

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 434

(By Senator Beach)

[Originating in the Committee on Transportation and
Infrastructure; reported February 5, 2014.]

A BILL 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- 3 persons whose licenses have been revoked pursuant to this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 (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 pursuant to subsection (k), section

79 ~~two of this article~~ for driving with a blood alcohol
80 concentration of fifteen hundredths of one percent or more,
81 by weight, must participate in the program when the person's
82 minimum revocation period as specified by subsection (c) of
83 this section has expired and the person is enrolled in or has
84 successfully completed the safety and treatment program or
85 presents proof to the commissioner within sixty days of
86 receiving approval to participate by the commissioner that he
87 or she is enrolled in a safety and treatment program.

88 (2) Any person whose license has been suspended
89 ~~pursuant to the provisions of subsection (n), section two of~~
90 ~~this article~~ for driving a motor vehicle while under the age of
91 twenty-one years with an alcohol concentration in his or her
92 blood of two hundredths of one percent or more, by weight,
93 but less than eight hundredths of one percent, by weight, is
94 eligible to participate in the program after thirty days have
95 elapsed from the date of the initial suspension, during which
96 time the suspension was actually in effect: *Provided,* That in
97 the case of a person under the age of eighteen, the person is

98 eligible to participate in the program after thirty days have
99 elapsed from the date of the initial suspension, during which
100 time the suspension was actually in effect or after the
101 person's eighteenth birthday, whichever is later. Before the
102 commissioner approves a person to operate a motor vehicle
103 equipped with a motor vehicle alcohol test and lock system,
104 the person must agree to comply with the following
105 conditions:

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

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

115 (3) Notwithstanding the provisions of this section to the
116 contrary, a person eligible to participate in the program under

117 this subsection may not operate a motor vehicle unless
118 approved to do so by the commissioner.

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

123 (1) For a person whose license has been revoked for a
124 first offense for six months ~~pursuant to the provisions of~~
125 ~~section one-a of this article for conviction of an offense~~
126 ~~defined in subsection (d) or (g), section two, article five of~~
127 ~~this chapter or pursuant to subsection (j), section two of this~~
128 ~~article, for driving under the influence of alcohol, or a~~
129 ~~combination of alcohol and any controlled substance or other~~
130 ~~drug, or with a blood alcohol concentration of eight~~
131 ~~hundredths of one percent, by weight, but less than fifteen~~
132 ~~hundredths, by weight,~~ the minimum period of revocation for
133 participation in the test and lock program is fifteen days and
134 the minimum period for the use of the ignition interlock
135 device is one hundred and twenty-five days;

136 (2) For a person whose license has been revoked for a
137 first offense ~~pursuant to section seven, article five of this~~
138 ~~chapter,~~ for refusing a secondary chemical test, the minimum
139 period of revocation for participation in the test and lock
140 program is forty-five days and the minimum period for the
141 use of the ignition interlock device is one year;

142 (3) For a person whose license has been revoked for a
143 first offense ~~pursuant to section one-a of this article for~~
144 ~~conviction of an offense defined in subsection (e), section~~
145 ~~two, article five of this chapter or pursuant to subsection (j),~~
146 ~~section two of this article,~~ for driving with a blood alcohol
147 concentration of fifteen hundredths of one percent or more,
148 by weight, the minimum period of revocation for
149 participation in the test and lock program is forty-five days
150 and the minimum period for the use of the ignition interlock
151 device is two hundred seventy days;

152 (4) For a person whose license has been revoked for a
153 first offense ~~pursuant to the provisions of section one-a of~~
154 ~~this article for conviction of an offense defined in subsection~~

155 ~~(a), section two, article five of this chapter or pursuant to~~
156 ~~subsection (f), section two of this article, for driving under~~
157 ~~the influence of alcohol, or a combination of alcohol and any~~
158 ~~controlled substance or other drug, or with a blood alcohol~~
159 ~~concentration of eight hundredths of one percent or more, by~~
160 ~~weight, or did drive a motor vehicle while under the age of~~
161 ~~twenty-one years with an alcohol concentration in his or her~~
162 ~~blood of two hundredths of one percent or more, by weight,~~
163 ~~but less than eight hundredths of one percent, by weight, and~~
164 ~~while driving does any act forbidden by law or fails to~~
165 ~~perform any duty imposed by law, which act or failure~~
166 ~~proximately causes the death of any person within one year~~
167 ~~next following the act or failure, and commits the act or~~
168 ~~failure in reckless disregard of the safety of others and when~~
169 ~~the influence of alcohol, controlled substances or drugs is~~
170 ~~shown to be a contributing cause to the death,~~ the minimum
171 period of revocation before the person is eligible for
172 participation in the test and lock program is twelve months
173 and the minimum period for the use of the ignition interlock
174 device is two years;

