

1 **Senate Bill No. 434**

2 (By Senator Beach)

3 _____
4 [Introduced January 27, 2014; referred to the Committee on
5 Transportation and Infrastructure; and then to the Committee on
6 the Judiciary.]
7 _____

8
9
10
11 A BILL to amend and reenact §17C-5A-3a of the Code of West
12 Virginia, 1931, as amended, relating to the establishment of
13 and participation in the Motor Vehicle Alcohol Test and Lock
14 Program; allowing DUI offenders to forgo the applicable
15 revocation period for their offense and waive the right to
16 their administrative hearing to expedite participation in the
17 program; and making technical and descriptive corrections to
18 this section of the code.

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

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

22 **ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND**
23 **REVOCATION OF LICENSES FOR DRIVING UNDER THE**

1 **INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR**
2 **DRUGS.**

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

5 (a) (1) The Division of Motor Vehicles shall control and
6 regulate a Motor Vehicle Alcohol Test and Lock Program for persons
7 whose licenses have been revoked pursuant to this article or the
8 provisions of article five of this chapter or have been convicted
9 under section two, article five of this chapter, or who are serving
10 a term of a conditional probation pursuant to section two-b,
11 article five of this chapter.

12 (2) The program shall include the establishment of a users fee
13 for persons participating in the program which shall be paid in
14 advance and deposited into the Driver's Rehabilitation Fund:
15 *Provided*, That on and after July 1, 2007, any unexpended balance
16 remaining in the Driver's Rehabilitation Fund shall be transferred
17 to the Motor Vehicle Fees Fund created under the provisions of
18 section twenty-one, article two, chapter seventeen-a of this code
19 and all further fees collected shall be deposited in that fund.

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

23 (B) The Commissioner of the Division of Motor Vehicles shall

1 propose legislative rules for promulgation in accordance with the
2 provisions of chapter twenty-nine-a of this code for the purpose of
3 implementing the provisions of this section. The rules shall also
4 prescribe those requirements which, in addition to the requirements
5 specified by this section for eligibility to participate in the
6 program, the commissioner determines must be met to obtain the
7 commissioner's approval to operate a motor vehicle equipped with a
8 motor vehicle alcohol test and lock system.

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

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

23 (5) The fee for installation and removal of ignition interlock

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

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

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

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

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

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

22 (b) (1) Any person whose license is revoked for the first time
23 pursuant to this article or the provisions of article five of this

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

18 (2) Any person whose license has been suspended ~~pursuant to~~
19 ~~the provisions of subsection (n), section two of this article~~ for
20 driving a motor vehicle while under the age of twenty-one years
21 with an alcohol concentration in his or her blood of two
22 hundredths of one percent or more, by weight, but less than eight
23 hundredths of one percent, by weight, is eligible to participate

1 in the program after thirty days have elapsed from the date of the
2 initial suspension, during which time the suspension was actually
3 in effect: *Provided*, That in the case of a person under the age
4 of eighteen, the person is eligible to participate in the program
5 after thirty days have elapsed from the date of the initial
6 suspension, during which time the suspension was actually in
7 effect or after the person's eighteenth birthday, whichever is
8 later. Before the commissioner approves a person to operate a
9 motor vehicle equipped with a motor vehicle alcohol test and lock
10 system, the person must agree to comply with the following
11 conditions:

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

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

21 (3) Notwithstanding the provisions of this section to the
22 contrary, a person eligible to participate in the program under
23 this subsection may not operate a motor vehicle unless approved

1 to do so by the commissioner.

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

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

19 (2) For a person whose license has been revoked for a first
20 offense pursuant to section seven, article five of this chapter
21 for refusing a secondary chemical test, the minimum period of
22 revocation for participation in the test and lock program is
23 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 the combined influence of alcohol and
17 controlled substances or drugs, or with a blood alcohol
18 concentration of eight hundredths of one percent or more by weight
19 and proximately causing the death of another while committing an
20 act forbidden by law or failing to perform a duty imposed by law
21 in reckless disregard of the safety of others and the influence
22 of alcohol, controlled substances or drugs or the alcohol
23 concentration in the blood was a contributing cause to the death

1 the minimum period of revocation before the person is eligible for
2 participation in the test and lock program is twelve months and
3 the minimum period for the use of the ignition interlock device
4 is two years;

5 (5) For a person whose license has been revoked for a first
6 offense ~~pursuant to the provisions of section one-a of this~~
7 ~~article for conviction of an offense defined in subsection (b),~~
8 ~~section two, article five of this chapter or pursuant to~~
9 ~~subsection (g), section two of this article~~ for driving under the
10 influence of alcohol, or the combined influence of alcohol and
11 controlled substances or drugs, or with a blood alcohol
12 concentration of eight hundredths of one percent or more by weight
13 and proximately causing the death of another while committing an
14 act forbidden by law or failing to perform a duty imposed by law,
15 the minimum period of revocation is six months and the minimum
16 period for the use of the ignition interlock device is two years;

