WEST VIRGINIA CODE CHAPTER 17c ARTICLE 5A

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§17C-5A-1. Report to be submitted to commissioner following arrest for driving under the influence of alcohol, controlled substances, or drugs or refusal to submit to secondary chemical test; report to the court.

(a) Any law-enforcement officer investigating a person for an offense described in §17C-5-2 of this code, or for an offense described in a municipal ordinance which has the same elements as an offense described in said section, shall report to the Commissioner of the Division of Motor Vehicles by written statement within 48 hours of the conclusion of the investigation the name and address of the person believed to have committed the offense. The report shall include the specific offense with which the person is charged and, if applicable, a copy of the results of any secondary tests of blood, breath, or urine. The signing of the statement required to be signed by this subsection constitutes an oath or affirmation by the person signing the statement that the statements contained in the statement are true and that any copy filed is a true copy. The statement shall contain upon its face a warning to the officer signing that to willfully sign a statement containing false information concerning any matter or thing, material or not material, is false swearing and is a misdemeanor.

(b) After receiving the report required by subsection (a) of this section, the Commissioner of the Division of Motor Vehicles shall immediately submit, to the court with jurisdiction over the criminal offense, a full and complete record of the following:

(1) Any prior suspensions or revocations of the person’s license to operate a motor vehicle under §17C-5-2, §17C-5-2b, or §17C-5-7a of this code; or

(2) Any conviction or term of conditional probation imposed under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in §17C-5-2 of this code.

(c) The amendments made to this section during the 2020 regular session of the Legislature shall become effective on July 1, 2020.

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§17C-5A-1a. Revocation upon conviction for driving under the influence of alcohol, controlled substances, or drugs.

(a) The Commissioner of the Division of Motor Vehicles shall revoke or suspend a person's license to operate a motor vehicle in any of the following circumstances:

(1) The person is convicted of an offense defined in §17C-5-2 of this code, which requires a minimum period of revocation or suspension of the person's license to operate a motor vehicle, and the person does not appeal the conviction;

(2) The person is convicted of an offense described in a municipal ordinance which has the same elements as an offense defined in §17C-5-2 of this code, which requires a minimum period of revocation or suspension of the person's license to operate a motor vehicle for the offense with the same elements as the municipal ordinance, and the person does not appeal the conviction;

(3) The person has a term of conditional probation imposed pursuant to §17C-5-2b of this code;

(4) A court enters an order, pursuant to §17C-5-7a of this code, finding that the person did refuse to submit to a secondary chemical test; or

(5) The person is convicted of an offense, as provided in subdivision (1) or (2) of this subsection, the person appeals the conviction, and the conviction is affirmed by the highest appellate court in which an appeal in the matter is filed.

(b) The clerk of the court that has jurisdiction over a term of conditional probation or a conviction described in subsection (a) of this section shall forward to the Commissioner of the Division of Motor Vehicles the order imposing conditional probation or the judgment of conviction and any related transcripts. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the order and any related transcript when the person convicted has not filed a notice of appeal within 20 days of the sentencing for such conviction. If the term of conditional probation is the act of a magistrate court, the magistrate court clerk shall forward the order and any related transcript when the order imposing the term of conditional probation is entered. If the conviction is the judgment of a mayor or police court judge or municipal court judge, the clerk or recorder shall forward the order and any related transcript when the person convicted has not filed a notice of appeal within 10 days from and after the date upon which the sentence is imposed. If the conviction is the judgment of a circuit court, the circuit clerk shall forward the transcript when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within 30 days after the judgment was entered.

(c) Upon receipt of an order of the court, as described in subsection (b) of this section, the commissioner shall make and enter an order revoking or suspending the person's license to operate a motor vehicle in this state as required by §17C-5-2, §17C-5-2b, or §17C-5-7a of this

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code. The order of the commissioner, revoking or suspending the license, shall contain the reasons for the revocation or suspension and the statutorily mandated revocation or suspension period for the offense or the suspension period required as a condition of probation.

