

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2787

FISCAL
NOTE

2015 Carryover

(BY DELEGATE ROWE)

[Introduced January 13, 2016; referred to the
Committee on the Judiciary.]

1 A BILL to amend and reenact §17C-5A-2 of the Code of West Virginia, 1931, as amended; and
 2 to amend said code by adding thereto two new sections, designated §17C-5C-4c and
 3 §17C-5C-4d, all relating to hearings before the Office of Administrative Hearings; deleting
 4 the provision that provide the OAH cannot be made a party to an appeal; requiring parties
 5 appealing a decision of the OAH to serve the Petition for Appeal on the OAH; establishing
 6 procedures for the recusal of the Chief Hearing Examiner; providing appeal procedures
 7 for petitioners denied entry into the alcohol test and lock program described in
 8 §17C-5A-3(e); allowing OAH to enter orders nunc pro tunc to correct clerical mistakes or
 9 omissions; and providing that OAH has jurisdiction to decide cases in which substantial
 10 prejudice is asserted due to alleged constitutional violations. .

Be it enacted by the Legislature of West Virginia:

1 That §17C-5A-2 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted, and that said code be amended by adding thereto two new sections, designated
 3 §17C-5C-4c and §17C-5C-4d, all to read as follows:

**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 suspension under the provisions of
 2 section one of this article or section seven, article five of this chapter shall be filed with the Office
 3 of Administrative Hearings. Upon the receipt of an objection, the Office of Administrative Hearings
 4 shall notify the Commissioner of the Division of Motor Vehicles, who shall stay the imposition of
 5 the period of revocation or suspension and afford the person an opportunity to be heard by the

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

17 (b) A Petitioner who has previously elected to avail himself or herself of the provisions
18 of §17C-5A-3a(e) but was not accepted into the program shall have thirty calendar days after
19 receipt of notification of nonacceptance into the alcohol test and lock program to file a written
20 objection or no hearing will be granted. The written objection must be filed with Office of
21 Administrative Hearings in person, by registered or certified mail, return receipt requested, or by
22 facsimile transmission or electronic mail, or no hearing shall be granted: *Provided*, That a
23 successful transmittal sheet shall be necessary for proof of written objection in the case of filing
24 by fax. Upon the receipt of an objection, the Office of Administrative Hearings shall notify the
25 Commissioner of the Division of Motor Vehicles, who shall stay the imposition of the period of
26 revocation or suspension and afford the person an opportunity to be heard by the Office of
27 Administrative Hearings.

28 (c) All hearings before the Office of Administrative Hearings shall be before a hearing
29 examiner employed by the Office of Administrative Hearings who shall rule on evidentiary issues.

30 Upon consideration of the designated record, the hearing examiner shall, based on the
31 determination of the facts of the case and applicable law, render a decision affirming, reversing
32 or modifying the action protested. The decision shall contain findings of fact and conclusions of
33 law and shall be provided to all parties by registered or certified mail, return receipt requested, or
34 with a party's written consent, by facsimile or electronic mail.

35 ~~(b) (d) (1) The hearing shall be held at an office of the Division of Motor Vehicles suitable~~
36 ~~for hearing purposes located in or near the county in which the arrest was made in this state or at~~
37 ~~some other suitable place in the county in which the arrest was made if an office of the division is~~
38 ~~not available. At the discretion of the Office of Administrative Hearings, the hearing may also be~~
39 ~~held at an office of the Office of Administrative Hearings located in or near the county in which~~
40 ~~the arrest was made in this state. The hearing shall be held at an office of the Office of~~
41 Administrative Hearings or the Division of Motor Vehicles located in or near the county in which
42 the arrest was made in this state or at some other suitable place in the county in which the arrest
43 was made if an office of the Office of Administrative Hearings or the Division of Motor Vehicles is
44 not available.

45 (2) The Office of Administrative Hearings shall send a notice of hearing to the person
46 whose driving privileges are at issue and the person's legal counsel if the person is represented
47 by legal counsel, by regular mail, or with the written consent of the person whose driving privileges
48 are at issue or their legal counsel, by facsimile or electronic mail. The Office of Administrative
49 Hearings shall also send a notice of hearing by regular mail, facsimile or electronic mail to the
50 Division of Motor Vehicles, and the Attorney General's Office, if the Attorney General has filed a
51 notice of appearance of counsel on behalf of the Division of Motor Vehicles.

52 ~~(e) (e) (1) Any hearing shall be held within one hundred eighty days after the date upon~~
53 ~~which the Office of Administrative Hearings received the timely written objection unless there is a~~

54 postponement or continuance.

