WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

---

ENROLLED

Com. Sub. For

HOUSE BILL No. 2172

(By Delegate ...........................................)

---

Passed ........................................... 1995

In Effect Ninety Day from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2272

(BY DELEGATE LOVE)

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

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.

(a) The division of motor vehicles shall control and regulate a motor vehicle alcohol test and lock program for persons whose licenses have been revoked pursuant to this article or the provisions of article five of this chapter. Such program shall include the establishment of a users fee for persons participating in the program which shall be paid in advance and deposited into the driver's rehabilitation fund. Except where specified otherwise, the use of the term "program" in this section refers to the motor vehicle alcohol test and lock program. The commissioner of the division of motor vehicles shall propose legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section. Such rules shall also prescribe those requirements which, in addition to the requirements specified by this section for eligibility to participate in the program, the commissioner determines must be met to obtain the commissioner's approval to operate a motor vehicle equipped with a motor vehicle alcohol test and lock system. For purposes of this section, a "motor vehicle alcohol test and lock system" means a mechanical or computerized system which, in the opinion of the commissioner, prevents the operation of a motor vehicle when, through the system's assessment of the blood alcohol content of the person operating or attempting to operate the vehicle, such person is determined to be under the influence of alcohol.

(b) (1) Any person whose license has been revoked pursuant to this article or the provisions of article five of this chapter is eligible to participate in the program when such person's minimum revocation period as specified by subsection (c) of this section has expired and such person is enrolled in or has successfully completed the safety and treatment program or presents proof to the commissioner within sixty days of receiving approval to participate by
the commissioner that he or she is enrolled in a safety and
treatment program: Provided, That no person whose
license has been revoked pursuant to the provisions of
section one-a of this article for conviction of an offense
defined in subsections (a) or (b), section two, article five of
this chapter, or pursuant to the provisions of subsections
(f) or (g), section two of this article, shall be eligible for
participation in the program: Provided, however, That any
person whose license is revoked pursuant to this article or
pursuant to article five of this chapter for an act which
occurred either while participating in or after successfully
completing the program shall not again be eligible to
participate in such program.

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

(A) If not already enrolled, the person will enroll in
and complete the educational program provided for in
subsection (c), section three of this article at the earliest
time that placement in the educational program is
available, unless good cause is demonstrated to the
commissioner as to why placement should be postponed;
(B) The person will pay all costs of the educational program, any administrative costs and all costs assessed for any suspension hearing.

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

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

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

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

(3) For a person whose license has been revoked for a second offense pursuant to the provisions of section one-a of this article for conviction of an offense defined in section two, article five of this chapter, or pursuant to
section two of this article, the minimum period of
revocation before such person is eligible for participation
in the test and lock program is nine months, and the
minimum period for the use of the ignition interlock
device is eighteen months, or that period set forth in
subdivision (2), subsection (e) of this section, whichever
period is greater;

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

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

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

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

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

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

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

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

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

(f) A person whose license has been suspended
pursuant to the provisions of subsection (l), section two of
this article, who has completed the educational program,
and who has not violated the terms required by the
commissioner of such person's participation in the motor
vehicle alcohol test and lock program shall be entitled to
the reinstatement of his or her driver's license six months
from the date the person is permitted to operate a motor
vehicle by the commissioner. When a license has been
reinstated pursuant to this subsection, the records ordering
the suspension, records of any administrative hearing,
records of any blood alcohol test results and all other
records pertaining to the suspension shall be expunged by
operation of law: Provided, That a person shall be entitled
to expungement under the provisions of this subsection
only once. The expungement shall be accomplished by
physically marking the records to show that such records
have been expunged, and by securely sealing and filing
the records. Expungement shall have the legal effect as if
the suspension never occurred. The records shall not be
disclosed or made available for inspection, and in response
to a request for record information, the commissioner
shall reply that no information is available. Information
from the file may be used by the commissioner for
research and statistical purposes so long as the use of such
information does not divulge the identity of the person.

(g) In addition to any other penalty imposed by this
code, any person who operates a motor vehicle not
equipped with an approved motor vehicle alcohol test and
lock system during such person's participation in the
motor vehicle alcohol test and lock program is guilty of a
misdemeanor, and, upon conviction thereof, shall be
confined in the county jail for a period not less than one
month nor more than six months and fined not less than
one hundred dollars nor more than five hundred dollars.

Any person who assists another person required by the
terms of such other person's participation in the motor
vehicle alcohol test and lock program to use a motor
vehicle alcohol test and lock system in any effort to
bypass the system, is guilty of a misdemeanor, and, upon
conviction thereof, shall be confined in the county jail not
more than six months and fined not less than one hundred
dollars nor more than one thousand dollars: Provided,
That notwithstanding any provision of this code to the
contrary, a person enrolled and participating in the test
and lock program may operate a motor vehicle solely at
his or her job site, if such is a condition of his or her
employment.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schommer
Chairman Senate Committee

Ernest E. Moore
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Barrett Clark
Clerk of the Senate

Donald L. Kapp
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Speaker of the House of Delegates

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

Governor

[Signature]