(d) If a person receives an order of the commissioner suspending or revoking his or her license, as provided in subsection (c) of this section, and the person believes that he or she is not the person named in the commissioner's order, the person may notify the commissioner of the alleged error in writing. Upon receipt of this notification, the commissioner shall immediately review the contents of the judgment of conviction and the information provided by the person in question to determine whether or not the alleged error has been made. If the commissioner determines that the alleged error has been made, the commissioner shall: (1) Immediately reverse the suspension or revocation made in error; and (2) take all necessary steps to correctly identify the person who should have been named in the order and suspend or revoke the license of the correctly identified person, as required by this section.

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

Repealed.

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§17C-5A-2a. Assessment of costs; special account created.

The Division of Motor Vehicles is hereby authorized and required to assess witness costs at the same rate as witness fees in circuit court and a docket fee of $15 for each hearing request against any person filing a request for a hearing under section two of this article who fails to appear, fails to have said order rescinded or fails to have said order modified to a lesser period of revocation. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: Provided, That an increase in such fee may not exceed ten percent of the total fee amount in a single year.

All fees and costs collected hereunder shall be paid into a special revenue account in the State Treasury: Provided, That on and after July 1, 2007, any unexpended balance remaining in the special revolving fund shall be transferred to the Motor Vehicle Fees Fund created under the provisions of section twenty-one, article two, chapter seventeen-a of this code and all further fees and costs collected shall be deposited in that fund. A portion of the funds in the Motor Vehicle Fees Fund may be used to pay or reimburse the various law-enforcement agencies at the same rate as witnesses in circuit court for the travel and appearance of its officers before the commissioner or authorized deputy or agent pursuant to a hearing request under the provisions of this article. The department shall authorize payment to the law-enforcement agencies from said account as the fees for a particular hearing request are received from the person against whom the costs were assessed. The department shall authorize transfer to an appropriate agency account from the Motor Vehicle Fees Fund to pay costs of registered and certified mailings and other expenses associated with the conduct of hearings under this article as the docket fee for a particular hearing request is received from the person against whom the costs were assessed.

In the event judicial review results in said order being rescinded or modified to a lesser period of revocation the costs assessed shall be discharged.

The provisions of this section enacted in 2017 take effect on July 1, 2017.

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§17C-5A-2b. Administrative hearing, revocation, and review process terminated on July 1, 2020.

Notwithstanding any other provision of this code:

(1) The provisions of §17C-5A-2 of this code apply only to proceedings arising from offenses occurring on or before June 30, 2020; and

(2) The provisions of §17C-5A-2 of this code have no force or effect beginning on the date when the Office of Administrative Hearings terminates, pursuant to §17C-5C-1a of this code.

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§17C-5A-3. Safety and treatment program; reissuance of license.

(a) The Division of Motor Vehicles shall administer a comprehensive safety and treatment program for persons whose licenses have been suspended or revoked under the provisions of §17B-3-5(6), §17C-5-2, §17C-5-2a, or §17C-5-7a of this code and shall also establish the minimum qualifications for mental health facilities, day report centers, community corrections centers, or other public agencies or private entities conducting the safety and treatment program: *Provided*, That the Division of Motor Vehicles may establish standards whereby the division will accept or approve participation by violators in another treatment program which provides the same or substantially similar benefits as the safety and treatment program established pursuant to this section.

(b) The program shall include, but not be limited to, treatment of alcoholism, treatment of alcohol and drug abuse, psychological counseling, educational courses on the dangers of alcohol and drugs as they relate to driving, defensive driving, or other safety driving instruction, and other programs designed to properly educate, train, and rehabilitate the offender: *Provided*, That successful compliance with the substance abuse and counseling program prescribed in §61-11-26a of this code is sufficient to meet the requirements of this section.

(c) The Division of Motor Vehicles shall provide for the preparation of an educational and treatment program for each person whose license has been revoked under the provisions of §17B-3-5(6), §17C-5-2, §17C-5-2a, or §17C-5-7a of this code, which shall contain the following: (1) A listing and evaluation of the offender's prior traffic record; (2) the characteristics and history of alcohol or drug use, if any; (3) his or her amenability to rehabilitation through the alcohol safety program; and (4) a recommendation as to treatment or rehabilitation and the terms and conditions of the treatment or rehabilitation. The program shall be prepared by persons knowledgeable in the diagnosis of alcohol or drug abuse and treatment.

