined in jail for not more than six months and shall  
74 be fined not less than \$100 nor more than \$500.

75 (i) Any person who knowingly permits his or her vehicle to  
76 be driven in this state by any other person who is a habitual user

77 of narcotic drugs or amphetamine or any derivative thereof is  
78 guilty of a misdemeanor and, upon conviction thereof, shall be  
79 confined in jail for not more than six months and shall be fined  
80 not less than \$100 nor more than \$500.

81 (j) Any person under the age of twenty-one years who drives  
82 a vehicle in this state while he or she has an alcohol  
83 concentration in his or her blood of two hundredths of one  
84 percent or more, by weight, but less than eight hundredths of one  
85 percent, by weight, for a first offense under this subsection is  
86 guilty of a misdemeanor and, upon conviction thereof, shall be  
87 fined not less than \$25 nor more than \$100. For a second or  
88 subsequent offense under this subsection, the person is guilty of  
89 a misdemeanor and, upon conviction thereof, shall be confined  
90 in jail for twenty-four hours and shall be fined not less than \$100  
91 nor more than \$500. A person who is charged with a first offense  
92 under the provisions of this subsection may move for a  
93 continuance of the proceedings, from time to time, to allow the  
94 person to participate in the Motor Vehicle Alcohol Test and  
95 Lock Program as provided in section three-a, article five-a of this  
96 chapter. Upon successful completion of the program, the court  
97 shall dismiss the charge against the person and expunge the  
98 person's record as it relates to the alleged offense. In the event  
99 the person fails to successfully complete the program, the court  
100 shall proceed to an adjudication of the alleged offense. A motion  
101 for a continuance under this subsection may not be construed as  
102 an admission or be used as evidence.

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

108 (k) Any person who drives a vehicle in this state while he or  
109 she is in an impaired state and has within the vehicle one or more

110 other persons who are unemancipated minors who have not yet  
111 reached their sixteenth birthday is guilty of a misdemeanor and,  
112 upon conviction thereof, shall be confined in jail for not less than  
113 two days nor more than twelve months, and shall be fined not  
114 less than \$200 nor more than \$1,000: *Provided*, That such jail  
115 term shall include actual confinement of not less than forty-eight  
116 hours: *Provided, however*, That a person sentenced pursuant to  
117 this subdivision shall receive credit for any period of actual  
118 confinement he or she served upon arrest for the subject offense.

119 (l) A person violating any provision of subsection (d), (e),  
120 (f), (g), (h) or(j) of this section, for the second offense under this  
121 section, is guilty of a misdemeanor and, upon conviction thereof,  
122 shall be confined in jail for not less than six months nor more  
123 than one year and the court may, in its discretion, impose a fine  
124 of not less than \$1,000 nor more than \$3,000.

125 (m) A person violating any provision of subsection (d), (e),  
126 (f), (g), (h) or(j) of this section, for the third or any subsequent  
127 offense under this section, is guilty of a felony and, upon  
128 conviction thereof, shall be imprisoned in a state correctional  
129 facility for not less than two nor more than five years and the  
130 court may, in its discretion, impose a fine of not less than \$3,000  
131 nor more than \$5,000.

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

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

140 (2) Any conviction under a municipal ordinance of this state  
141 or any other state or a statute of the United States or of any other

142 state of an offense which has the same elements as an offense  
143 described in subsection (b), (c), (d), (e), (f), (g), (h) or(i) of this  
144 section, which offense occurred within the ten-year period  
145 immediately preceding the date of arrest in the current  
146 proceeding; and,

147 (3) Any period of conditional probation imposed pursuant  
148 section two-b of this article for violation of subsection (e) of this  
149 section, which violation occurred within the ten-year period  
150 immediately preceding the date of arrest in the current  
151 proceeding.

152 (o) A person may be charged in a warrant or indictment or  
153 information for a second or subsequent offense under this section  
154 if the person has been previously arrested for or charged with a  
155 violation of this section which is alleged to have occurred within  
156 the applicable time period for prior offenses, notwithstanding the  
157 fact that there has not been a final adjudication of the charges for  
158 the alleged previous offense. In that case, the warrant or  
159 indictment or information must set forth the date, location and  
160 particulars of the previous offense or offenses. No person may  
161 be convicted of a second or subsequent offense under this section  
162 unless the conviction for the previous offense has become final,  
163 or the person has previously had a period of conditional  
164 probation imposed pursuant to section two-b of this article.

