

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **Senate Bill 267**

By Senators Rucker and Deeds

[Introduced on January 11, 2024; referred  
to the Committee on the Judiciary; and then to the  
Committee on Finance]

1 A BILL to amend and reenact §17C-5A-3 and §17C-5A-3a of the Code of West Virginia, 1931, as  
 2 amended, all relating to the addition of grievance and appellate procedures, and judicial  
 3 review for individuals participating in, or who have participated in, the Division of Motor  
 4 Vehicles' Safety and Treatment Program; authorizing the Commissioner of the Division of  
 5 Motor Vehicles to promulgate a rule to add such procedures and judicial review for  
 6 participants of the Safety and Treatment Program; eliminating minimum driving time,  
 7 minimum mileage, and driving frequency requirements of Motor Vehicle Alcohol and Drug  
 8 Test and Lock Program system, and further prohibiting removal of program participant for  
 9 failure to meet such requirements; and directing commissioner to reinstate program  
 10 participants for failing to meet such requirements, at no cost to the program participant,  
 11 upon participants meeting specified criteria.

*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-3. Safety and Treatment Program; reissuance of license.**

1 (a) The Division of Motor Vehicles shall administer a comprehensive Safety and Treatment  
 2 Program for persons whose licenses have been revoked under the provisions of this article, or  
 3 §17C-5-7 or §17B-3-5(6) of this code, and shall also establish the minimum qualifications for  
 4 mental health facilities, day report centers, community corrections centers, or other public  
 5 agencies or private entities conducting the Safety and Treatment Program: *Provided*, That the  
 6 Division of Motor Vehicles may establish standards whereby the division will accept or approve  
 7 participation by violators in another treatment program which provides the same or substantially  
 8 similar benefits as the Safety and Treatment Program established pursuant to this section.

9 (b) The program shall include, but not be limited to: treatment of alcoholism, alcohol and

10 drug abuse; psychological counseling; educational courses on the dangers of alcohol and drugs  
11 as they relate to driving, defensive driving, or other safety driving instruction; and other programs  
12 designed to properly educate, train, and rehabilitate the offender: *Provided*, That successful  
13 compliance with the substance abuse and counseling program prescribed in §61-11-26a of this  
14 code is sufficient to meet the requirements of this section.

15 (c) The Division of Motor Vehicles shall provide for the preparation of an educational and  
16 treatment program for each person whose license has been revoked under the provisions of this  
17 article, or §17C-5-7 or §17B-3-5(6), ~~§17C-5-2, §17C-5-2a, or §17C-5-7a~~ of this code which shall  
18 contain the following: (1) A listing and evaluation of the offender's prior traffic record; (2) the  
19 characteristics and history of alcohol or drug use, if any; (3) his or her amenability to rehabilitation  
20 through the alcohol safety program; and (4) a recommendation as to treatment or rehabilitation  
21 and the terms and conditions of the treatment or rehabilitation. The program shall be prepared by  
22 persons knowledgeable in the diagnosis of alcohol or drug abuse and treatment.

23 (d) ~~A special revenue account is created~~ There is hereby created a special revenue  
24 account within the State Treasury known as the Division of Motor Vehicles Safety and Treatment  
25 Fund. ~~The Commissioner of the Division of Motor Vehicles shall manage and expend moneys from~~  
26 ~~the account~~ The account shall be administered by the Commissioner of the Division of Motor  
27 Vehicles for the purpose of administering the comprehensive Safety and Treatment Program  
28 established by subsection (a) of this section. ~~The moneys in the~~ The account may be invested and  
29 all earnings and interest accruing shall be retained in the account. The Auditor shall conduct an  
30 audit of the fund at least every three fiscal years.