175 (5) For a person whose license has been revoked for a
176 first offense ~~pursuant to the provisions of section one-a of~~
177 ~~this article for conviction of an offense defined in subsection~~
178 ~~(b), section two, article five of this chapter or pursuant to~~
179 ~~subsection (g), section two of this article,~~ for driving under
180 the influence of alcohol, or a combination of alcohol and any
181 controlled substance or other drug, or with a blood alcohol
182 concentration of eight hundredths of one percent or more, by
183 weight, and while driving does any act forbidden by law or
184 fails to perform any duty imposed by law in the driving of the
185 vehicle, which act or failure proximately causes the death of
186 any person within one year next following the act or failure,
187 the minimum period of revocation is six months and the
188 minimum period for the use of the ignition interlock device
189 is two years;

190 (6) For a person whose license has been revoked for a
191 first offense ~~pursuant to the provisions of section one-a of~~
192 ~~this article for conviction of an offense defined in subsection~~
193 ~~(c), section two, article five of this chapter or pursuant to~~

194 ~~subsection (h), section two of this article,~~ for driving under
195 the influence of alcohol, or a combination of alcohol and any
196 controlled substance or other drug, or with a blood alcohol
197 concentration of eight hundredths of one percent or more, by
198 weight, and while driving does any act forbidden by law or
199 fails to perform any duty imposed by law in the driving of the
200 vehicle, which act or failure proximately causes bodily injury
201 to any person other than himself or herself, the minimum
202 period of revocation for participation in the program is two
203 months and the minimum period for the use of the ignition
204 interlock device is one year;

205 (7) For a person whose license has been revoked for a
206 first offense ~~pursuant to the provisions of section one-a of~~
207 ~~this article for conviction of an offense defined in subsection~~
208 ~~(j), section two, article five of this chapter or pursuant to~~
209 ~~subsection (m), section two of this article,~~ for driving under
210 the influence of alcohol, or a combination of alcohol and any
211 controlled substance or other drug, or with a blood alcohol
212 concentration of eight hundredths of one percent or more, by

213 weight, and while driving has on or within the motor vehicle
214 one or more other persons who are unemancipated minors
215 who have not reached their sixteenth birthday, the minimum
216 period of revocation for participation in the program is two
217 months and the minimum period for the use of the ignition
218 interlock device is ten months;

219 (d) Notwithstanding any provision of the code to the
220 contrary, a person shall participate in the program if the
221 person is convicted under section two, article five of this
222 chapter or the person's license is revoked under section two
223 of this article or section seven, article five of this chapter and
224 the person was previously either convicted or his or her
225 license was revoked under any provision cited in this
226 subsection within the past ten years. The minimum
227 revocation period for a person required to participate in the
228 program under this subsection is one year and the minimum
229 period for the use of the ignition interlock device is two
230 years, except that the minimum revocation period for a
231 person required to participate because of a violation of

232 ~~subsection (n), section two of this article or subsection (i),~~
233 ~~section two, article five of this chapter~~ for driving while
234 under the age of twenty-one with a blood alcohol
235 concentration of two hundredths of one percent, or more, by
236 weight, but less than eight hundredths of one percent, or
237 more, by weight, is two months and the minimum period of
238 participation is one year. The division shall add an additional
239 two months to the minimum period for the use of the ignition
240 interlock device if the offense was committed while a minor
241 was in the vehicle. The division shall add an additional six
242 months to the minimum period for the use of the ignition
243 interlock device if a person other than the driver received
244 injuries. The division shall add an additional two years to the
245 minimum period for the use of the ignition interlock device
246 if a person other than the driver is injured and the injuries
247 result in that person's death. The division shall add one year
248 to the minimum period for the use of the ignition interlock
249 device for each additional previous conviction or revocation
250 within the past ten years. Any person required to participate

251 under this subsection must have an ignition interlock device
252 installed on every vehicle he or she owns or operates.

