

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 434**

4 (By Senator Beach)

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6 [Originating in the Committee on Transportation and  
7 Infrastructure;  
8 reported February 5, 2014.]  
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12 A BILL to amend and reenact §17C-5A-3a of the Code of West  
13 Virginia, 1931, as amended, relating to the establishment of  
14 and participation in the Motor Vehicle Alcohol Test and Lock  
15 Program; allowing the deferral of the revocation period for  
16 certain DUI offenses through participation in the program;  
17 waiving the revocation period for certain DUI offenses upon  
18 successful completion of the program for a period including  
19 the applicable minimum period for the use of the ignition  
20 interlock device plus an additional period equal to the  
21 applicable minimum revocation period; providing that  
22 acceptance into the program constitutes a waiver of the  
23 administrative hearing and that the Office of Administrative  
24 Hearings shall conduct no hearing on a matter on which a

1 person is actively participating in the program; and making  
2 technical and descriptive corrections.

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

4 That §17C-5A-3a of the Code of West Virginia, 1931, as  
5 amended, be amended and reenacted to read as follows:

6 **ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND**  
7 **REVOCAION OF LICENSES FOR DRIVING UNDER THE**  
8 **INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR**  
9 **DRUGS.**

10 **§17C-5A-3a. Establishment of and participation in the Motor**  
11 **Vehicle Alcohol Test and Lock Program.**

12 (a) (1) The Division of Motor Vehicles shall control and  
13 regulate a Motor Vehicle Alcohol Test and Lock Program for persons  
14 whose licenses have been revoked pursuant to this article or the  
15 provisions of article five of this chapter or have been convicted  
16 under section two, article five of this chapter, or who are serving  
17 a term of a conditional probation pursuant to section two-b,  
18 article five of this chapter.

19 (2) The program shall include the establishment of a user's  
20 fee for persons participating in the program which shall be paid in  
21 advance and deposited into the Driver's Rehabilitation Fund:  
22 *Provided*, That on and after July 1, 2007, any unexpended balance  
23 remaining in the Driver's Rehabilitation Fund shall be transferred  
24 to the Motor Vehicle Fees Fund created under the provisions of

1 section twenty-one, article two, chapter seventeen-a of this code  
2 and all further fees collected shall be deposited in that fund.

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

6 (B) The Commissioner of the Division of Motor Vehicles shall  
7 propose legislative rules for promulgation in accordance with the  
8 provisions of chapter twenty-nine-a of this code for the purpose of  
9 implementing the provisions of this section. The rules shall also  
10 prescribe those requirements which, in addition to the requirements  
11 specified by this section for eligibility to participate in the  
12 program, the commissioner determines must be met to obtain the  
13 commissioner's approval to operate a motor vehicle equipped with a  
14 motor vehicle alcohol test and lock system.

15 (C) Nothing in this section may be construed to prohibit day-  
16 report or community correction programs authorized pursuant to  
17 article eleven-c, chapter sixty-two of this code, or a home  
18 incarceration program authorized pursuant to article eleven-b,  
19 chapter sixty-two of this code, from being a provider of motor  
20 vehicle alcohol test and lock systems for eligible participants as  
21 authorized by this section.

22 (4) For purposes of this section, a "motor vehicle alcohol  
23 test and lock system" means a mechanical or computerized system  
24 which, in the opinion of the commissioner, prevents the operation

1 of a motor vehicle when, through the system's assessment of the  
2 blood alcohol content of the person operating or attempting to  
3 operate the vehicle, the person is determined to be under the  
4 influence of alcohol.

5       (5) The fee for installation and removal of ignition interlock  
6 devices shall be waived for persons determined to be indigent by  
7 the Department of Health and Human Resources pursuant to section  
8 three, article five-a, chapter seventeen-c of this code. The  
9 commissioner shall establish by legislative rule, proposed pursuant  
10 to article three, chapter twenty-nine-a of this code, procedures to  
11 be followed with regard to persons determined by the Department of  
12 Health and Human Resources to be indigent. The rule shall include,  
13 but is not limited to, promulgation of application forms;  
14 establishment of procedures for the review of applications; and the  
15 establishment of a mechanism for the payment of installations for  
16 eligible offenders.

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

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

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

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

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

3 (b) (1) Any person whose license is revoked for the first time  
4 pursuant to this article or the provisions of article five of this  
5 chapter is eligible to participate in the program when the person's  
6 minimum revocation period as specified by subsection (c) of this  
7 section has expired and the person is enrolled in or has  
8 successfully completed the safety and treatment program or presents  
9 proof to the commissioner within sixty days of receiving approval  
10 to participate by the commissioner that he or she is enrolled in a  
11 safety and treatment program: *Provided*, That anyone whose license  
12 is revoked for the first time ~~pursuant to subsection (k), section~~  
13 ~~two of this article~~ for driving with a blood alcohol concentration  
14 of fifteen hundredths of one percent or more, by weight, must  
15 participate in the program when the person's minimum revocation  
16 period as specified by subsection (c) of this section has expired  
17 and the person is enrolled in or has successfully completed the  
18 safety and treatment program or presents proof to the commissioner  
19 within sixty days of receiving approval to participate by the  
20 commissioner that he or she is enrolled in a safety and treatment  
21 program.