31 ~~Effective July 1, 2019, all moneys held in the Department of Health and Human Resources~~  
32 ~~Safety and Treatment Fund shall be transferred to the Division of Motor Vehicles Safety and~~  
33 ~~Treatment Fund~~

34 (e) (1) The program provider shall collect the established fee from each participant upon  
35 enrollment unless the division has determined that the participant is an indigent based upon

36 criteria established pursuant to legislative rule authorized in this section.

37 (2) If the division determined that a participant is an indigent based upon criteria  
38 established pursuant to the legislative rule authorized by this section, the department shall provide  
39 the applicant with proof of its determination regarding indigency, which proof the applicant shall  
40 present to the interlock provider as part of the application process provided in §17C-5A-3a of this  
41 code and/or the rules promulgated pursuant thereto.

42 (3) Program providers shall remit to the Division of Motor Vehicles a portion of the fee  
43 collected, which shall be deposited by the Commissioner of the Division of Motor Vehicles into the  
44 Division of Motor Vehicles Safety and Treatment Fund. The Division of Motor Vehicles shall  
45 reimburse enrollment fees to program providers for each eligible indigent offender.

46 (f) On or before January 15 of each year, the Commissioner of the Division of Motor  
47 Vehicles shall report to the Legislature on:

48 (1) The total number of offenders participating in the safety and treatment program during  
49 the prior year;

50 (2) The total number of indigent offenders participating in the safety and treatment program  
51 during the prior year;

52 (3) The total number of program providers during the prior year; and

53 (4) The total amount of reimbursements paid to program providers during the prior year.

54 (g) The Commissioner of the Division of Motor Vehicles, after giving due consideration to  
55 the program developed for the offender, shall prescribe the necessary terms and conditions for the  
56 reissuance of the license to operate a motor vehicle in this state revoked under this article, or  
57 §17C-5-7 or §17B-3-5(6), ~~§17C-5-2, §17C-5-2a, or §17C-5-7a~~ of this code, which shall include  
58 successful completion of the educational, treatment, or rehabilitation program, subject to the  
59 following:

60 (1) When the period of revocation is six months, the license to operate a motor vehicle in  
61 this state may not be reissued until: (A) At least 90 days have elapsed from the date of the initial

62 revocation, during which time the revocation was actually in effect; (B) the offender has  
63 successfully completed the program; (C) all costs of the program and administration have been  
64 paid; and (D) all costs assessed as a result of ~~criminal proceedings~~ a revocation hearing have  
65 been paid.

66 (2) When the period of revocation is for a period of one year or for more than a year, the  
67 license to operate a motor vehicle in this state may not be reissued until: (A) At least one-half of the  
68 time period has elapsed from the date of the initial revocation, during which time the revocation  
69 was actually in effect; (B) the offender has successfully completed the program; (C) all costs of the  
70 program and administration have been paid; and (D) all costs assessed as a result of a ~~criminal~~  
71 ~~proceedings~~ revocation hearing have been paid. Notwithstanding any provision in this code, a  
72 person whose license is revoked for refusing to take a chemical test as required by §17C-5-4 of  
73 this code for a first offense is not eligible to reduce the revocation period by completing the safety  
74 and treatment Program.

75 (3) When the period of revocation is for life, the license to operate a motor vehicle in this  
76 state may not be reissued until: (A) At least 10 years have elapsed from the date of the initial  
77 revocation, during which time the revocation was actually in effect; (B) the offender has  
78 successfully completed the program; (C) all costs of the program and administration have been  
79 paid; and (D) all costs assessed as a result of a ~~criminal proceeding~~ revocation hearing have been  
80 paid.

81 (4) Notwithstanding any provision of this code, or any rule, any mental health facilities, or  
82 other public agencies or private entities conducting the Safety and Treatment Program, when  
83 certifying that a person has successfully completed a Safety and Treatment Program, shall only  
84 have to certify that the person has successfully completed the program.

85 (h) (1) The Division of Motor Vehicles shall provide for the preparation of an educational  
86 program for each person whose license has been suspended for 60 days pursuant to the  
87 provisions of §17C-5-2(j) of this code. The educational program shall consist of not less than 12

88 nor more than 18 hours of actual classroom time.