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

172 (q) For purposes of this section, the term “controlled  
173 substance” has the meaning ascribed to it in chapter sixty-a of  
174 this code.

175 (r) The sentences provided in this section upon conviction  
176 for a violation of this article are mandatory and are not subject  
177 to suspension or probation: *Provided*, That the court may apply  
178 the provisions of article eleven-a, chapter sixty-two of this code  
179 to a person sentenced or committed to a term of one year or less  
180 for a first offense under this section: *Provided further*, That the  
181 court may impose a term of conditional probation pursuant to  
182 section two-b of this article to persons adjudicated thereunder.  
183 An order for home detention by the court pursuant to the  
184 provisions of article eleven-b of said chapter may be used as an  
185 alternative sentence to any period of incarceration required by  
186 this section for a first or subsequent offense: *Provided, however*,  
187 That for any period of home incarceration ordered for a person  
188 convicted of second offense under this section, electronic  
189 monitoring shall be required for no fewer than five days of the  
190 total period of home confinement ordered and the offender may  
191 not leave home for those five days notwithstanding the  
192 provisions of section five, article eleven-b, chapter sixty-two of  
193 this code: *Provided further*, That for any period of home  
194 incarceration ordered for a person convicted of a third or  
195 subsequent violation of this section, electronic monitoring shall  
196 be included for no fewer than ten days of the total period of  
197 home confinement ordered and the offender may not leave home  
198 for those ten days notwithstanding section five, article eleven-b,  
199 chapter sixty-two of this code.

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

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

1 (a) Written objections to an order of revocation or  
2 suspension under the provisions of section one of this article or  
3 section seven, article five of this chapter shall be filed with the  
4 Office of Administrative Hearings. Upon the receipt of an

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

28 (b) The hearing shall be held at an office of the Division of  
29 Motor Vehicles suitable for hearing purposes located in or near  
30 the county in which the arrest was made in this state or at some  
31 other suitable place in the county in which the arrest was made  
32 if an office of the division is not available. At the discretion of  
33 the Office of Administrative Hearings, the hearing may also be  
34 held at an office of the Office of Administrative Hearings  
35 located in or near the county in which the arrest was made in this  
36 state. The Office of Administrative Hearings shall send a notice  
37 of hearing to the person whose driving privileges are at issue and  
38 the person's legal counsel if the person is represented by legal

39 counsel, by regular mail, or with the written consent of the  
40 person whose driving privileges are at issue or their legal  
41 counsel, by facsimile or electronic mail. The Office of  
42 Administrative Hearings shall also send a notice of hearing by  
43 regular mail, facsimile or electronic mail to the Division of  
44 Motor Vehicles, and the Attorney General's Office, if the  
45 Attorney General has filed a notice of appearance of counsel on  
46 behalf of the Division of Motor Vehicles.

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

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

55 (3) The Office of Administrative Hearings may issue  
56 subpoenas commanding the appearance of witnesses and  
57 subpoenas duces tecum commanding the submission of  
58 documents, items or other things. Subpoenas duces tecum shall  
59 be returnable on the date of the next scheduled hearing unless  
60 otherwise specified. The Office of Administrative hearings shall  
61 issue subpoenas and subpoenas duces tecum at the request of a  
62 party or the party's legal representative. The party requesting the  
63 subpoena shall be responsible for service of the subpoena upon  
64 the appropriate individual. Every subpoena or subpoena duces  
65 tecum shall be served at least five days before the return date  
66 thereof, either by personal service made by a person over  
67 eighteen years of age or by registered or certified mail, return  
68 receipt requested, and received by the party responsible for  
69 serving the subpoena or subpoena duces tecum: *Provided*, That  
70 the Division of Motor Vehicles may serve subpoenas to  
71 law-enforcement officers through electronic mail to the

72 department of his or her employer. If a person does not obey the  
73 subpoena or fails to appear, the party who issued the subpoena  
74 to the person may petition the circuit court wherein the action  
75 lies for enforcement of the subpoena.