22 (2) Any person whose license has been suspended ~~pursuant to~~  
23 ~~the provisions of subsection (n), section two of this article~~ for  
24 driving a motor vehicle while under the age of twenty-one years

1 with an alcohol concentration in his or her blood of two  
2 hundredths of one percent or more, by weight, but less than eight  
3 hundredths of one percent, by weight, is eligible to participate  
4 in the program after thirty days have elapsed from the date of the  
5 initial suspension, during which time the suspension was actually  
6 in effect: *Provided*, That in the case of a person under the age  
7 of eighteen, the person is eligible to participate in the program  
8 after thirty days have elapsed from the date of the initial  
9 suspension, during which time the suspension was actually in  
10 effect or after the person's eighteenth birthday, whichever is  
11 later. Before the commissioner approves a person to operate a  
12 motor vehicle equipped with a motor vehicle alcohol test and lock  
13 system, the person must agree to comply with the following  
14 conditions:

15 (A) If not already enrolled, the person shall enroll in and  
16 complete the educational program provided in subsection (d),  
17 section three of this article at the earliest time that placement  
18 in the educational program is available, unless good cause is  
19 demonstrated to the commissioner as to why placement should be  
20 postponed;

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

24 (3) Notwithstanding the provisions of this section to the

1 contrary, a person eligible to participate in the program under  
2 this subsection may not operate a motor vehicle unless approved  
3 to do so by the commissioner.

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

8 (1) For a person whose license has been revoked for a first  
9 offense for six months ~~pursuant to the provisions of section one-a~~  
10 ~~of this article for conviction of an offense defined in subsection~~  
11 ~~(d) or (g), section two, article five of this chapter or pursuant~~  
12 ~~to subsection (j), section two of this article,~~ for driving under  
13 the influence of alcohol, or a combination of alcohol and any  
14 controlled substance or other drug, or with a blood alcohol  
15 concentration of eight hundredths of one percent, by weight, but  
16 less than fifteen hundredths, by weight, the minimum period of  
17 revocation for participation in the test and lock program is  
18 fifteen days and the minimum period for the use of the ignition  
19 interlock device is one hundred and twenty-five days;

20 (2) For a person whose license has been revoked for a first  
21 offense ~~pursuant to section seven, article five of this chapter,~~  
22 for refusing a secondary chemical test, the minimum period of  
23 revocation for participation in the test and lock program is  
24 forty-five days and the minimum period for the use of the ignition

1 interlock device is one year;

2 (3) For a person whose license has been revoked for a first  
3 offense ~~pursuant to section one-a of this article for conviction~~  
4 ~~of an offense defined in subsection (e), section two, article five~~  
5 ~~of this chapter or pursuant to subsection (j), section two of this~~  
6 ~~article,~~ for driving with a blood alcohol concentration of fifteen  
7 hundredths of one percent or more, by weight, the minimum period  
8 of revocation for participation in the test and lock program is  
9 forty-five days and the minimum period for the use of the ignition  
10 interlock device is two hundred seventy days;

11 (4) For a person whose license has been revoked for a first  
12 offense ~~pursuant to the provisions of section one-a of this~~  
13 ~~article for conviction of an offense defined in subsection (a),~~  
14 ~~section two, article five of this chapter or pursuant to~~  
15 ~~subsection (f), section two of this article,~~ for driving under the  
16 influence of alcohol, or a combination of alcohol and any  
17 controlled substance or other drug, or with a blood alcohol  
18 concentration of eight hundredths of one percent or more, by  
19 weight, or did drive a motor vehicle while under the age of  
20 twenty-one years with an alcohol concentration in his or her blood  
21 of two hundredths of one percent or more, by weight, but less than  
22 eight hundredths of one percent, by weight, and while driving does  
23 any act forbidden by law or fails to perform any duty imposed by  
24 law, which act or failure proximately causes the death of any



1 person within one year next following the act or failure, and  
2 commits the act or failure in reckless disregard of the safety of  
3 others and when the influence of alcohol, controlled substances  
4 or drugs is shown to be a contributing cause to the death, the  
5 minimum period of revocation before the person is eligible for  
6 participation in the test and lock program is twelve months and  
7 the minimum period for the use of the ignition interlock device  
8 is two years;