89 (2) When a 60-day period of suspension has been ordered, the license to operate a motor  
90 vehicle may not be reinstated until: (A) At least 60 days have elapsed from the date of the initial  
91 suspension, during which time the suspension was in effect; (B) the offender has successfully  
92 completed the educational program; (C) all costs of the program and administration have been  
93 paid; and (D) all costs assessed as a result of a suspension hearing have been paid.

94 (i) ~~As a component of the programs~~ A required component of the treatment programs  
95 ~~required by subsections (b) and (c) of this section~~ provided in §17C-5A-3(b) of this code and the  
96 education program provided for in §17C-5A-3(c) of this code shall attend a victim impact panel  
97 program. The victim impact panel program must provide a forum for victims of alcohol and drug-  
98 related offenses and offenders to share first-hand experiences on the impact of alcohol and drug-  
99 related offenses in their lives. The Division of Motor Vehicles shall propose and implement a plan  
100 for victim impact panels where appropriate numbers of victims are available and willing to  
101 participate and shall establish guidelines for other innovative programs which may be substituted  
102 where the victims are not available to participate in an impact panel. The plan shall require, at a  
103 minimum, discussion and consideration of the following:

- 104 (1) Economic losses suffered by victims or offenders;  
105 (2) Death or physical injuries suffered by victims or offenders;  
106 (3) Psychological injuries suffered by victims or offenders;  
107 (4) Changes in the personal welfare or familial relationships of victims or offenders; and  
108 (5) Other information relating to the impact of alcohol and drug-related offenses upon  
109 victims or offenders.

110 The Division of Motor Vehicles shall ensure that any meetings between victims and  
111 offenders shall be nonconfrontational and ensure the physical safety of the persons involved.

112 (j)(1) The Commissioner of the Division of Motor Vehicles shall propose a rule for  
113 legislative approval in accordance with §29A-3-1 *et seq.* of this code to administer the provisions

114 of this section and establish a fee to be collected from each offender enrolled in the Safety and  
115 Treatment Program. The rule shall include: (A) A reimbursement mechanism to program providers  
116 of required fees for the safety and treatment program for indigent offenders, criteria for  
117 determining eligibility of indigent offenders, and any necessary application forms; and (B) program  
118 standards that encompass provider criteria including minimum professional training requirements  
119 for providers, curriculum approval, minimum course length requirements, and other items ~~that may~~  
120 ~~be~~ necessary to properly implement the provisions of this section.

121 (2) The Legislature finds that an emergency exists and, therefore, the commissioner shall  
122 file by July 1, 2024, an emergency rule to implement this section pursuant to the provisions of  
123 §29A-3-15 of this code.

124 (k) A day report or community corrections program, authorized pursuant to §62-11C-1 et  
125 seq. of this code, may provide the comprehensive safety and treatment program pursuant to this  
126 section.

127 (l) The Division of Motor Vehicles shall provide a fair, impartial, and expeditious grievance  
128 procedure for participants in the Safety and Treatment Program who wish to challenge a decision  
129 by the provider conducting the program that precludes license reinstatement or which negatively  
130 affects, or unnecessarily delays, the participants' outcome in that program. After all administrative  
131 remedies authorized by this subsection have been exhausted, participants who have been  
132 determined unsuccessful in the program, rendering them ineligible for license reinstatement, or  
133 whose outcomes in the program have been unnecessarily delayed, are entitled to judicial review of  
134 the adverse decision, pursuant to §29A-5-4 of this code. The Commissioner of the Division of  
135 Motor Vehicles shall propose rules for legislative approval in accordance with the provisions of  
136 §29A-3-1 et seq. of this code and may promulgate emergency rules pursuant to the provisions of  
137 §29A-3-15 et seq. of this code.