(d) A special revenue account is created within the State Treasury, known as the Division of Motor Vehicles Safety and Treatment Fund. The Commissioner of the Division of Motor Vehicles shall manage and expend moneys from the account for the purpose of administering the comprehensive safety and treatment program established by subsection (a) of this section. The moneys in the account may be invested and all earnings and interest accruing shall be retained in the account. The Auditor shall conduct an audit of the account at least every three fiscal years.

(e) (1) The program provider shall collect the established fee from each participant upon enrollment unless the division has determined that the participant is an indigent based upon criteria established pursuant to legislative rule authorized in this section.

(2) If the division determined that a participant is an indigent based upon criteria established pursuant to the legislative rule authorized by this section, the department shall provide the participant with proof of its determination regarding indigency, which proof the

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participant shall present to the interlock provider as part of the application process provided in §17C-5A-3a of this code and the rules promulgated pursuant thereto.

(3) Program providers shall remit to the Division of Motor Vehicles a portion of the fee collected, which shall be deposited by the Commissioner of the Division of Motor Vehicles into the Division of Motor Vehicles Safety and Treatment Fund. The Division of Motor Vehicles shall reimburse enrollment fees to program providers for each eligible indigent offender.

(f) On or before January 15 of each year, the Commissioner of the Division of Motor Vehicles shall report to the Legislature on:

(1) The total number of offenders participating in the safety and treatment program during the prior year;

(2) The total number of indigent offenders participating in the safety and treatment program during the prior year;

(3) The total number of program providers during the prior year; and

(4) The total amount of reimbursements paid to program providers during the prior year.

(g) The Commissioner of the Division of Motor Vehicles, after giving due consideration to the program developed for the offender, shall prescribe the necessary terms and conditions for the reissuance of the license to operate a motor vehicle in this state revoked under §17B-3-5(6), §17C-5-2, §17C-5-2a, or §17C-5-7a of this code which shall include successful completion of the educational, treatment, or rehabilitation program, subject to the following:

(1) When the period of revocation is six months, the license to operate a motor vehicle in this state may not be reissued until: (A) At least 90 days have elapsed from the date of the initial revocation, during which time the revocation was actually in effect; (B) the offender has successfully completed the program; (C) all costs of the program and administration have been paid; and (D) all court costs assessed as a result of criminal proceedings have been paid.

(2) When the period of revocation is for a period of one year or for more than a year, the license to operate a motor vehicle in this state may not be reissued until: (A) At least one half of the time period has elapsed from the date of the initial revocation, during which time the revocation was actually in effect; (B) the offender has successfully completed the program; (C) all costs of the program and administration have been paid; and (D) all court costs assessed as a result of a criminal proceedings have been paid. Notwithstanding any provision in this code, a person whose license is revoked for refusing to take a chemical test as required by §17C-5-4 of this code for a first offense is not eligible to reduce the revocation period by completing the safety and treatment program.

(3) When the period of revocation is for life, the license to operate a motor vehicle in this

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state may not be reissued until: (A) At least 10 years have elapsed from the date of the initial revocation, during which time the revocation was actually in effect; (B) the offender has successfully completed the program; (C) all costs of the program and administration have been paid; and (D) all court costs assessed as a result of a criminal proceeding have been paid.

(4) Notwithstanding any provision of this code or any rule, any mental health facilities or other public agencies or private entities conducting the safety and treatment program, when certifying that a person has successfully completed a safety and treatment program, shall only have to certify that the person has successfully completed the program.

(h) (1) The Division of Motor Vehicles shall provide for the preparation of an educational program for each person whose license has been suspended for 60 days pursuant to §17C-5-2(j) of this code. The educational program shall consist of not less than 12 nor more than 18 hours of actual classroom time.

(2) When a 60-day period of suspension has been ordered, the license to operate a motor vehicle may not be reinstated until: (A) At least 60 days have elapsed from the date of the initial suspension, during which time the suspension was in effect; (B) the offender has successfully completed the educational program; (C) all costs of the program and administration have been paid; and (D) all costs assessed as a result of a suspension hearing have been paid.