17 (6) For a person whose license has been revoked for a first
18 offense ~~pursuant to the provisions of section one-a of this~~
19 ~~article for conviction of an offense defined in subsection (c),~~
20 ~~section two, article five of this chapter or pursuant to~~
21 ~~subsection (h), section two of this article~~ for driving under the
22 influence of alcohol, or the combined influence of alcohol and
23 controlled substances or drugs, or with a blood alcohol

1 concentration of eight hundredths of one percent or more by weight
2 and proximately causing bodily injury to another while committing
3 an act forbidden by law or failing to perform a duty imposed by
4 law, the minimum period of revocation for participation in the
5 program is two months and the minimum period for the use of the
6 ignition interlock device is one year;

7 (7) For a person whose license has been revoked for a first
8 offense ~~pursuant to the provisions of section one a of this~~
9 ~~article for conviction of an offense defined in subsection (j),~~
10 ~~section two, article five of this chapter or pursuant to~~
11 ~~subsection (m), section two of this article~~ for driving under the
12 influence of alcohol, or the combined influence of alcohol and
13 controlled substances or drugs, or with a blood alcohol
14 concentration of eight hundredths of one percent or more by weight
15 while having a passenger under the age of sixteen, the minimum
16 period of revocation for participation in the program is two
17 months and the minimum period for the use of the ignition
18 interlock device is ten months;

19 (d) Notwithstanding any provision of the code to the contrary
20 a person shall participate in the program if the person is
21 convicted under section two, article five of this chapter or the
22 person's license is revoked under section two of this article or
23 section seven, article five of this chapter and the person was

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

1 for each additional previous conviction or revocation within the
2 past ten years. Any person required to participate under this
3 subsection must have an ignition interlock device installed on
4 every vehicle he or she owns or operates.

5 (e) The commissioner shall defer the revocation period of any
6 person eligible to participate in the Motor Vehicle Alcohol Test
7 and Lock Program under the provisions of subsection (c) or (d) of
8 this section if the person applies for the program prior to the
9 effective date of the revocation and agrees to the minimum period
10 for the use of the ignition interlock device. The person's
11 application submission to participate in the Motor Vehicle Alcohol
12 Test and Lock Program under this subsection constitutes a waiver
13 of the administrative hearing right provided in section two of
14 this article. Upon successful completion of the period for the
15 use of the ignition interlock device and all other terms of the
16 program, the commissioner shall waive the revocation period.

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

21 ~~(f)~~ (g) An applicant for the test and lock program may not
22 have been convicted of any violation of section three, article
23 four, chapter seventeen-b of this code for driving while the

1 applicant's driver's license was suspended or revoked within the
2 six-month period preceding the date of application for admission
3 to the test and lock program unless such is necessary for
4 employment purposes.

5 ~~(g)~~ (h) Upon permitting an eligible person to participate in
6 the program, the commissioner shall issue to the person, and the
7 person is required to exhibit on demand, a driver's license which
8 shall reflect that the person is restricted to the operation of
9 a motor vehicle which is equipped with an approved motor vehicle
10 alcohol test and lock system.

11 ~~(h)~~ (I) The commissioner may extend the minimum period of
12 revocation and the minimum period of participation in the program
13 for a person who violates the terms and conditions of
14 participation in the program as found in this section, or
15 legislative rule, or any agreement or contract between the
16 participant and the division or program service provider. If the
17 commissioner finds that any person participating in the program
18 pursuant to section two-b, article five of this chapter must be
19 removed therefrom for violation(s) of the terms and conditions
20 thereof, he or she shall notify the person, the court that imposed
21 the term of participation in the program, and the prosecuting
22 attorney in the county wherein the order imposing participation
23 in the program was entered.

1 ~~(I)~~ (j) A person whose license has been suspended pursuant
2 ~~to the provisions of subsection (n), section two for a first~~
3 offense of driving while under the age of twenty-one with a blood
4 alcohol concentration of two hundredths of one percent, or more,
5 by weight, but less than eight hundredths of one percent, or more,
6 by weight, who has completed the educational program and who has
7 not violated the terms required by the commissioner of the
8 person's participation in the program is entitled to the
9 reinstatement of his or her driver's license six months from the
10 date the person is permitted to operate a motor vehicle by the
11 commissioner. When a license has been reinstated pursuant to this
12 subsection, the records ordering the suspension, records of any
13 administrative hearing, records of any blood alcohol test results
14 and all other records pertaining to the suspension shall be
15 expunged by operation of law: *Provided,* That a person is entitled
16 to expungement under the provisions of this subsection only once.
17 The expungement shall be accomplished by physically marking the
18 records to show that the records have been expunged and by
19 securely sealing and filing the records. Expungement has the
20 legal effect as if the suspension never occurred. The records may
21 not be disclosed or made available for inspection and in response
22 to a request for record information, the commissioner shall reply
23 that no information is available. Information from the file may

1 be used by the commissioner for research and statistical purposes
2 so long as the use of the information does not divulge the
3 identity of the person.

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

NOTE: The purpose of this bill is to eliminate the revocation period for DUI offenders if the person is eligible for the Alcohol Test and Lock Program, applies for the Program prior to the effective date of the revocation, agrees to use the Test and Lock Device for the required length of the Program and waives any 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.