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

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

72 (4) The Chief Hearing Examiner for the Office of Administrative Hearings may recuse
73 himself or herself from any matter pending before the Office of Administrative Hearings when the
74 Chief Hearing Examiner believes a conflict of interest in the matter exists. Further, the Chief
75 Hearing Examiner may recuse himself or herself from any matter pending before the Office of
76 Administrative Hearings when the examiner believes his or her continued involvement in the
77 matter would create the appearance of impropriety. If the Chief Hearing Examiner considers it

78 necessary to recuse himself or herself, he or she shall designate either the Deputy Chief Hearing
79 Examiner or the Legal Section Supervisor, both of whom shall be licensed attorneys in good
80 standing in this state, to assume and perform all duties and responsibilities related to the case for
81 which the Chief Hearing Examiner would otherwise be responsible. If the Chief Hearing
82 Examiner considers it necessary to recuse himself or herself, he or she shall have no further
83 involvement in the matter.

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

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

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

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

114 ~~(g)~~ (i) If, in addition to a finding that the person did drive a motor vehicle while under the
115 influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an
116 alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight,
117 or did drive a motor vehicle while under the age of twenty-one years with an alcohol concentration
118 in his or her blood of two hundredths of one percent or more, by weight, but less than eight
119 hundredths of one percent, by weight, the Office of Administrative Hearings also finds by a
120 preponderance of the evidence that the person when driving did an act forbidden by law or failed
121 to perform a duty imposed by law, which act or failure proximately caused the death of a person
122 and was committed in reckless disregard of the safety of others and if the Office of Administrative
123 Hearings further finds that the influence of alcohol, controlled substances or drugs or the alcohol
124 concentration in the blood was a contributing cause to the death, the commissioner shall revoke
125 the person's license for a period of ten years: *Provided*, That if the person's license has previously

126 been suspended or revoked under the provisions of this section or section one of this article within
127 the ten years immediately preceding the date of arrest, the period of revocation shall be for the
128 life of the person.

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

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

150 article within the ten years immediately preceding the date of arrest, the period of revocation shall
151 be for the life of the person.

152 (†) (l) If the Office of Administrative Hearings finds by a preponderance of the evidence
153 that the person did drive a motor vehicle while under the influence of alcohol, controlled
154 substances or drugs, or did drive a motor vehicle while having an alcohol concentration in the
155 person's blood of eight hundredths of one percent or more, by weight, but less than fifteen
156 hundredths of one percent or more, by weight, or finds that the person knowingly permitted the
157 persons vehicle to be driven by another person who was under the influence of alcohol, controlled
158 substances or drugs, or knowingly permitted the person's vehicle to be driven by another person
159 who had an alcohol concentration in his or her blood of eight hundredths of one percent or more,
160 by weight the commissioner shall revoke the person's license for a period of six months or a period
161 of fifteen days with an additional one hundred and twenty days of participation in the Motor Vehicle
162 Alcohol Test and Lock Program in accordance with the provisions of section three-a of this article:
163 *Provided*, That any period of participation in the Motor Vehicle Alcohol Test and Lock Program
164 that has been imposed by a court pursuant to section two-b, article five of this chapter shall be
165 credited against any period of participation imposed by the commissioner: *Provided*, however,
166 That a person whose license is revoked for driving while under the influence of drugs is not eligible
167 to participate in the Motor Vehicle Alcohol Test and Lock Program: *Provided* further, That if the
168 person's license has previously been suspended or revoked under the provisions of this section
169 or section one of this article within the ten years immediately preceding the date of arrest, the
170 period of revocation shall be ten years: *And provided further*, That if the person's license has
171 previously been suspended or revoked more than once under the provisions of this section or
172 section one of this article within the ten years immediately preceding the date of arrest, the period
173 of revocation shall be for the life of the person.

174 ~~(k)~~ (m) (1) If in addition to finding by a preponderance of the evidence that the person did
175 drive a motor vehicle while under the influence of alcohol, controlled substance or drugs, the
176 Office of Administrative Hearings also finds by a preponderance of the evidence that the person
177 did drive a motor vehicle while having an alcohol concentration in the person's blood of fifteen
178 hundredths of one percent or more, by weight, the commissioner shall revoke the person's license
179 for a period of forty-five days with an additional two hundred and seventy days of participation in
180 the Motor Vehicle Alcohol Test and Lock Program in accordance with the provisions of section
181 three-a, article five-a, chapter seventeen-c of this code: *Provided*, That if the person's license
182 has previously been suspended or revoked under the provisions of this section or section one of
183 this article within the ten years immediately preceding the date of arrest, the period of revocation
184 shall be ten years: *Provided, however*, That if the person's license has previously been
185 suspended or revoked the person's license more than once under the provisions of this section
186 or section one of this article within the ten years immediately preceding the date of arrest, the
187 period of revocation shall be for the life of the person.