(i) As a component of the programs required by subsections (b) and (c) of this section, the offender shall attend a victim impact panel program. The victim impact panel program must provide a forum for victims of alcohol and drug-related offenses and offenders to share first-hand experiences on the impact of alcohol and drug-related offenses in their lives. The Division of Motor Vehicles shall propose and implement a plan for victim impact panels where appropriate numbers of victims are available and willing to participate and shall establish guidelines for other innovative programs which may be substituted where the victims are not available to participate in an impact panel. The plan shall require, at a minimum, discussion and consideration of the following:

(1) Economic losses suffered by victims and offenders;

(2) Death or physical injuries suffered by victims and offenders;

(3) Psychological injuries suffered by victims and offenders;

(4) Changes in the personal welfare or familial relationships of victims and offenders; and

(5) Other information relating to the impact of alcohol and drug-related offenses upon victims and offenders.

The Division of Motor Vehicles shall ensure that any meetings between victims and offenders shall be nonconfrontational and ensure the physical safety of the persons involved.

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(j) The Commissioner of the Division of Motor Vehicles shall propose a rule for legislative approval in accordance with §29A-3-1 *et seq.* of this code to administer the provisions of this section and establish a fee to be collected from each offender enrolled in the safety and treatment program. The rule shall include: (A) A reimbursement mechanism to program providers of required fees for the safety and treatment program for indigent offenders, criteria for determining eligibility of indigent offenders, and any necessary application forms; and (B) program standards that encompass provider criteria including minimum professional training requirements for providers, curriculum approval, minimum course length requirements, and other items that may be necessary to properly implement the provisions of this section.

(k) A day report or community corrections program, authorized pursuant to §62-11C-1 *et seq*. of this code, may provide the comprehensive safety and treatment program pursuant to this section.

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§17C-5A-3a. Establishment of and participation in the Motor Vehicle Alcohol and Drug Test and Lock Program.

(a) (1) The Division of Motor Vehicles shall control and regulate a Motor Vehicle Alcohol and Drug Test and Lock Program for persons whose licenses have been revoked pursuant to this article or the provisions of §17C-5-1 *et seq*. of this code or have been convicted under §17C-5-2 of this code, or who are serving a term of a conditional probation pursuant to §17C-5-2b of this code.

(2) The program shall include the establishment of a user's fee for persons participating in the program which shall be paid in advance and deposited into the Motor Vehicle Fees Fund created under the provisions of §17A-2-21 of this code.

(3) (A) Except where specified otherwise, the use of the term "program" in this section refers to the Motor Vehicle Alcohol and Drug Test and Lock Program.

(B) The Commissioner of the Division of Motor Vehicles shall propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq*. of this code for the purpose of implementing the provisions of this section. The rules shall also prescribe those requirements which, in addition to the requirements specified by this section for eligibility to participate in the program, the commissioner determines must be met to obtain the commissioner's approval to operate a motor vehicle equipped with a motor vehicle alcohol and drug test and lock system.

(C) Nothing in this section may be construed to prohibit day report or community corrections programs authorized pursuant to §62-11C-1 *et seq*. of this code, or a home confinement program authorized pursuant to §62-11B-1 *et seq*. of this code, from being a provider of motor vehicle alcohol and drug test and lock systems for eligible participants as authorized by this section.

(4) For purposes of this section, a "motor vehicle alcohol and drug test and lock system" means a mechanical or computerized system which, in the opinion of the commissioner, prevents the operation of a motor vehicle when, through the system's assessment of the blood alcohol or drug content of the person operating or attempting to operate the vehicle, the person is determined to be under the influence of alcohol or drugs.

(5) The fee for installation and removal of ignition interlock devices shall be waived for persons determined to be indigent by the Division of Motor Vehicles pursuant to §17C-5A-3 of this code. The commissioner shall establish by legislative rule, proposed pursuant to §29A-3-1 *et seq*. of this code, procedures to be followed with regard to persons determined by the Division of Motor Vehicles to be indigent. The rule shall include, but is not limited to, promulgation of application forms, establishment of procedures for the review of applications, and the establishment of a mechanism for the payment of installations for eligible offenders.

