WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2005

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2444

(By Delegates Amores, Palumbo, Pethtel, Stemple and Craig)

Passed April 9, 2005

In Effect Ninety Days from Passage
AN ACT to amend and reenact §17C-5-2 of the code of West Virginia, 1931, as amended; and to amend reenact §17C-5A-3a, all relating to compliance with federal funding requirements regarding driving under the influence offenders; limiting work release to convictions for a first offense; and the creation of mandatory periods of electronically monitored home confinement.

Be it enacted by the Legislature of West Virginia:

That section §17C-5-2 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §17C-5A-3a of said code be amended and reenacted, all to read as follows:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.
$17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

(a) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure; and

(3) Commits the act or failure in reckless disregard of the safety of others, and when the influence of alcohol, controlled substances or drugs is shown to be a contributing cause to the death, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than ten years and shall be fined not less than one thousand dollars nor more than three thousand dollars.

(b) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol; or
(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes the death of any person within one year next following the act or failure, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than ninety days nor more than one year and shall be fined not less than five hundred dollars nor more than one thousand dollars.

(c) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes bodily injury
to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than one year, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(d) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than six months, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(e) Any person who, being an habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this state, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than one day nor more than six months, which jail term is to include actual confinement of not less than twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars.
(f) Any person who:

(1) Knowingly permits his or her vehicle to be driven in this state by any other person who:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight;

(2) Is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(g) Any person who knowingly permits his or her vehicle to be driven in this state by any other person who is an habitual user of narcotic drugs or amphetamine or any derivative thereof, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not more than six months and shall be fined not less than one hundred dollars nor more than five hundred dollars.

(h) Any person under the age of twenty-one years who drives a vehicle in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under this subsection, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one
hundred dollars. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for twenty-four hours, and shall be fined not less than one hundred dollars nor more than five hundred dollars. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings, from time to time, to allow the person to participate in the vehicle alcohol test and lock program as provided for in section three-a, article five-a of this chapter. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person’s record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection may not be construed as an admission or be used as evidence.

A person arrested and charged with an offense under the provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(i) Any person who:

(1) Drives a vehicle in this state while he or she:

(A) Is under the influence of alcohol; or

(B) Is under the influence of any controlled substance; or

(C) Is under the influence of any other drug; or

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and
(2) The person when so driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their sixteenth birthday, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than two days nor more than twelve months, which jail term is to include actual confinement of not less than forty-eight hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

(j) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section, for the second offense under this section, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than six months nor more than one year, and the court may, in its discretion, impose a fine of not less than one thousand dollars nor more than three thousand dollars.

(k) A person violating any provision of subsection (b), (c), (d), (e), (f), (g) or (i) of this section, for the third or any subsequent offense under this section, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one nor more than three years, and the court may, in its discretion, impose a fine of not less than three thousand dollars nor more than five thousand dollars.

(l) For purposes of subsections (j) and (k) of this section relating to second, third and subsequent offenses, the following types of convictions are to be regarded as convictions under this section:

(1) Any conviction under the provisions of subsection (a), (b), (c), (d), (e) or (f) of this section or under a prior enactment of this section for an offense which occurred within the ten-year period immediately preceding the date of arrest in the current proceeding;
(2) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), (c), (d), (e), (f) or (g) of this section, which offense occurred within the ten-year period immediately preceding the date of arrest in the current proceeding.

(m) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time period for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that case, the warrant or indictment or information must set forth the date, location and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final.

(n) The fact that any person charged with a violation of subsection (a), (b), (c), (d) or (e) of this section, or any person permitted to drive as described under subsection (f) or (g) of this section, is or has been legally entitled to use alcohol, a controlled substance or a drug does not constitute a defense against any charge of violating subsection (a), (b), (c), (d), (e), (f) or (g) of this section.

(o) For purposes of this section, the term “controlled substance” has the meaning ascribed to it in chapter sixty-a of this code.

(p) The sentences provided herein upon conviction for a violation of this article are mandatory and may not be subject to suspension or probation: Provided, That the court may apply
the provisions of article eleven-a, chapter sixty-two of this code
to a person sentenced or committed to a term of one year or less
for a first offense under this section. An order for home
detention by the court pursuant to the provisions of article
eleven-b of said chapter may be used as an alternative sentence
to any period of incarceration required by this section for a first
or subsequent offense: Provided, however, That for any period
of home incarceration ordered for a person convicted of second
offense under this section, electronic monitoring shall be
required for no fewer than five days of the total period of home
confinement ordered and the offender may not leave home for
those five days notwithstanding the provisions of section five,
article eleven-b, chapter sixty-two of this code: Provided
further, That for any period of home incarceration ordered for
a person convicted of a third or subsequent violation of this
section, electronic monitoring shall be included for no fewer
than ten days of the total period of home confinement ordered
and the offender may not leave home for those ten days
notwithstanding section five, article eleven-b, chapter sixty-two
of this code.

