

HB 2272  
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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

— ● —

## ENROLLED

Com. Sub. For  
HOUSE BILL No. 2272

(By Delegate Love )

— ● —

Passed March 10, 1995

In Effect Ninety Day From Passage



**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 2272**

(BY DELEGATE LOVE)

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[Passed March 10, 1995; in effect ninety days from passage.]

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AN ACT to amend and reenact section three-a, article five-a, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expanding the availability of the motor vehicle test and lock program to additional persons whose licenses to operate a motor vehicle have been suspended or revoked for offenses related to driving under the influence of alcohol, controlled substances or drugs; authority of commissioner to allow use of extra devices; and exception for test and lock participants at job site.

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

That section three-a, article five-a, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, 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) 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3 persons whose licenses have been revoked pursuant to this  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.  
5 Such program shall include the establishment of a users  
6 fee for persons participating in the program which shall be  
7 paid in advance and deposited into the driver's re-  
8 habilitation fund. Except where specified otherwise, the  
9 use of the term "program" in this section refers to the  
10 motor vehicle alcohol test and lock program. The  
11 commissioner of the division of motor vehicles shall  
12 propose legislative rules for promulgation in accordance  
13 with the provisions of chapter twenty-nine-a of this code  
14 for the purpose of implementing the provisions of this  
15 section. Such rules shall also prescribe those requirements  
16 which, in addition to the requirements specified by this  
17 section for eligibility to participate in the program, the  
18 commissioner determines must be met to obtain the  
19 commissioner's approval to operate a motor vehicle  
20 equipped with a motor vehicle alcohol test and lock  
21 system. For purposes of this section, a "motor vehicle  
22 alcohol test and lock system" means a mechanical or  
23 computerized system which, in the opinion of the  
24 commissioner, prevents the operation of a motor vehicle  
25 when, through the system's assessment of the blood  
26 alcohol content of the person operating or attempting to  
27 operate the vehicle, such person is determined to be under  
28 the influence of alcohol.

29 (b) (1) Any person whose license has been revoked  
30 pursuant to this article or the provisions of article five of  
31 this chapter is eligible to participate in the program when  
32 such person's minimum revocation period as specified by  
33 subsection (c) of this section has expired and such person  
34 is enrolled in or has successfully completed the safety and  
35 treatment program or presents proof to the commissioner  
36 within sixty days of receiving approval to participate by

37 the commissioner that he or she is enrolled in a safety and  
38 treatment program: *Provided*, That no person whose  
39 license has been revoked pursuant to the provisions of  
40 section one-a of this article for conviction of an offense  
41 defined in subsections (a) or (b), section two, article five of  
42 this chapter, or pursuant to the provisions of subsections  
43 (f) or (g), section two of this article, shall be eligible for  
44 participation in the program: *Provided, however*, That any  
45 person whose license is revoked pursuant to this article or  
46 pursuant to article five of this chapter for an act which  
47 occurred either while participating in or after successfully  
48 completing the program shall not again be eligible to  
49 participate in such program.

50 (2) Any person whose license has been suspended  
51 pursuant to the provisions of subsection (l), section two of  
52 this article for driving a motor vehicle while under the age  
53 of twenty-one years with an alcohol concentration in his  
54 or her blood of two hundredths of one percent or more,  
55 by weight, but less than ten hundredths of one percent, by  
56 weight, is eligible to participate in the program after thirty  
57 days have elapsed from the date of the initial suspension,  
58 during which time the suspension was actually in effect:  
59 *Provided*, That in the case of a person under the age of  
60 eighteen, the person shall be eligible to participate in the  
61 program after thirty days have elapsed from the date of  
62 the initial suspension, during which time the suspension  
63 was actually in effect, or after the person's eighteenth  
64 birthday, whichever is later. Before the commissioner  
65 approves a person to operate a motor vehicle equipped  
66 with a motor vehicle alcohol test and lock system, the  
67 person must agree to thereafter comply with the following  
68 conditions:

69 (A) If not already enrolled, the person will enroll in  
70 and complete the educational program provided for in  
71 subsection (c), section three of this article at the earliest  
72 time that placement in the educational program is  
73 available, unless good cause is demonstrated to the  
74 commissioner as to why placement should be postponed;

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

78 (3) Notwithstanding the provisions of this section to  
79 the contrary, no person eligible to participate in the  
80 program shall operate a motor vehicle unless approved to  
81 do so by the commissioner.

82 (c) For purposes of this section, "minimum revocation  
83 period" means the portion which has actually expired of  
84 the period of revocation imposed by the commissioner  
85 pursuant to this article or the provisions of article five of  
86 this chapter upon a person eligible for participation in the  
87 program as follows:

88 (1) For a person whose license has been revoked for a  
89 first offense for six months pursuant to the provisions of  
90 section one-a of this article for conviction of an offense  
91 defined in section two, article five of this chapter, or  
92 pursuant to subsection (i), section two of this article, the  
93 minimum period of revocation before such person is  
94 eligible for participation in the test and lock program is  
95 thirty days, and the minimum period for the use of the  
96 ignition interlock device is five months, or that period  
97 described in subdivision (1), subsection (e) of this section,  
98 whichever period is greater;

99 (2) For a person whose license has been revoked for a  
100 first offense pursuant to section seven, article five of this  
101 chapter, refusal to submit to a designated secondary  
102 chemical test, the minimum period of revocation before  
103 such person is eligible for participation in the test and lock  
104 program is thirty days, and the minimum period for the  
105 use of the ignition interlock device is nine months, or the  
106 period set forth in subdivision (1), subsection (e) of this  
107 section, whichever period is greater;

