

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 345

BY SENATORS WELD, ROBERTS, IHLENFELD, AND UNGER

[Originating in the Committee on the Judiciary;

reported on March 1, 2021]

1 A BILL to amend and reenact §17C-5A-3a of the Code of West Virginia, 1931, as amended,
2 relating to expansion of the alcohol test and lock program to offenders with a drug-related
3 offense; renaming the alcohol test and lock program to the Motor Vehicle Alcohol and
4 Drug Test and Lock Program; authorizing the commissioner to require drug testing;
5 authorizing deferral of the revocation period for a participant with a drug offense; and
6 authorizing an offender of driving while license suspended or revoked, driving while
7 license revoked for driving under the influence of alcohol, controlled substances, or drugs,
8 or while having alcoholic concentration in the blood of eight hundredths of one percent or
9 more, by weight, or for refusing to take secondary chemical test of blood alcohol contents,
10 to participate in the Motor Vehicle Alcohol and Drug Test And Lock Program.

Be it enacted by the Legislature of West Virginia:

**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 and Drug Test
and Lock Program.**

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2 and Drug Test and Lock Program for persons whose licenses have been revoked pursuant to this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

6 (2) The program shall include the establishment of a user's fee for persons participating
7 in the program which shall be paid in advance and deposited into the ~~Driver's Rehabilitation Fund:~~
8 ~~Provided, That on and after July 1, 2007, any unexpended balance remaining in the Driver's~~

9 ~~Rehabilitation Fund shall be transferred to the Motor Vehicle Fees Fund created under the~~
10 ~~provisions of §17A-2-21 of this code. and all further fees collected shall be deposited in that fund~~

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

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

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

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

30 (5) The fee for installation and removal of ignition interlock devices shall be waived for
31 persons determined to be indigent by the Division of Motor Vehicles pursuant to §17C-5A-3 of
32 this code. The commissioner shall establish by legislative rule, proposed pursuant to §29A-3-1 *et*
33 *seq.* of this code, procedures to be followed with regard to persons determined by the Division of
34 Motor Vehicles to be indigent. The rule shall include, but is not limited to, promulgation of

35 application forms, establishment of procedures for the review of applications, and the
36 establishment of a mechanism for the payment of installations for eligible offenders.

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

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

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

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

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

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

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

60 the commissioner within 60 days of receiving approval to participate by the commissioner that he
61 or she is enrolled in a safety and treatment program.

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

72 (A) If not already enrolled, the person shall enroll in and complete the educational program
73 provided in §17C-5A-3(d) of this code at the earliest time that placement in the educational
74 program is available, unless good cause is demonstrated to the commissioner as to why
75 placement should be postponed;

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

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

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

84 (1) For a person whose license has been revoked for a first offense for six months for
85 driving under the influence of alcohol, or a combination of alcohol and any controlled substance

86 or other drug, or with a blood alcohol concentration of 0.08 percent, by weight, but less 0.15
87 percent, by weight, the minimum period of revocation for participation in the test and lock program
88 is 15 days and the minimum period for the use of the ignition interlock device is 125 days;

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

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

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

107 (5) For a person whose license has been revoked for a first offense for driving under the
108 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or
109 with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving does any
110 act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which
111 act or failure proximately causes the death of any person within one year next following the act or

112 failure, the minimum period of revocation is six months and the minimum period for the use of the
113 ignition interlock device is two years;

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

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

127 (d) Notwithstanding any provision of the code to the contrary, a person shall participate in
128 the program if the person is convicted under §17C-5-2 of this code or the person's license is
129 revoked under §17C-5A-2 or §17C-5-7 of this code and the person was previously either
130 convicted or his or her license was revoked under any provision cited in this subsection within the
131 past 10 years. The minimum revocation period for a person required to participate in the program
132 under this subsection is one year and the minimum period for the use of the ignition interlock
133 device is two years, except that the minimum revocation period for a person required to participate
134 because of a violation for driving while under the age of 21 with a blood alcohol concentration of
135 0.02 percent, or more, by weight, but less than 0.08 percent, or more, by weight, is two months
136 and the minimum period of participation is one year. The division shall add an additional two
137 months to the minimum period for the use of the ignition interlock device if the offense was

138 committed while a minor was in the vehicle. The division shall add an additional six months to the
139 minimum period for the use of the ignition interlock device if a person other than the driver
140 received injuries. The division shall add an additional two years to the minimum period for the use
141 of the ignition interlock device if a person other than the driver is injured and the injuries result in
142 that person's death. The division shall add one year to the minimum period for the use of the
143 ignition interlock device for each additional previous conviction or revocation within the past 10
144 years. Any person required to participate under this subsection must have an ignition interlock
145 device installed on every vehicle he or she owns or operates.