9 (5) For a person whose license has been revoked for a first  
10 offense ~~pursuant to the provisions of section one-a of this~~  
11 ~~article for conviction of an offense defined in subsection (b),~~  
12 ~~section two, article five of this chapter or pursuant to~~  
13 ~~subsection (g), section two of this article,~~ for driving under the  
14 influence of alcohol, or a combination of alcohol and any  
15 controlled substance or other drug, or with a blood alcohol  
16 concentration of eight hundredths of one percent or more, by  
17 weight, and while driving does any act forbidden by law or fails  
18 to perform any duty imposed by law in the driving of the vehicle,  
19 which act or failure proximately causes the death of any person  
20 within one year next following the act or failure, the minimum  
21 period of revocation is six months and the minimum period for the  
22 use of the ignition interlock device is two years;

23 (6) For a person whose license has been revoked for a first  
24 offense ~~pursuant to the provisions of section one-a of this~~

1 ~~article for conviction of an offense defined in subsection (c),~~  
2 ~~section two, article five of this chapter or pursuant to~~  
3 ~~subsection (h), section two of this article, for driving under the~~  
4 influence of alcohol, or a combination of alcohol and any  
5 controlled substance or other drug, or with a blood alcohol  
6 concentration of eight hundredths of one percent or more, by  
7 weight, and while driving does any act forbidden by law or fails  
8 to perform any duty imposed by law in the driving of the vehicle,  
9 which act or failure proximately causes bodily injury to any  
10 person other than himself or herself, the minimum period of  
11 revocation for participation in the program is two months and the  
12 minimum period for the use of the ignition interlock device is one  
13 year;

14 (7) For a person whose license has been revoked for a first  
15 offense ~~pursuant to the provisions of section one-a of this~~  
16 ~~article for conviction of an offense defined in subsection (j),~~  
17 ~~section two, article five of this chapter or pursuant to~~  
18 ~~subsection (m), section two of this article, for driving under the~~  
19 influence of alcohol, or a combination of alcohol and any  
20 controlled substance or other drug, or with a blood alcohol  
21 concentration of eight hundredths of one percent or more, by  
22 weight, and while driving has on or within the motor vehicle one  
23 or more other persons who are unemancipated minors who have not  
24 reached their sixteenth birthday, the minimum period of revocation

1 for participation in the program is two months and the minimum  
2 period for the use of the ignition interlock device is ten months;

3 (d) Notwithstanding any provision of the code to the  
4 contrary, a person shall participate in the program if the person  
5 is convicted under section two, article five of this chapter or  
6 the person's license is revoked under section two of this article  
7 or section seven, article five of this chapter and the person was  
8 previously either convicted or his or her license was revoked  
9 under any provision cited in this subsection within the past ten  
10 years. The minimum revocation period for a person required to  
11 participate in the program under this subsection is one year and  
12 the minimum period for the use of the ignition interlock device  
13 is two years, except that the minimum revocation period for a  
14 person required to participate because of a violation of  
15 ~~subsection (n), section two of this article or subsection (i),~~  
16 ~~section two, article five of this chapter~~ for driving while under  
17 the age of twenty-one with a blood alcohol concentration of two  
18 hundredths of one percent, or more, by weight, but less than eight  
19 hundredths of one percent, or more, by weight, is two months and  
20 the minimum period of participation is one year. The division  
21 shall add an additional two months to the minimum period for the  
22 use of the ignition interlock device if the offense was committed  
23 while a minor was in the vehicle. The division shall add an  
24 additional six months to the minimum period for the use of the

1 ignition interlock device if a person other than the driver  
2 received injuries. The division shall add an additional two years  
3 to the minimum period for the use of the ignition interlock device  
4 if a person other than the driver is injured and the injuries  
5 result in that person's death. The division shall add one year  
6 to the minimum period for the use of the ignition interlock device  
7 for each additional previous conviction or revocation within the  
8 past ten years. Any person required to participate under this  
9 subsection must have an ignition interlock device installed on  
10 every vehicle he or she owns or operates.

11 (e) (1) If a person applies for and is accepted into the Motor  
12 Vehicle Alcohol Test and Lock Program prior to the effective date  
13 of the revocation, the commissioner shall defer the revocation  
14 period of such person under the provisions of this section. Such  
15 deferral shall continue throughout the applicable minimum period  
16 for the use of the ignition interlock device plus an additional  
17 period equal to the applicable minimum revocation period. If a  
18 person successfully completes all terms of the Motor Vehicle  
19 Alcohol Test and Lock Program for a period equal to the minimum  
20 period for the use of the ignition interlock device pursuant to  
21 subsection (c) of this section, plus any applicable minimum  
22 revocation period, the commissioner shall waive the revocation  
23 period.