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

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

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

105 while under the influence of alcohol, controlled substances or  
106 drugs, or while having an alcohol concentration in the person's  
107 blood of eight hundredths of one percent or more, by weight, or  
108 to have been driving a motor vehicle while under the age of  
109 twenty-one years with an alcohol concentration in his or her  
110 blood of two hundredths of one percent or more, by weight, but  
111 less than eight hundredths of one percent, by weight; (2) whether  
112 the person was lawfully placed under arrest for an offense  
113 involving driving under the influence of alcohol, controlled  
114 substances or drugs, or was lawfully taken into custody for the  
115 purpose of administering a secondary test: *Provided*, That this  
116 element shall be waived in cases where no arrest occurred due to  
117 driver incapacitation; (3) whether the person committed an  
118 offense involving driving under the influence of alcohol,  
119 controlled substances or drugs; and (4) whether the tests, if any,  
120 were administered in accordance with the provisions of this  
121 article and article five of this chapter.

122 (g) If, in addition to a finding that the person did drive a  
123 motor vehicle while under the influence of alcohol, controlled  
124 substances or drugs, or did drive a motor vehicle while having an  
125 alcohol concentration in the person's blood of eight hundredths  
126 of one percent or more, by weight, or did drive a motor vehicle  
127 while under the age of twenty-one years with an alcohol  
128 concentration in his or her blood of two hundredths of one  
129 percent or more, by weight, but less than eight hundredths of one  
130 percent, by weight, the Office of Administrative Hearings also  
131 finds by a preponderance of the evidence that the person when  
132 driving did an act forbidden by law or failed to perform a duty  
133 imposed by law, which act or failure proximately caused the  
134 death of a person and was committed in reckless disregard of the  
135 safety of others and if the Office of Administrative Hearings  
136 further finds that the influence of alcohol, controlled substances  
137 or drugs or the alcohol concentration in the blood was a  
138 contributing cause to the death, the commissioner shall revoke

139 the person's license for a period of ten years: *Provided*, That if  
140 the person's license has previously been suspended or revoked  
141 under the provisions of this section or section one of this article  
142 within the ten years immediately preceding the date of arrest, the  
143 period of revocation shall be for the life of the person.

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

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

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

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

207 more than once under the provisions of this section or section  
208 one of this article within the ten years immediately preceding the  
209 date of arrest, the period of revocation shall be for the life of the  
210 person.

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

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

241 immediately preceding the date of arrest, the period of  
242 revocation shall be ten years: *Provided, however,* That if the  
243 person's license has previously been suspended or revoked more  
244 than once under the provisions of this section or section one of  
245 this article within the ten years immediately preceding the date  
246 of arrest, the period of revocation shall be for the life of the  
247 person.

248 (l) If, in addition to a finding that the person did drive a  
249 motor vehicle while under the age of twenty-one years with an  
250 alcohol concentration in his or her blood of two hundredths of  
251 one percent or more, by weight, but less than eight hundredths of  
252 one percent, by weight, the Office of Administrative Hearings  
253 also finds by a preponderance of the evidence that the person  
254 when driving did an act forbidden by law or failed to perform a  
255 duty imposed by law, which act or failure proximately caused  
256 the death of a person, and if the Office of Administrative  
257 Hearings further finds that the alcohol concentration in the blood  
258 was a contributing cause to the death, the commissioner shall  
259 revoke the person's license for a period of five years: *Provided,*  
260 That if the person's license has previously been suspended or  
261 revoked under the provisions of this section or section one of this  
262 article within the ten years immediately preceding the date of  
263 arrest, the period of revocation shall be for the life of the person.

264 (m) If, in addition to a finding that the person did drive a  
265 motor vehicle while under the age of twenty-one years with an  
266 alcohol concentration in his or her blood of two hundredths of  
267 one percent or more, by weight, but less than eight hundredths of  
268 one percent, by weight, the Office of Administrative Hearings  
269 also finds by a preponderance of the evidence that the person  
270 when driving did an act forbidden by law or failed to perform a  
271 duty imposed by law, which act or failure proximately caused  
272 bodily injury to a person other than himself or herself, and if the  
273 Office of Administrative Hearings further finds that the alcohol  
274 concentration in the blood was a contributing cause to the bodily

275 injury, the commissioner shall revoke the person's license for a  
276 period of two years: *Provided*, That if the person's license has  
277 previously been suspended or revoked under the provisions of  
278 this section or section one of this article within the ten years  
279 immediately preceding the date of arrest, the period of  
280 revocation shall be ten years: *Provided, however*, That if the  
281 person's license has previously been suspended or revoked more  
282 than once under the provisions of this section or section one of  
283 this article within the ten years immediately preceding the date  
284 of arrest, the period of revocation shall be for the life of the  
285 person.