188 (2) If a person whose license is revoked pursuant to subdivision (1) of this subsection
189 proves by clear and convincing evidence that they do not own a motor vehicle upon which the
190 alcohol test and lock device may be installed or is otherwise incapable of participating in the Motor
191 Vehicle Alcohol Test and Lock Program, the period of revocation shall be one hundred eighty
192 days: *Provided*, That if the person's license has previously been suspended or revoked under the
193 provisions of this section or section one of this article within the ten years immediately preceding
194 the date of arrest, the period of revocation shall be ten years: *Provided, however*, That if the
195 person's license has previously been suspended or revoked more than once under the provisions
196 of this section or section one of this article within the ten years immediately preceding the date of
197 arrest, the period of revocation shall be for the life of the person.

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

209 ~~(m)~~ (o) If, in addition to a finding that the person did drive a motor vehicle while under the
210 age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of
211 one percent or more, by weight, but less than eight hundredths of one percent, by weight, the
212 Office of Administrative Hearings also finds by a preponderance of the evidence that the person
213 when driving did an act forbidden by law or failed to perform a duty imposed by law, which act or
214 failure proximately caused bodily injury to a person other than himself or herself, and if the Office
215 of Administrative Hearings further finds that the alcohol concentration in the blood was a
216 contributing cause to the bodily injury, the commissioner shall revoke the person's license for a
217 period of two years: *Provided*, That if the person's license has previously been suspended or
218 revoked under the provisions of this section or section one of this article within the ten years
219 immediately preceding the date of arrest, the period of revocation shall be ten years: *Provided*,
220 *however*, That if the person's license has previously been suspended or revoked more than once
221 under the provisions of this section or section one of this article within the ten years immediately

222 preceding the date of arrest, the period of revocation shall be for the life of the person.

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

231 ~~(o)~~ (q) If, in addition to a finding that the person did drive a motor vehicle while under the
232 influence of alcohol, controlled substances or drugs, or did drive a motor vehicle while having an
233 alcohol concentration in the person's blood of eight hundredths of one percent or more, by weight,
234 the Office of Administrative Hearings also finds by a preponderance of the evidence that the
235 person when driving did have on or within the Motor vehicle another person who has not reached
236 his or her sixteenth birthday, the commissioner shall revoke the person's license for a period of
237 one year: *Provided*, That if the person's license has previously been suspended or revoked
238 under the provisions of this section or section one of this article within the ten years immediately
239 preceding the date of arrest, the period of revocation shall be ten years: *Provided, however*,
240 That if the person's license has previously been suspended or revoked more than once under the
241 provisions of this section or section one of this article within the ten years immediately preceding
242 the date of arrest, the period of revocation shall be for the life of the person.

243 ~~(p)~~ (r) For purposes of this section, where reference is made to previous suspensions or
244 revocations under this section, the following types of criminal convictions or administrative
245 suspensions or revocations shall also be regarded as suspensions or revocations under this

246 section or section one of this article:

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

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

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

255 ~~(q)~~ (s) In the case of a hearing in which a person is accused of refusing to submit to a
256 designated secondary test, the Office of Administrative Hearings shall make specific findings as
257 to: (1) Whether the arresting law-enforcement officer had reasonable grounds to believe the
258 person had been driving a motor vehicle in this state while under the influence of alcohol,
259 controlled substances or drugs; (2) whether the person was lawfully placed under arrest for an
260 offense involving driving under the influence of alcohol, controlled substances or drugs, or was
261 lawfully taken into custody for the purpose of administering a secondary test: *Provided*, That this
262 element shall be waived in cases where no arrest occurred due to driver incapacitation; (3)
263 whether the person committed an offense relating to driving a motor vehicle in this state while
264 under the influence of alcohol, controlled substances or drugs; (4) whether the person refused to
265 submit to the secondary test finally designated in the manner provided in section four, article five
266 of this chapter; and (5) whether the person had been given a written statement advising the person
267 that the person's license to operate a motor vehicle in this state would be revoked for at least
268 forty-five days and up to life if the person refused to submit to the test finally designated in the
269 manner provided in said section.