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, or have been convicted
under section two, article five of this chapter. The program shall
include the establishment of a users fee for persons participat-
ing 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. The 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, the person is determined to be under the influence of alcohol.

(b) (1) Any person whose license is revoked for the first time pursuant to this article or the provisions of article five of this chapter is eligible to participate in the program when the person's minimum revocation period as specified by subsection (c) of this section has expired and the 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.

(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 eight 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 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 or after the person’s eight-
teenth 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 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 place-
ment 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 pro-
gram, 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 under
this subsection may operate a motor vehicle unless approved to
do so by the commissioner.

(c) A person who participates in the program under
subdivision (1), subsection (b) of this section is subject to a
minimum revocation period and minimum period for the use of
the ignition interlock device 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
subsection (d) or (f), section two, article five of this chapter or
pursuant to subsection (i), section two of this article, the
minimum period of revocation 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;

(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 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;

(3) For a person whose license has been revoked for a first
offense pursuant to the provisions of section one-a of this
article for conviction of an offense defined in subsection (a),
section two, article five of this chapter or pursuant to subsection
(f), section two of this article, the minimum period of revoca-
tion before the person is eligible for participation in the test and
lock program is twelve months and the minimum period for the
use of the ignition interlock device is two years;

(4) For a person whose license has been revoked for a first
offense pursuant to the provisions of section one-a of this
article for conviction of an offense defined in subsection (b),
section two, article five of this chapter or pursuant to subsection
(g), section two of this article, the minimum period of revoca-
tion is six months and the minimum period for the use of the
ignition interlock device is two years;

(5) For a person whose license has been revoked for a first
offense pursuant to the provisions of section one-a of this
article for conviction of an offense defined in subsection (c),
section two, article five of this chapter or pursuant to subsection
(h), section two of this article, the minimum period of revoca-
tion for participation in the program is two months and the
minimum period for the use of the ignition interlock device is
one year;
(6) For a person whose license has been revoked for a first offense pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsection (i), section two, article five of this chapter or pursuant to subsection (m), section two of this article, the minimum period of revocation for participation in the program is two months and the minimum period for the use of the ignition interlock device is ten months;

(d) Notwithstanding any provision of the code to the contrary, a person shall participate in the program if the person is convicted under section two, article five of this chapter or the person’s license is revoked under section two of this article or section seven, article five of this chapter and the person was previously either convicted or license was revoked under any provision cited in this subsection within the past ten years. The minimum revocation period for a person required to participate in the program under this subsection is one year and the minimum period for the use of the ignition interlock device is two years, except that the minimum revocation period for a person required to participate because of a violation of subsection (l), section two of this article or subsection (h), section two, article five of this chapter is two months and the minimum period of participation is one year. The division will add one year to the minimum period for the use of the ignition interlock device for each additional previous conviction or revocation within the past ten years. Any person required to participate under this subsection must have an ignition interlock device installed on every vehicle he or she owns or operates.

(e) An applicant for the test and lock program may 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 six-month period preceding the date of application for admission to
the test and lock program; such is necessary for employment purposes.

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

(g) The commissioner may extend the minimum period of revocation and the minimum period of participation in the program for a person who violates the terms and conditions of participation in the program as found in this section, or legislative rule, or any agreement or contract between the participant and the division or program service provider.

(h) A person whose license has been suspended pursuant to the provisions of subsection (1), section two of this article who has completed the educational program, and who has not violated the terms required by the commissioner of the person’s participation in the program, is 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 is entitled to expungement under the provisions of this subsection only once. The expungement shall be accomplished by physically marking the records to show that the records have been expunged and by securely sealing and filing the records. Expungement has the legal effect as if the suspension never occurred. The records may 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 the information does
not divulge the identity of the person.

(i) 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 or regional 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 attempts to bypass the alcohol
test and lock system is guilty of a misdemeanor and, upon
conviction thereof, shall be confined in the county or regional
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. For the purpose of this
section, job site does not include any street or highway open to
the use of the public for purposes of vehicular traffic.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 3rd day of May 2005.

Governor
PRESENTED TO THE GOVERNOR

MAY 2 2005

Time ___________