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

155 ~~(2) The application and acceptance of a person into the Motor Vehicle Alcohol Test and~~
156 ~~Lock Program pursuant to §17C-5A-3(e)(1) of this code constitutes an automatic waiver of their~~
157 ~~right to an administrative hearing. The Office of Administrative Hearings may not conduct a~~
158 ~~hearing on a matter which is the basis for a person actively participating in the Motor Vehicle~~
159 ~~Alcohol Test and Lock Program~~ If a person applies for and is accepted into the Motor Vehicle
160 Alcohol and Drug Test and Lock Program prior to the effective date of the revocation for an offense
161 solely involving drugs, the commissioner may defer the revocation period of such person under
162 the provisions of this section. Such deferral shall continue throughout the applicable minimum
163 period for the use of the ignition interlock device plus an additional period equal to the applicable

164 minimum revocation period. If a person successfully completes all terms of the Motor Vehicle
165 Alcohol and Drug Test and Lock Program for a period equal to the minimum period for the use of
166 the ignition interlock device pursuant to subsection (c) of this section, plus any applicable
167 minimum revocation period, the commissioner shall waive the revocation period.

168 ~~(f) Notwithstanding any other provision in this code, a person whose license is revoked for~~
169 ~~driving under the influence of drugs is not eligible to participate in the Motor Vehicle Alcohol Test~~
170 ~~and Lock Program: *Provided*, That The Division of Motor Vehicles may reduce any revocation~~
171 ~~period required of a person with a second or subsequent offense for driving under the influence~~
172 ~~of drugs to a minimum of one year and thereafter issue a restricted license on the conditions that~~
173 ~~the person is in the treatment and job program prescribed in §61-11-26a of this code, has~~
174 ~~satisfactorily performed in the treatment component of the program and that the person submits~~
175 ~~to two years of monthly drug testing. If the person is otherwise required to participate in the Alcohol~~
176 ~~and Drug Test and Lock Program for another offense, he or she may do so while meeting the~~
177 ~~conditions described in this subsection. If the person fails to submit to a drug test or submits to a~~
178 ~~test that reveals the presence of controlled substances or drugs, then the full revocation period is~~
179 ~~reinstated, and the person is only credited with revocation time actually served prior to receiving~~
180 ~~restricted privileges. The Commissioner of the Division of Motor Vehicles is hereby authorized to~~
181 ~~promulgate emergency rules to implement the provisions of this article.~~

182 (g) An applicant for the test and lock program ~~may not have been~~ convicted of any violation
183 of §17B-4-3 of this code for driving while the applicant's driver's license was suspended or
184 revoked within the six-month period preceding the date of application for admission to the test
185 and lock program ~~unless such is necessary for employment purposes~~ may still participate in the
186 program by serving the revocation or suspension required by §17B-4-3 of this code as additional
187 participation time in the program.

188 (h) Upon permitting an eligible person to participate in the program, the commissioner
189 shall issue to the person, and the person is required to exhibit on demand, a driver's license which

190 shall reflect that the person is restricted to the operation of a motor vehicle which is equipped with
191 an approved motor vehicle alcohol and drug test and lock system.

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

200 (j) A person whose license has been suspended for a first offense of driving while under
201 the age of 21 with a blood alcohol concentration of 0.02 percent, or more, by weight, but less than
202 0.08 percent, or more, by weight, who has completed the educational program and who has not
203 violated the terms required by the commissioner of the person's participation in the program is
204 entitled to the reinstatement of his or her driver's license six months from the date the person is
205 permitted to operate a motor vehicle by the commissioner. When a license has been reinstated
206 pursuant to this subsection, the records ordering the suspension, records of any administrative
207 hearing, records of any blood alcohol test results, and all other records pertaining to the
208 suspension shall be expunged by operation of law: *Provided*, That a person is entitled to
209 expungement under the provisions of this subsection only once. The expungement shall be
210 accomplished by physically marking the records to show that the records have been expunged
211 and by securely sealing and filing the records. Expungement has the legal effect as if the
212 suspension never occurred. The records may not be disclosed or made available for inspection
213 and in response to a request for record information, the commissioner shall reply that no
214 information is available. Information from the file may be used by the commissioner for research

215 and statistical purposes so long as the use of the information does not divulge the identity of the
216 person.

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