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(6) On or before January 15 of each year, the Commissioner of the Division of Motor Vehicles shall report to the Legislature on:

(A) The total number of offenders participating in the program during the prior year;

(B) The total number of indigent offenders participating in the program during the prior year;

(C) The terms of any contracts with the providers of ignition interlock devices; and

(D) The total cost of the program to the state during the prior year.

(7) A person participating in the Motor Vehicle Alcohol and Drug Test and Lock Program shall submit to drug testing in a manner and at intervals prescribed by the commissioner. The commissioner shall give due consideration to a lawfully prescribed medication taken in accordance with a valid prescription or order of a licensed medical practitioner who acted in the course of the practitioner's professional practice and does not create an impairment to driving safely when considering a positive drug test result.

(b) (1) Any person whose license is revoked for the first time pursuant to this article or the provisions of §17C-5-1 *et seq*. of this code is eligible to participate in the program when the person's minimum revocation period, as specified by subsection (c) of this section, has expired and the person is enrolled in or has successfully completed the safety and treatment program or presents proof to the commissioner within 60 days of receiving approval to participate by the commissioner that he or she is enrolled in a safety and treatment program: *Provided*, That anyone whose license is revoked for the first time for driving with a blood alcohol concentration of 0.15 percent or more, by weight, must participate in the program when the person's minimum revocation period, as specified by subsection (c) of this section, has expired and the person is enrolled in or has successfully completed the safety and treatment Program or presents proof to the commissioner within 60 days of receiving approval to participate by the commissioner that he or she is enrolled in a safety and treatment program.

(2) Any person whose license has been suspended for driving a motor vehicle while under the age of 21 years with an alcohol concentration in his or her blood 0.02 percent or more, by weight, but less than 0.08 percent, by weight, is eligible to participate in the program after 30 days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect: *Provided*, That in the case of a person under the age of 18, the person is eligible to participate in the program after 30 days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect or after the person's 18th birthday, whichever is later. Before the commissioner approves a person to operate a motor vehicle equipped with a motor vehicle alcohol and drug test and lock system, the person must agree to comply with the following conditions:

(A) If not already enrolled, the person shall enroll in and complete the educational program

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provided in §17C-5A-3(d) of this code at the earliest time that placement in the educational program is available, unless good cause is demonstrated to the commissioner as to why placement should be postponed;

(B) The person shall pay all costs of the educational program, any administrative costs, and all costs assessed for any suspension hearing; and

(3) Notwithstanding the provisions of this section to the contrary, a person eligible to participate in the program under this subsection may not operate a motor vehicle unless approved to do so by the commissioner.

(c) A person who participates in the program under subdivision (1), subsection (b) of this section is subject to a minimum revocation period and minimum period for the use of the ignition interlock device as follows:

(1) For a person whose license has been revoked for a first offense for six months for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent, by weight, but less 0.15 percent, by weight, the minimum period of revocation for participation in the test and lock program is 15 days and the minimum period for the use of the ignition interlock device is 125 days;

(2) For a person whose license has been revoked for a first offense for refusing a secondary chemical test, the minimum period of revocation for participation in the test and lock program is 45 days and the minimum period for the use of the ignition interlock device is one year;

(3) For a person whose license has been revoked for a first offense for driving with a blood alcohol concentration of 0.15 percent or more, by weight, the minimum period of revocation for participation in the test and lock program is 45 days and the minimum period for the use of the ignition interlock device is 270 days;

(4) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent or more, by weight, or did drive a motor vehicle while under the age of 21 years with an alcohol concentration in his or her blood of 0.02 percent or more, by weight, but less than 0.08 percent, by weight, and while driving does any act forbidden by law or fails to perform any duty imposed by law, which act or failure proximately causes the death of any person within one year next following the act or failure, and commits the act or failure in reckless disregard of the safety of others and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death, the minimum period of revocation before the person is eligible for participation in the test and lock program is 12 months and the minimum period for the use of the ignition interlock device is two years;

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(5) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure, the minimum period of revocation is six months and the minimum period for the use of the ignition interlock device is two years;

(6) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes bodily injury to any person other than himself or herself, the minimum period of revocation for participation in the program is two months and the minimum period for the use of the ignition interlock device is one year;

(7) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their 16th birthday, the minimum period of revocation for participation in the program is two months and the minimum period for the use of the ignition interlock device is 10 months.

