

SB 434

**WEST VIRGINIA LEGISLATURE
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REGULAR SESSION, 2014**



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 434

(SENATOR BEACH, *ORIGINAL SPONSOR*)

[PASSED MARCH 8, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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(SENATOR BEACH, *original sponsor*)

[Passed March 8, 2014; in effect ninety days from passage.]

AN ACT to amend and reenact §17C-5A-3a of the Code of West Virginia, 1931, as amended, relating to the establishment of and participation in the Motor Vehicle Alcohol Test and Lock Program; allowing the deferral of the revocation period for certain DUI offenses through participation in the program; waiving the revocation period for certain DUI offenses upon successful completion of the program for a period including the applicable minimum period for the use of the ignition interlock device plus an additional period equal to the applicable minimum revocation period; providing that acceptance into the program constitutes a waiver of the administrative hearing and that the Office of Administrative Hearings shall conduct no hearing on a matter on which a person is actively participating in the program; and making technical and descriptive corrections.

Be it enacted by the Legislature of West Virginia:

That §17C-5A-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted 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-3a. Establishment of and participation in the Motor
Vehicle Alcohol Test and Lock Program.

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3 persons whose licenses have been revoked pursuant to this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

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

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

20 (B) The Commissioner of the Division of Motor Vehicles
21 shall propose legislative rules for promulgation in accordance
22 with the provisions of chapter twenty-nine-a of this code for
23 the purpose of implementing the provisions of this section.

24 The rules shall also prescribe those requirements which, in
25 addition to the requirements specified by this section for
26 eligibility to participate in the program, the commissioner
27 determines must be met to obtain the commissioner's
28 approval to operate a motor vehicle equipped with a motor
29 vehicle alcohol test and lock system.

30 *JMM* (C) Nothing in this section may be construed to prohibit
31 ~~day-report~~ or community correction programs authorized
32 pursuant to article eleven-c, chapter sixty-two of this code, or
33 a home incarceration program authorized pursuant to article
34 eleven-b, chapter sixty-two of this code, from being a
35 provider of motor vehicle alcohol test and lock systems for
36 eligible participants as authorized by this section.

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

44 (5) The fee for installation and removal of ignition
45 interlock devices shall be waived for persons determined to
46 be indigent by the Department of Health and Human
47 Resources pursuant to section three, article five-a, chapter
48 seventeen-c of this code. The commissioner shall establish
49 by legislative rule, proposed pursuant to article three, chapter
50 twenty-nine-a of this code, procedures to be followed with
51 regard to persons determined by the Department of Health
52 and Human Resources to be indigent. The rule shall include,
53 but is not limited to, promulgation of application forms;
54 establishment of procedures for the review of applications;
55 and the establishment of a mechanism for the payment of
56 installations for eligible offenders.

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

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

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

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

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

68 (b) (1) Any person whose license is revoked for the first
69 time pursuant to this article or the provisions of article five of
70 this chapter is eligible to participate in the program when the
71 person's minimum revocation period as specified by
72 subsection (c) of this section has expired and the person is
73 enrolled in or has successfully completed the safety and
74 treatment program or presents proof to the commissioner
75 within sixty days of receiving approval to participate by the
76 commissioner that he or she is enrolled in a safety and
77 treatment program: *Provided*, That anyone whose license is
78 revoked for the first time for driving with a blood alcohol
79 concentration of fifteen hundredths of one percent or more,
80 by weight, must participate in the program when the person's
81 minimum revocation period as specified by subsection (c) of
82 this section has expired and the person is enrolled in or has
83 successfully completed the safety and treatment program or
84 presents proof to the commissioner within sixty days of
85 receiving approval to participate by the commissioner that he
86 or she is enrolled in a safety and treatment program.

87 (2) Any person whose license has been suspended for
88 driving a motor vehicle while under the age of twenty-one
89 years with an alcohol concentration in his or her blood of two
90 hundredths of one percent or more, by weight, but less than
91 eight hundredths of one percent, by weight, is eligible to
92 participate in the program after thirty days have elapsed from
93 the date of the initial suspension, during which time the
94 suspension was actually in effect: *Provided*, That in the case
95 of a person under the age of eighteen, the person is eligible to
96 participate in the program after thirty days have elapsed from
97 the date of the initial suspension, during which time the
98 suspension was actually in effect or after the person's
99 eighteenth birthday, whichever is later. Before the
100 commissioner approves a person to operate a motor vehicle
101 equipped with a motor vehicle alcohol test and lock system,
102 the person must agree to comply with the following
103 conditions:

104 (A) If not already enrolled, the person shall enroll in and
105 complete the educational program provided in subsection (d),
106 section three of this article at the earliest time that placement
107 in the educational program is available, unless good cause is
108 demonstrated to the commissioner as to why placement
109 should be postponed;

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

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

117 (c) A person who participates in the program under
118 subdivision (1), subsection (b) of this section is subject to a

119 minimum revocation period and minimum period for the use
120 of the ignition interlock device as follows:

121 (1) For a person whose license has been revoked for a
122 first offense for six months for driving under the influence of
123 alcohol, or a combination of alcohol and any controlled
124 substance or other drug, or with a blood alcohol
125 concentration of eight hundredths of one percent, by weight,
126 but less than fifteen hundredths, by weight, the minimum
127 period of revocation for participation in the test and lock
128 program is fifteen days and the minimum period for the use
129 of the ignition interlock device is one hundred ~~and~~ twenty- *7 m m*
130 five days;

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


136 (3) For a person whose license has been revoked for a
137 first offense for driving with a blood alcohol concentration of
138 fifteen hundredths of one percent or more, by weight, the
139 minimum period of revocation for participation in the test and
140 lock program is forty-five days and the minimum period for
141 the use of the ignition interlock device is two hundred
142 seventy days;

143 (4) For a person whose license has been revoked for a
144 first offense for driving under the influence of alcohol, or a
145 combination of alcohol and any controlled substance or other
146 drug, or with a blood alcohol concentration of eight
147 hundredths of one percent or more, by weight, or did drive a
148 motor vehicle while under the age of twenty-one years with
149 an alcohol concentration in his or her blood of two
150 hundredths of one percent or more, by weight, but less than

151 eight hundredths of one percent, by weight, and while driving
152 does any act forbidden by law or fails to perform any duty
153 imposed by law, which act or failure proximately causes the
154 death of any person within one year next following the act or
155 failure, and commits the act or failure in reckless disregard of
156 the safety of others and when the influence of alcohol,
157 controlled substances or drugs is shown to be a contributing
158 cause to the death, the minimum period of revocation before
159 the person is eligible for participation in the test and lock
160 program is twelve months and the minimum period for the
161 use of the ignition interlock device is two years;

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

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

185 (7) For a person whose license has been revoked for a
186 first offense for driving under the influence of alcohol, or a
187 combination of alcohol and any controlled substance or other
188 drug, or with a blood alcohol concentration of eight
189 hundredths of one percent or more, by weight, and while
190 driving has on or within the motor vehicle one or more other
191 persons who are unemancipated minors who have not reached
192 their sixteenth birthday, the minimum period of revocation
193 for participation in the program is two months and the
194 minimum period for the use of the ignition interlock device
195 is ten months 

196 (d) Notwithstanding any provision of the code to the
197 contrary, a person shall participate in the program if the
198 person is convicted under section two, article five of this
199 chapter or the person's license is revoked under section two
200 of this article or section seven, article five of this chapter and
201 the person was previously either convicted or his or her
202 license was revoked under any provision cited in this
203 subsection within the past ten years. The minimum
204 revocation period for a person required to participate in the
205 program under this subsection is one year and the minimum
206 period for the use of the ignition interlock device is two
207 years, except that the minimum revocation period for a
208 person required to participate because of a violation for
209 driving while under the age of twenty-one with a blood
210 alcohol concentration of two hundredths of one percent, or
211 more, by weight, but less than eight hundredths of one
212 percent, or more, by weight, is two months and the minimum
213 period of participation is one year. The division shall add an
214 additional two months to the minimum period for the use of
215 the ignition interlock device if the offense was committed
216 while a minor was in the vehicle. The division shall add an
217 additional six months to the minimum period for the use of
218 the ignition interlock device if a person other than the driver
219 received injuries. The division shall add an additional two

220 years to the minimum period for the use of the ignition
221 interlock device if a person other than the driver is injured
222 and the injuries result in that person's death. The division
223 shall add one year to the minimum period for the use of the
224 ignition interlock device for each additional previous
225 conviction or revocation within the past ten years. Any
226 person required to participate under this subsection must have
227 an ignition interlock device installed on every vehicle he or
228 she owns or operates.

229 (e)(1) If a person applies for and is accepted into the
230 Motor Vehicle Alcohol Test and Lock Program prior to the
231 effective date of the revocation, the commissioner shall defer
232 the revocation period of such person under the provisions of
233 this section. Such deferral shall continue throughout the
234 applicable minimum period for the use of the ignition
235 interlock device plus an additional period equal to the
236 applicable minimum revocation period. If a person
237 successfully completes all terms of the Motor Vehicle
238 Alcohol Test and Lock Program for a period equal to the
239 minimum period for the use of the ignition interlock device
240 pursuant to subsection (c) of this section, plus any applicable
241 minimum revocation period, the commissioner shall waive
242 the revocation period.