24 (2) A person's acceptance into the Motor Vehicle Alcohol Test

1 and Lock Program constitutes an automatic waiver of the  
2 administrative hearing right provided in section two of this  
3 article. The Office of Administrative Hearings shall conduct no  
4 hearing on a matter on which a person is actively participating  
5 in the Motor Vehicle Alcohol Test and Lock Program.

6 ~~(e)~~ (f) Notwithstanding any other provision in this code, a  
7 person whose license is revoked for driving under the influence  
8 of drugs is not eligible to participate in the Motor Vehicle  
9 Alcohol Test and Lock Program.

10 ~~(f)~~ (g) An applicant for the test and lock program may not  
11 have been convicted of any violation of section three, article  
12 four, chapter seventeen-b of this code for driving while the  
13 applicant's driver's license was suspended or revoked within the  
14 six-month period preceding the date of application for admission  
15 to the test and lock program unless such is necessary for  
16 employment purposes.

17 ~~(g)~~ (h) Upon permitting an eligible person to participate in  
18 the program, the commissioner shall issue to the person, and the  
19 person is required to exhibit on demand, a driver's license which  
20 shall reflect that the person is restricted to the operation of  
21 a motor vehicle which is equipped with an approved motor vehicle  
22 alcohol test and lock system.

23 ~~(h)~~ (i) The commissioner may extend the minimum period of  
24 revocation and the minimum period of participation in the program

1 for a person who violates the terms and conditions of  
2 participation in the program as found in this section, or  
3 legislative rule, or any agreement or contract between the  
4 participant and the division or program service provider. If the  
5 commissioner finds that any person participating in the program  
6 pursuant to section two-b, article five of this chapter must be  
7 removed therefrom for violation(s) of the terms and conditions  
8 thereof, he or she shall notify the person, the court that imposed  
9 the term of participation in the program and the prosecuting  
10 attorney in the county wherein the order imposing participation  
11 in the program was entered.

12 ~~(i)~~ (j) A person whose license has been suspended pursuant  
13 ~~to the provisions of subsection (n), section two~~ for a first  
14 offense of driving while under the age of twenty-one with a blood  
15 alcohol concentration of two hundredths of one percent, or more,  
16 by weight, but less than eight hundredths of one percent, or more,  
17 by weight, who has completed the educational program and who has  
18 not violated the terms required by the commissioner of the  
19 person's participation in the program is entitled to the  
20 reinstatement of his or her driver's license six months from the  
21 date the person is permitted to operate a motor vehicle by the  
22 commissioner. When a license has been reinstated pursuant to this  
23 subsection, the records ordering the suspension, records of any  
24 administrative hearing, records of any blood alcohol test results

1 and all other records pertaining to the suspension shall be  
2 expunged by operation of law: *Provided*, That a person is entitled  
3 to expungement under the provisions of this subsection only once.  
4 The expungement shall be accomplished by physically marking the  
5 records to show that the records have been expunged and by  
6 securely sealing and filing the records. Expungement has the  
7 legal effect as if the suspension never occurred. The records may  
8 not be disclosed or made available for inspection and in response  
9 to a request for record information, the commissioner shall reply  
10 that no information is available. Information from the file may  
11 be used by the commissioner for research and statistical purposes  
12 so long as the use of the information does not divulge the  
13 identity of the person.

14 ~~(j)~~ (k) In addition to any other penalty imposed by this  
15 code, any person who operates a motor vehicle not equipped with  
16 an approved motor vehicle alcohol test and lock system during that  
17 person's participation in the Motor Vehicle Alcohol Test and Lock  
18 Program is guilty of a misdemeanor and, upon conviction thereof,  
19 shall be confined in jail for a period not less than one month nor  
20 more than six months and fined not less than \$100 nor more than  
21 \$500. Any person who attempts to bypass the alcohol test and lock  
22 system is guilty of a misdemeanor and, upon conviction thereof,  
23 shall be confined in jail not more than six months and fined not  
24 less than \$100 nor more than \$1,000: *Provided*, That

1 notwithstanding any provision of this code to the contrary, a  
2 person enrolled and participating in the test and lock program may  
3 operate a motor vehicle solely at his or her job site if the  
4 operation is a condition of his or her employment. For the  
5 purpose of this section, "job site" does not include any street  
6 or highway open to the use of the public for purposes of vehicular  
7 traffic.

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(NOTE: The purpose of this bill is to eliminate the revocation period for a DUI offender who applies to the Motor Vehicle Alcohol Test and Lock Program prior to the effective date of the revocation, is accepted into the Program, successfully completes all terms of the Motor Vehicle Alcohol Test and Lock Program for a period equal to the minimum period for the use of the ignition interlock device plus any applicable minimum revocation period, and waives the right to an administrative hearing.)

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