(d) Notwithstanding any provision of the code to the contrary, a person shall participate in the program if the person is convicted under §17C-5-2 of this code or the person's license is revoked under §17C-5A-2 or §17C-5-7 of this code and the person was previously either convicted or his or her license was revoked under any provision cited in this subsection within the past 10 years. The minimum revocation period for a person required to participate in the program under this subsection is one year and the minimum period for the use of the ignition interlock device is two years, except that the minimum revocation period for a person required to participate because of a violation for driving while under the age of 21 with a blood alcohol concentration of 0.02 percent, or more, by weight, but less than 0.08 percent, or more, by weight, is two months and the minimum period of participation is one year. The division shall add an additional two months to the minimum period for the use of the ignition interlock device if the offense was committed while a minor was in the vehicle. The division shall add an additional six months to the minimum period for the use of the ignition interlock device if a person other than the driver received injuries. The division shall add an additional two years to the minimum period for the use of the ignition interlock device if a person other than the driver is injured and the injuries result in that person's death. The division shall add one year to the minimum period for the use of the ignition interlock device for each additional previous conviction or revocation within the past 10 years. Any person required to participate under this subsection must have an ignition interlock device installed on every vehicle he or she owns or operates.

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(e)(1) If a person applies for and is accepted into the Motor Vehicle Alcohol and Drug Test and Lock Program prior to the effective date of the revocation for an offense involving alcohol, the commissioner shall defer the revocation period of such person under the provisions of this section. Such deferral shall continue throughout the applicable minimum period for the use of the ignition interlock device plus an additional period equal to the applicable minimum revocation period. If a person successfully completes all terms of the Motor Vehicle Alcohol and Drug Test and Lock Program for a period equal to the minimum period for the use of the ignition interlock device pursuant to subsection (c) of this section, plus any applicable minimum revocation period, the commissioner shall waive the revocation period.

(2) If a person applies for and is accepted into the Motor Vehicle Alcohol and Drug Test and Lock Program prior to the effective date of the revocation for an offense solely involving drugs, the commissioner may defer the revocation period of such person under the provisions of this section. Such deferral shall continue throughout the applicable minimum period for the use of the ignition interlock device plus an additional period equal to the applicable minimum revocation period. If a person successfully completes all terms of the Motor Vehicle Alcohol and Drug Test and Lock Program for a period equal to the minimum period for the use of the ignition interlock device pursuant to subsection (c) of this section, plus any applicable minimum revocation period, the commissioner shall waive the revocation period.

(f) The Division of Motor Vehicles may reduce any revocation period required of a person with a second or subsequent offense for driving under the influence of drugs to a minimum of one year and thereafter issue a restricted license on the conditions that the person is in the treatment and job program prescribed in §61-11-26a of this code, has satisfactorily performed in the treatment component of the program and that the person submits to two years of monthly drug testing. If the person is otherwise required to participate in the Alcohol and Drug Test and Lock Program for another offense, he or she may do so while meeting the conditions described in this subsection. If the person fails to submit to a drug test or submits to a test that reveals the presence of controlled substances or drugs, then the full revocation period is reinstated, and the person is only credited with revocation time actually served prior to receiving restricted privileges. The Commissioner of the Division of Motor Vehicles is hereby authorized to promulgate emergency rules to implement the provisions of this article.

(g) An applicant for the test and lock program convicted of any violation of §17B-4-3 of this code for driving while the applicant’s driver’s license was suspended or revoked within the six-month period preceding the date of application for admission to the test and lock program may still participate in the program by serving the revocation or suspension required by §17B-4-3 of this code as additional participation time in the program.