**§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 in  
7 the program which shall be paid in advance and deposited into the Motor Vehicle Fees Fund  
8 created under the provisions of §17A-2-21 of this code.

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

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

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

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



27 system may not have as a component of it any minimum driving time requirement, any minimum  
28 mileage requirement, or daily, or other, driving frequency requirement, and a participant in the  
29 Motor Vehicle Alcohol and Drug Test and Lock Program may not be removed from the program or  
30 penalized as a result of failing to meet any minimum driving time requirement, any minimum  
31 mileage requirement, or any daily, or other, driving frequency requirement.

32 (5) The fee for installation and removal of ignition interlock devices shall be waived for  
33 persons determined to be indigent by the Division of Motor Vehicles pursuant to §17C-5A-3 of this  
34 code. The commissioner shall establish by legislative rule, proposed pursuant to §29A-3-1 *et seq.*  
35 of this code, procedures to be followed with regard to persons determined by the Division of Motor  
36 Vehicles to be indigent. The rule shall include, but is not limited to, promulgation of application  
37 forms, establishment of procedures for the review of applications, and the establishment of a  
38 mechanism for the payment of installations for eligible offenders.

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

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

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

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

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

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

52 (b) (1) Any person whose license is revoked for the first time pursuant to this article or the

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

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

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

78 (B) The person shall pay all costs of the educational program, any administrative costs,

79 and all costs assessed for any suspension hearing; and

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

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

86 (1) For a person whose license has been revoked for a first offense for six months for  
87 driving under the influence of alcohol, or a combination of alcohol and any controlled substance or  
88 other drug, or with a blood alcohol concentration of 0.08 percent, by weight, but less 0.15 percent,  
89 by weight, the minimum period of revocation for participation in the test and lock program is 15  
90 days and the minimum period for the use of the ignition interlock device is 125 days;

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

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

98 (4) For a person whose license has been revoked for a first offense for driving under the  
99 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or  
100 with a blood alcohol concentration of 0.08 percent or more, by weight, or did drive a motor vehicle  
101 while under the age of 21 years with an alcohol concentration in his or her blood of 0.02 percent or  
102 more, by weight, but less than 0.08 percent, by weight, and while driving does any act forbidden by  
103 law or fails to perform any duty imposed by law, which act or failure proximately causes the death  
104 of any person within one year next following the act or failure, and commits the act or failure in

105 reckless disregard of the safety of others and when the influence of alcohol, controlled substances  
106 or drugs is shown to be a contributing cause to the death, the minimum period of revocation before  
107 the person is eligible for participation in the test and lock program is 12 months and the minimum  
108 period for the use of the ignition interlock device is two years;

109 (5) For a person whose license has been revoked for a first offense for driving under the  
110 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or  
111 with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving does any  
112 act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which  
113 act or failure proximately causes the death of any person within one year next following the act or  
114 failure, the minimum period of revocation is six months and the minimum period for the use of the  
115 ignition interlock device is two years;

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

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

129 (d) Notwithstanding any provision of the code to the contrary, a person shall participate in  
130 the program if the person is convicted under §17C-5-2 of this code or the person's license is

131 revoked under §17C-5A-2 or §17C-5-7 of this code and the person was previously either convicted  
132 or his or her license was revoked under any provision cited in this subsection within the past 10  
133 years. The minimum revocation period for a person required to participate in the program under  
134 this subsection is one year and the minimum period for the use of the ignition interlock device is  
135 two years, except that the minimum revocation period for a person required to participate because  
136 of a violation for driving while under the age of 21 with a blood alcohol concentration of 0.02  
137 percent, or more, by weight, but less than 0.08 percent, or more, by weight, is two months and the  
138 minimum period of participation is one year. The division shall add an additional two months to the  
139 minimum period for the use of the ignition interlock device if the offense was committed while a  
140 minor was in the vehicle. The division shall add an additional six months to the minimum period for  
141 the use of the ignition interlock device if a person other than the driver received injuries. The  
142 division shall add an additional two years to the minimum period for the use of the ignition interlock  
143 device if a person other than the driver is injured and the injuries result in that person's death. The  
144 division shall add one year to the minimum period for the use of the ignition interlock device for  
145 each additional previous conviction or revocation within the past 10 years. Any person required to  
146 participate under this subsection must have an ignition interlock device installed on every vehicle  
147 he or she owns or operates.