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

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

309 preceding the date of arrest, the period of revocation shall be ten  
310 years: *Provided, however,* That if the person's license has  
311 previously been suspended or revoked more than once under the  
312 provisions of this section or section one of this article within the  
313 ten years immediately preceding the date of arrest, the period of  
314 revocation shall be for the life of the person.

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

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

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

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

332 (q) In the case of a hearing in which a person is accused of  
333 refusing to submit to a designated secondary test, the Office of  
334 Administrative Hearings shall make specific findings as to: (1)  
335 Whether the arresting law-enforcement officer had reasonable  
336 grounds to believe the person had been driving a motor vehicle  
337 in this state while under the influence of alcohol, controlled  
338 substances or drugs; (2) whether the person was lawfully placed  
339 under arrest for an offense involving driving under the influence

340 of alcohol, controlled substances or drugs, or was lawfully taken  
341 into custody for the purpose of administering a secondary test:  
342 *Provided*, That this element shall be waived in cases where no  
343 arrest occurred due to driver incapacitation; (3) whether the  
344 person committed an offense relating to driving a motor vehicle  
345 in this state while under the influence of alcohol, controlled  
346 substances or drugs; (4) whether the person refused to submit to  
347 the secondary test finally designated in the manner provided in  
348 section four, article five of this chapter; and (5) whether the  
349 person had been given a written statement advising the person  
350 that the person's license to operate a motor vehicle in this state  
351 would be revoked for at least forty-five days and up to life if the  
352 person refused to submit to the test finally designated in the  
353 manner provided in said section.

354 (r) If the Office of Administrative Hearings finds by a  
355 preponderance of the evidence that: (1) The investigating officer  
356 had reasonable grounds to believe the person had been driving  
357 a motor vehicle in this state while under the influence of alcohol,  
358 controlled substances or drugs; (2) whether the person was  
359 lawfully placed under arrest for an offense involving driving  
360 under the influence of alcohol, controlled substances or drugs, or  
361 was lawfully taken into custody for the purpose of administering  
362 a secondary test: *Provided*, That this element shall be waived in  
363 cases where no arrest occurred due to driver incapacitation; (3)  
364 the person committed an offense relating to driving a motor  
365 vehicle in this state while under the influence of alcohol,  
366 controlled substances or drugs; (4) the person refused to submit  
367 to the secondary test finally designated in the manner provided  
368 in section four, article five of this chapter; and (5) the person had  
369 been given a written statement advising the person that the  
370 person's license to operate a motor vehicle in this state would be  
371 revoked for at least forty-five days and up to life if the person  
372 refused to submit to the test finally designated, the commissioner  
373 shall revoke the person's license to operate a motor vehicle in

374 this state for the periods specified in section seven, article five  
375 of this chapter. The revocation period prescribed in this  
376 subsection shall run concurrently with any other revocation  
377 period ordered under this section or section one of this article  
378 arising out of the same occurrence. The revocation period  
379 prescribed in this subsection shall run concurrently with any  
380 other revocation period ordered under this section or section one  
381 of this article arising out of the same occurrence.

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

398 A person whose license is at issue and the commissioner  
399 shall be entitled to judicial review as set forth in chapter  
400 twenty-nine-a of this code. Neither the commissioner nor the  
401 Office of Administrative Hearings may stay enforcement of the  
402 order. The court may grant a stay or supersede as of the order  
403 only upon motion and hearing, and a finding by the court upon  
404 the evidence presented, that there is a substantial probability that  
405 the appellant shall prevail upon the merits and the appellant will  
406 suffer irreparable harm if the order is not stayed: *Provided*, That  
407 in no event shall the stay or supersede as of the order exceed one

408 hundred fifty days. The Office of Administrative Hearings may  
409 not be made a party to an appeal. The party filing the appeal  
410 shall pay the Office of Administrative Hearings for the  
411 production and transmission of the certified file copy and the  
412 hearing transcript to the court. Notwithstanding the provisions of  
413 section four, article five of said chapter, the Office of  
414 Administrative Hearings may not be compelled to transmit a  
415 certified copy of the file or the transcript of the hearing to the  
416 circuit court in less than sixty days. Circuit clerk shall provide a  
417 copy of the circuit court's final order on the appeal to the Office  
418 of Administrative Hearings by regular mail, by facsimile, or by  
419 electronic mail if available.

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

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



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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2015.

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*Governor*