(h) Upon permitting an eligible person to participate in the program, the commissioner shall issue to the person, and the person is required to exhibit on demand, a driver’s license which shall reflect that the person is restricted to the operation of a motor vehicle which is

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equipped with an approved motor vehicle alcohol and drug test and lock system.

(i) The commissioner may extend the minimum period of revocation and the minimum period of participation in the program for a person who violates the terms and conditions of participation in the program as found in this section, or legislative rule, or any agreement or contract between the participant and the division or program service provider. If the commissioner finds that any person participating in the program pursuant to §17C-5-2b of this code must be removed therefrom for violation(s) of the terms and conditions thereof, he or she shall notify the person, the court that imposed the term of participation in the program, and the prosecuting attorney in the county wherein the order imposing participation in the program was entered.

(j) A person whose license has been suspended for a first offense of driving while under the age of 21 with a blood alcohol concentration of 0.02 percent, or more, by weight, but less than 0.08 percent, or more, by weight, who has completed the educational program and who has not violated the terms required by the commissioner of the person's participation in the program is entitled to the reinstatement of his or her driver's license six months from the date the person is permitted to operate a motor vehicle by the commissioner. When a license has been reinstated pursuant to this subsection, the records ordering the suspension, records of any administrative hearing, records of any blood alcohol test results, and all other records pertaining to the suspension shall be expunged by operation of law: *Provided*, That a person is entitled to expungement under the provisions of this subsection only once. The expungement shall be accomplished by physically marking the records to show that the records have been expunged and by securely sealing and filing the records. Expungement has the legal effect as if the suspension never occurred. The records may not be disclosed or made available for inspection and in response to a request for record information, the commissioner shall reply that no information is available. Information from the file may be used by the commissioner for research and statistical purposes so long as the use of the information does not divulge the identity of the person.

(k) In addition to any other penalty imposed by this code, any person who operates a motor vehicle not equipped with an approved motor vehicle alcohol and drug test and lock system during that person's participation in the Motor Vehicle Alcohol and Drug Test and Lock Program is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period not less than one month nor more than six months and fined not less than $100 nor more than $500. Any person who attempts to bypass the alcohol and drug test and lock system is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than six months and fined not less than $100 nor more than $1,000: *Provided*, That notwithstanding any provision of this code to the contrary, a person enrolled and participating in the test and lock program may operate a motor vehicle solely at his or her job site if the operation is a condition of his or her employment. For the purpose of this section, "job site" does not include any street or highway open to the use of the public for purposes of vehicular traffic.

WV Legislature

§17C-5A-4. Search for record of prior offenses by driver.

The commissioner shall immediately upon receipt of the statements required by section seven, article five of this chapter and section one of this article record the date and time of day of the receipt of such statements and shall forthwith cause a search of the appropriate records of the department to be made for any record of prior offenses under this article and such commissioner shall immediately report to the officer making such statement an abstract showing any such prior offense, the date thereof, the identity of any court in which any proceedings in regard thereto were instituted and the disposition thereof.

Any law-enforcement officer who fails to file the statements required by this chapter within forty-eight hours of the arrest of any person charged for any violation of section two, article five of this chapter or for any offense described in a municipal ordinance which has the same elements as an offense described in said section two of article five, shall be guilty of a misdemeanor and, shall be subject to a fine of not less than $20 nor more than $500. And if the commissioner shall willfully fail to post by United States mail or other adequate means of communication a written report addressed to the law-enforcement officer of any such offense, as required by this section, within a period of forty-eight hours after the receipt of the statement, the commissioner shall be guilty of a misdemeanor and, shall be subject to a fine of not less than $20 nor more than $500.

WV Legislature

§17C-5A-5.

Repealed.

Acts, 1981 Reg. Sess., Ch. 159.

WV Legislature

§17C-5A-6.

Repealed.

Acts, 1981 Reg. Sess., Ch. 159.

WV Legislature

§17C-5A-7.

Repealed.

Acts, 1981 Reg. Sess., Ch. 159.

WV Legislature

§17C-5A-8.

Repealed.

Acts, 1981 Reg. Sess., Ch. 159.

WV Legislature