253 (e)(1) If a person applies for and is accepted into the
254 Motor Vehicle Alcohol Test and Lock Program prior to the
255 effective date of the revocation, the commissioner shall defer
256 the revocation period of such person under the provisions of
257 this section. Such deferral shall continue throughout the
258 applicable minimum period for the use of the ignition
259 interlock device plus an additional period equal to the
260 applicable minimum revocation period. If a person
261 successfully completes all terms of the Motor Vehicle
262 Alcohol Test and Lock Program for a period equal to the
263 minimum period for the use of the ignition interlock device
264 pursuant to subsection (c) of this section, plus any applicable
265 minimum revocation period, the commissioner shall waive
266 the revocation period.

267 (2) A person's acceptance into the Motor Vehicle
268 Alcohol Test and Lock Program constitutes a automatic
269 waiver of the administrative hearing right provided in section

270 two of this article. The Office of Administrative Hearings
271 shall conduct no hearing on a matter on which a person is
272 actively participating in the Motor Vehicle Alcohol Test and
273 Lock Program.

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

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

285 ~~(g)~~ (h) Upon permitting an eligible person to participate
286 in the program, the commissioner shall issue to the person,
287 and the person is required to exhibit on demand, a driver's
288 license which shall reflect that the person is restricted to the

289 operation of a motor vehicle which is equipped with an
290 approved motor vehicle alcohol test and lock system.

291 (h) (i) The commissioner may extend the minimum
292 period of revocation and the minimum period of participation
293 in the program for a person who violates the terms and
294 conditions of participation in the program as found in this
295 section, or legislative rule, or any agreement or contract
296 between the participant and the division or program service
297 provider. If the commissioner finds that any person
298 participating in the program pursuant to section two-b, article
299 five of this chapter must be removed therefrom for
300 violation(s) of the terms and conditions thereof, he or she
301 shall notify the person, the court that imposed the term of
302 participation in the program and the prosecuting attorney in
303 the county wherein the order imposing participation in the
304 program was entered.

305 (i) (j) A person whose license has been suspended
306 pursuant to the provisions of subsection (n), section two for
307 a first offense of driving while under the age of twenty-one

308 with a blood alcohol concentration of two hundredths of one
309 percent, or more, by weight, but less than eight hundredths of
310 one percent, or more, by weight, who has completed the
311 educational program and who has not violated the terms
312 required by the commissioner of the person's participation in
313 the program is entitled to the reinstatement of his or her
314 driver's license six months from the date the person is
315 permitted to operate a motor vehicle by the commissioner.
316 When a license has been reinstated pursuant to this
317 subsection, the records ordering the suspension, records of
318 any administrative hearing, records of any blood alcohol test
319 results and all other records pertaining to the suspension shall
320 be expunged by operation of law: *Provided*, That a person is
321 entitled to expungement under the provisions of this
322 subsection only once. The expungement shall be
323 accomplished by physically marking the records to show that
324 the records have been expunged and by securely sealing and
325 filing the records. Expungement has the legal effect as if the
326 suspension never occurred. The records may not be

327 disclosed or made available for inspection and in response to
328 a request for record information, the commissioner shall
329 reply that no information is available. Information from the
330 file may be used by the commissioner for research and
331 statistical purposes so long as the use of the information does
332 not divulge the identity of the person.

333 (j) (k) In addition to any other penalty imposed by this
334 code, any person who operates a motor vehicle not equipped
335 with an approved motor vehicle alcohol test and lock system
336 during that person's participation in the Motor Vehicle
337 Alcohol Test and Lock Program is guilty of a misdemeanor
338 and, upon conviction thereof, shall be confined in jail for a
339 period not less than one month nor more than six months and
340 fined not less than \$100 nor more than \$500. Any person
341 who attempts to bypass the alcohol test and lock system is
342 guilty of a misdemeanor and, upon conviction thereof, shall
343 be confined in jail not more than six months and fined not
344 less than \$100 nor more than \$1,000: *Provided, That*
345 notwithstanding any provision of this code to the contrary, a

346 person enrolled and participating in the test and lock program
347 may operate a motor vehicle solely at his or her job site if the
348 operation is a condition of his or her employment. For the
349 purpose of this section, “job site” does not include any street
350 or highway open to the use of the public for purposes of
351 vehicular traffic.

(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.)