270 ~~(t)~~ (t) If the Office of Administrative Hearings finds by a preponderance of the evidence
271 that: (1) The investigating officer had reasonable grounds to believe the person had been driving
272 a motor vehicle in this state while under the influence of alcohol, controlled substances or drugs;
273 (2) whether the person was lawfully placed under arrest for an offense involving driving under the
274 influence of alcohol, controlled substances or drugs, or was lawfully taken into custody for the
275 purpose of administering a secondary test: *Provided*, That this element shall be waived in cases
276 where no arrest occurred due to driver incapacitation; (3) the person committed an offense
277 relating to driving a motor vehicle in this state while under the influence of alcohol, controlled
278 substances or drugs; (4) the person refused to submit to the secondary test finally designated in
279 the manner provided in section four, article five of this chapter; and (5) the person had been given
280 a written statement advising the person that the person's license to operate a motor vehicle in this
281 state would be revoked for at least forty-five days and up to life if the person refused to submit to
282 the test finally designated, the commissioner shall revoke the person's license to operate a motor
283 vehicle in this state for the periods specified in section seven, article five of this chapter. The
284 revocation period prescribed in this subsection shall run concurrently with any other revocation
285 period ordered under this section or section one of this article arising out of the same occurrence.
286 The revocation period prescribed in this subsection shall run concurrently with any other
287 revocation period ordered under this section or section one of this article arising out of the same
288 occurrence.

289 ~~(e)~~ (u) If the Office of Administrative Hearings finds to the contrary with respect to the
290 above issues, it shall rescind or modify the commissioner's order and, in the case of modification,
291 the commissioner shall reduce the order of revocation to the appropriate period of revocation
292 under this section or section seven, article five of this chapter. A copy of the Office of
293 Administrative Hearings' final order containing its findings of fact and conclusions of law made

294 and entered following the hearing shall be served upon the person whose license is at issue or
295 upon the person's legal counsel if the person is represented by legal counsel by registered or
296 certified mail, return receipt requested, or by facsimile or by electronic mail if available. The final
297 order shall be served upon the commissioner by electronic mail. During the pendency of any
298 hearing, the revocation of the person's license to operate a motor vehicle in this state shall be
299 stayed.

300 A person whose license is at issue and the commissioner shall be entitled to judicial review
301 as set forth in chapter twenty-nine-a of this code. Neither the commissioner nor the Office of
302 Administrative Hearings may stay enforcement of the order. The court may grant a stay ~~or~~
303 ~~supersede~~ as of the order only upon motion and hearing, and a finding by the court upon the
304 evidence presented, that there is a substantial probability that the appellant shall prevail upon the
305 merits and the appellant will suffer irreparable harm if the order is not stayed: *Provided*, That in
306 no event shall the stay ~~or supersede~~ as of the order exceed one hundred fifty days. ~~The Office of~~
307 ~~Administrative Hearings may not be made a party to an appeal.~~ A copy of the petition shall be
308 served upon the Office of Administrative Hearings and any other party to the appeal by registered
309 or certified mail. The party filing the appeal shall pay the Office of Administrative Hearings for the
310 production and transmission of the certified file copy and the hearing transcript to the court.
311 Notwithstanding the provisions of section four, article five of said chapter, the Office of
312 Administrative Hearings may not be compelled to transmit a certified copy of the file or the
313 transcript of the hearing to the circuit court in less than sixty days. The circuit clerk shall provide
314 a copy of the circuit court's final order on the appeal to the Office of Administrative Hearings by
315 regular mail, by facsimile, or by electronic mail if available.

316 (†) (v) In any revocation or suspension pursuant to this section, if the driver whose license
317 is revoked or suspended had not reached the driver's eighteenth birthday at the time of the

318 conduct for which the license is revoked or suspended, the driver's license shall be revoked or
319 suspended until the driver's eighteenth birthday or the applicable statutory period of revocation or
320 suspension prescribed by this section, whichever is longer.

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

ARTICLE 5C. OFFICE OF ADMINISTRATIVE HEARINGS.

§17C-5C-4c. Orders nunc pro tunc.

1 The Office of Administrative Hearings may issue orders nunc pro tunc to correct clerical
2 mistakes or omissions.

§17C-5C-4d. Legal Determinations related to constitutional violations.

1 The Office of Administrative Hearings has authority to address and rule upon matters
2 involving allegations by a party that unreasonable delay in the issuance of a revocation or
3 suspension order has substantially prejudiced the party's legal position in the matter.

NOTE: The purpose of this bill is to: (1) Require parties appealing a decision of the OAH to serve the Petition for Appeal on the OAH; (2) establish procedures for the recusal of the Chief Hearing Examiner; (3) provide appeal procedures for petitioners denied entry into the alcohol test and lock program described in §17C-5A-3(e) of the Code of West Virginia, 1931, as amended; (4) allow OAH to enter orders nunc pro tunc to correct clerical mistakes or omissions; and (5) clarify that OAH has jurisdiction to decide cases in which substantial prejudice is asserted due to alleged constitutional violations.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§17C-5C-4c and §17C-5C-4d are new; therefore they have been completely underscored.