108 (3) For a person whose license has been revoked for a  
109 second offense pursuant to the provisions of section one-a  
110 of this article for conviction of an offense defined in  
111 section two, article five of this chapter, or pursuant to

112 section two of this article, the minimum period of  
 113 revocation before such person is eligible for participation  
 114 in the test and lock program is nine months, and the  
 115 minimum period for the use of the ignition interlock  
 116 device is eighteen months, or that period set forth in  
 117 subdivision (2), subsection (e) of this section, whichever  
 118 period is greater;

119 (4) For a person whose license has been revoked for  
 120 any other period of time pursuant to the provisions of  
 121 section one-a of this article for conviction of an offense  
 122 defined in section two, article five of this chapter, or  
 123 pursuant to section two of this article or pursuant to  
 124 section seven, article five of this chapter, the minimum  
 125 period of revocation is eighteen months, and the minimum  
 126 period for the use of the ignition interlock device is two  
 127 years, or that period set forth in subdivision (3), subsection  
 128 (e) of this section, whichever period is greater;

129 (5) An applicant for the test and lock program must  
 130 not have been convicted of any violation of section three,  
 131 article four, chapter seventeen-b of this code, for driving  
 132 while the applicant's driver's license was suspended or  
 133 revoked, within the two-year period preceding the date of  
 134 application for admission to the test and lock program;

135 (6) The commissioner is hereby authorized to allow  
 136 individuals in the test and lock program an additional  
 137 device or devices if such is necessary for employment  
 138 purposes.

139 (d) Upon permitting an eligible person to participate  
 140 in the program, the commissioner shall issue to such  
 141 person, and such person shall be required to exhibit on  
 142 demand, a driver's license which shall reflect that such  
 143 person is restricted to the operation of a motor vehicle  
 144 which is equipped with an approved motor vehicle alcohol  
 145 test and lock system.

146 (e) Any person who has completed the safety and  
 147 treatment program and who has not violated the terms  
 148 required by the commissioner of such person's

149 participation in the motor vehicle alcohol test and lock  
150 program shall be entitled to the restoration of such  
151 person's driver's license upon the expiration of:

152 (1) One hundred eighty days of the full revocation  
153 period imposed by the commissioner for a person  
154 described in subdivision (1) or (2), subsection (c) of this  
155 section;


156 (2) The full revocation period imposed by the  
157 commissioner for a person described in subdivision (3),  
158 subsection (c) of this section;

159 (3) One year from the date a person described in  
160 subdivision (4), subsection (c) of this section is permitted  
161 to operate a motor vehicle by the commissioner.

162 (f) A person whose license has been suspended  
163 pursuant to the provisions of subsection (l), section two of  
164 this article, who has completed the educational program,  
165 and who has not violated the terms required by the  
166 commissioner of such person's participation in the motor  
167 vehicle alcohol test and lock program shall be entitled to  
168 the reinstatement of his or her driver's license six months  
169 from the date the person is permitted to operate a motor  
170 vehicle by the commissioner. When a license has been  
171 reinstated pursuant to this subsection, the records ordering  
172 the suspension, records of any administrative hearing,  
173 records of any blood alcohol test results and all other  
174 records pertaining to the suspension shall be expunged by  
175 operation of law: *Provided*, That a person shall be entitled  
176 to expungement under the provisions of this subsection  
177 only once. The expungement shall be accomplished by  
178 physically marking the records to show that such records  
179 have been expunged, and by securely sealing and filing  
180 the records. Expungement shall have the legal effect as if  
181 the suspension never occurred. The records shall not be  
182 disclosed or made available for inspection, and in response  
183 to a request for record information, the commissioner  
184 shall reply that no information is available. Information  
185 from the file may be used by the commissioner for

186 research and statistical purposes so long as the use of such  
187 information does not divulge the identity of the person.

188 (g) In addition to any other penalty imposed by this  
189 code, any person who operates a motor vehicle not  
190 equipped with an approved motor vehicle alcohol test and  
191 lock system during such person's participation in the  
192 motor vehicle alcohol test and lock program is guilty of a  
193 misdemeanor, and, upon conviction thereof, shall be  
194 confined in the county jail for a period not less than one  
195 month nor more than six months and fined not less than  
196 one hundred dollars nor more than five hundred dollars.  
197 Any person who assists another person required by the  
198 terms of such other person's participation in the motor  
199 vehicle alcohol test and lock program to use a motor  
200 vehicle alcohol test and lock system in any effort to  
201 bypass the system, is guilty of a misdemeanor, and, upon  
202 conviction thereof, shall be confined in the county jail not  
203 more than six months and fined not less than one hundred  
204 dollars nor more than one thousand dollars: *Provided*,  
205 That notwithstanding any provision of this code to the  
206 contrary, a person enrolled and participating in the test  
207 and lock program may operate a motor vehicle solely at  
208 his or her job site, if such is a condition of his or her  
209 employment.



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

Randy Schorover  
Chairman Senate Committee

Ernest E. Moore  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Carroll E. Schuchman  
Clerk of the Senate

Donald L. Kapp  
Clerk of the House of Delegates

Earl Ray Tomblin  
President of the Senate

Robert C. Calvert  
Speaker of the House of Delegates

The within is approved this the 24th  
day of March, 1995.

Gaston Caperton  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/23/95

Time 11:55 am