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

157           (2) If a person applies for and is accepted into the Motor Vehicle Alcohol and Drug Test and  
158 Lock Program prior to the effective date of the revocation for an offense solely involving drugs, the  
159 commissioner may defer the revocation period of such person under the provisions of this section.  
160 Such deferral shall continue throughout the applicable minimum period for the use of the ignition  
161 interlock device plus an additional period equal to the applicable minimum revocation period. If a  
162 person successfully completes all terms of the Motor Vehicle Alcohol and Drug Test and Lock  
163 Program for a period equal to the minimum period for the use of the ignition interlock device  
164 pursuant to subsection (c) of this section, plus any applicable minimum revocation period, the  
165 commissioner shall waive the revocation period.

166           (f) The Division of Motor Vehicles may reduce any revocation period required of a person  
167 with a second or subsequent offense for driving under the influence of drugs to a minimum of one  
168 year and thereafter issue a restricted license on the conditions that the person is in the treatment  
169 and job program prescribed in §61-11-26a of this code, has satisfactorily performed in the  
170 treatment component of the program and that the person submits to two years of monthly drug  
171 testing. If the person is otherwise required to participate in the Alcohol and Drug Test and Lock  
172 Program for another offense, he or she may do so while meeting the conditions described in this  
173 subsection. If the person fails to submit to a drug test or submits to a test that reveals the presence  
174 of controlled substances or drugs, then the full revocation period is reinstated, and the person is  
175 only credited with revocation time actually served prior to receiving restricted privileges. The  
176 Commissioner of the Division of Motor Vehicles is hereby authorized to promulgate emergency  
177 rules to implement the provisions of this article.

178           (g) An applicant for the test and lock program convicted of any violation of §17B-4-3 of this  
179 code for driving while the applicant's driver's license was suspended or revoked within the six-  
180 month period preceding the date of application for admission to the test and lock program may still  
181 participate in the program by serving the revocation or suspension required by §17B-4-3 of this  
182 code as additional participation time in the program.

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

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

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

209 information is available. Information from the file may be used by the commissioner for research  
210 and statistical purposes so long as the use of the information does not divulge the identity of the  
211 person.

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

224 (l) Upon the effective date of the reenactment of this section in the year 2024, the  
225 commissioner shall reinstate to the Motor Vehicle Alcohol and Drug Test and Lock Program any  
226 former participant in the Motor Vehicle Alcohol and Drug Test and Lock Program who requests in  
227 writing to the commissioner to be reinstated, where the former participant was removed from the  
228 program solely as a result of failing to meet a minimum driving time requirement, a minimum  
229 mileage requirement, or a daily, or other, driving frequency requirement when participating in the  
230 program. Reinstatement under these circumstances shall be without cost to the participant, and  
231 the participant shall be provided retroactive credit by the Commissioner for participation in the  
232 program during the time period that: (1) the participant was participating in the program but was  
233 denied credit because the participant failed to meet a minimum driving time requirement, a  
234 minimum mileage requirement, or a daily, or other, driving frequency requirement; and (2) the



- 235 participant was removed from the program for failure to meet a minimum driving time requirement,  
236 a minimum mileage requirement, or a daily, or other, driving frequency requirement.

NOTE: The purpose of this bill is to add grievance and appellate procedures and judicial review for participants in the Division of Motor Vehicles' Safety and Treatment Program. The bill also authorizes the Commissioner of the Division of Motor Vehicles to promulgate rules to add such procedures and review for participants of the safety and treatment program.

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