243 (2) The application and acceptance of a person into the
244 Motor Vehicle Alcohol Test and Lock Program pursuant to
245 this subdivision (1) constitutes an automatic waiver of their
246 right to an administrative hearing. The Office of
247 Administrative Hearings may not conduct a hearing on a
248 matter which is the basis for a person actively participating in
249 the Motor Vehicle Alcohol Test and Lock Program.

250 (f) Notwithstanding any other provision in this code, a
251 person whose license is revoked for driving under the

252 influence of drugs is not eligible to participate in the Motor
253 Vehicle Alcohol Test and Lock Program.

254 (g) An applicant for the test and lock program may not
255 have been convicted of any violation of section three, article
256 four, chapter seventeen-b of this code for driving while the
257 applicant's driver's license was suspended or revoked within
258 the six-month period preceding the date of application for
259 admission to the test and lock program unless such is
260 necessary for employment purposes.

261 (h) Upon permitting an eligible person to participate in
262 the program, the commissioner shall issue to the person, and
263 the person is required to exhibit on demand, a driver's license
264 which shall reflect that the person is restricted to the
265 operation of a motor vehicle which is equipped with an
266 approved motor vehicle alcohol test and lock system.

267 (i) The commissioner may extend the minimum period of
268 revocation and the minimum period of participation in the
269 program for a person who violates the terms and conditions
270 of participation in the program as found in this section, or
271 legislative rule, or any agreement or contract between the
272 participant and the division or program service provider. If
273 the commissioner finds that any person participating in the
274 program pursuant to section two-b, article five of this chapter
275 must be removed therefrom for violation(s) of the terms and
276 conditions thereof, he or she shall notify the person, the court
277 that imposed the term of participation in the program and the
278 prosecuting attorney in the county wherein the order
279 imposing participation in the program was entered.

280 (j) A person whose license has been suspended for a first
281 offense of driving while under the age of twenty-one with a
282 blood alcohol concentration of two hundredths of one
283 percent, or more, by weight, but less than eight hundredths of

284 one percent, or more, by weight, who has completed the
285 educational program and who has not violated the terms
286 required by the commissioner of the person's participation in
287 the program is entitled to the reinstatement of his or her
288 driver's license six months from the date the person is
289 permitted to operate a motor vehicle by the commissioner.
290 When a license has been reinstated pursuant to this
291 subsection, the records ordering the suspension, records of
292 any administrative hearing, records of any blood alcohol test
293 results and all other records pertaining to the suspension shall
294 be expunged by operation of law: *Provided*, That a person is
295 entitled to expungement under the provisions of this
296 subsection only once. The expungement shall be
297 accomplished by physically marking the records to show that
298 the records have been expunged and by securely sealing and
299 filing the records. Expungement has the legal effect as if the
300 suspension never occurred. The records may not be disclosed
301 or made available for inspection and in response to a request
302 for record information, the commissioner shall reply that no
303 information is available. Information from the file may be
304 used by the commissioner for research and statistical
305 purposes so long as the use of the information does not
306 divulge the identity of the person.

307 (k) In addition to any other penalty imposed by this code,
308 any person who operates a motor vehicle not equipped with
309 an approved motor vehicle alcohol test and lock system
310 during that person's participation in the Motor Vehicle
311 Alcohol Test and Lock Program is guilty of a misdemeanor
312 and, upon conviction thereof, shall be confined in jail for a
313 period not less than one month nor more than six months and
314 fined not less than \$100 nor more than \$500. Any person
315 who attempts to bypass the alcohol test and lock system is
316 guilty of a misdemeanor and, upon conviction thereof, shall
317 be confined in jail not more than six months and fined not
318 less than \$100 nor more than \$1,000: *Provided*, That

319 notwithstanding any provision of this code to the contrary, a
320 person enrolled and participating in the test and lock program
321 may operate a motor vehicle solely at his or her job site if the
322 operation is a condition of his or her employment. For the
323 purpose of this section, "job site" does not include any street
324 or highway open to the use of the public for purposes of
325 vehicular traffic.

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

Rocky Felts
.....
Member - Chairman Senate Committee

James Wells
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Joseph M. O'Leary
.....
Clerk of the Senate

Bryan S. Day
.....
Clerk of the House of Delegates

Jeffrey V. K...
.....
President of the Senate

Robert W. K...
.....
Speaker of the House of Delegates

The within *is approved* this
the *28th* Day of *March*, 2014.

Earl Ray Tomblin
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 21 2014

Time 2:50 pm