WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 434
(Senator Beach, original sponsor)

[Passed March 8, 2014; in effect ninety days from passage.]
AN ACT to amend and reenact §17C-5A-3a of the Code of West Virginia, 1931, as amended, relating to the establishment of and participation in the Motor Vehicle Alcohol Test and Lock Program; allowing the deferral of the revocation period for certain DUI offenses through participation in the program; waiving the revocation period for certain DUI offenses upon successful completion of the program for a period including the applicable minimum period for the use of the ignition interlock device plus an additional period equal to the applicable minimum revocation period; providing that acceptance into the program constitutes a waiver of the administrative hearing and that the Office of Administrative Hearings shall conduct no hearing on a matter on which a person is actively participating in the program; and making technical and descriptive corrections.

Be it enacted by the Legislature of West Virginia:

That §17C-5A-3a of the Code of West Virginia, 1931, 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) (1) 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Motor Vehicles shall control and regulate a Motor Vehicle Alcohol Test and Lock Program for persons whose licenses have been revoked pursuant to this article or the provisions of article five of this chapter or have been convicted under section two, article five of this chapter, or who are serving a term of a conditional probation pursuant to section two-b, article five of this chapter.

(2) The program shall include the establishment of a user’s fee for persons participating in the program which shall be paid in advance and deposited into the Driver’s Rehabilitation Fund: Provided, That on and after July 1, 2007, any unexpended balance remaining in the Driver’s Rehabilitation Fund shall be transferred to the Motor Vehicle Fees Fund created under the provisions of section twenty-one, article two, chapter seventeen-a of this code and all further fees collected shall be deposited in that fund.

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

(B) 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.

(C) Nothing in this section may be construed to prohibit day-report or community correction programs authorized pursuant to article eleven-c, chapter sixty-two of this code, or a home incarceration program authorized pursuant to article eleven-b, chapter sixty-two of this code, from being a provider of motor vehicle alcohol test and lock systems for eligible participants as authorized by this section.

(4) 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.

(5) The fee for installation and removal of ignition interlock devices shall be waived for persons determined to be indigent by the Department of Health and Human Resources pursuant to section three, article five-a, chapter seventeen-c of this code. The commissioner shall establish by legislative rule, proposed pursuant to article three, chapter twenty-nine-a of this code, procedures to be followed with regard to persons determined by the Department of Health and Human Resources to be indigent. The rule shall include, but is not limited to, promulgation of application forms; establishment of procedures for the review of applications; and the establishment of a mechanism for the payment of installations for eligible offenders.
(6) On or before January 15 of each year, the Commissioner of the Division of Motor Vehicles shall report to the Legislature on:

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

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

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

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

(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: Provided, That anyone whose license is revoked for the first time for driving with a blood alcohol concentration of fifteen hundredths of one percent or more, by weight, must 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 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 eighteen 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 shall enroll in and complete the educational program provided in subsection (d), 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 shall 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, a person eligible to participate in the program under this subsection may not 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 for driving under the influence of
alcohol, or a combination of alcohol and any controlled
substance or other drug, or with a blood alcohol
concentration of eight hundredths of one percent, by weight,
but less than fifteen hundredths, by weight, the minimum
period of revocation for participation in the test and lock
program is fifteen days and the minimum period for the use
of the ignition interlock device is one hundred and twenty-
five days;

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

(3) For a person whose license has been revoked for a
first offense for driving with a blood alcohol concentration of
fifteen hundredths of one percent or more, by weight, the
minimum period of revocation for participation in the test and
lock program is forty-five days and the minimum period for
the use of the ignition interlock device is two hundred
seventy days;

(4) For a person whose license has been revoked for a
first offense for driving under the influence of alcohol, or a
combination of alcohol and any controlled substance or other
drug, or with a blood alcohol concentration of eight
hundredths of one percent or more, by weight, or did drive 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, and while driving
does any act forbidden by law or fails to perform any duty
imposed by law, which act or failure proximately causes the
death of any person within one year next following the act or
failure, and 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, the minimum period of revocation 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;

(5) For a person whose license has been revoked for a
first offense for driving under the influence of alcohol, or a
combination of alcohol and any controlled substance or other
drug, or with a blood alcohol concentration of eight
hundredths of one percent or more, by weight, and while
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, the minimum
period of revocation is six months and the minimum period
for the use of the ignition interlock device is two years;

(6) For a person whose license has been revoked for a
first offense for driving under the influence of alcohol, or a
combination of alcohol and any controlled substance or other
drug, or with a blood alcohol concentration of eight
hundredths of one percent or more, by weight, and while
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, 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 one year;
(7) For a person whose license has been revoked for a first offense for driving under the influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or with a blood alcohol concentration of eight hundredths of one percent or more, by weight, and while driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their sixteenth birthday, 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 his or her 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 for driving while under the age of twenty-one with a blood alcohol concentration of two hundredths of one percent, or more, by weight, but less than eight hundredths of one percent, or more, by weight, is two months and the minimum period of participation is one year. The division shall add an additional two months to the minimum period for the use of the ignition interlock device if the offense was committed while a minor was in the vehicle. The division shall add an additional six months to the minimum period for the use of the ignition interlock device if a person other than the driver received injuries. The division shall add an additional two
years to the minimum period for the use of the ignition
interlock device if a person other than the driver is injured
and the injuries result in that person's death. The division
shall 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)(1) If a person applies for and is accepted into the
Motor Vehicle Alcohol Test and Lock Program prior to the
effective date of the revocation, the commissioner shall defer
the revocation period of such person under the provisions of
this section. Such deferral shall continue throughout the
applicable minimum period for the use of the ignition
interlock device plus an additional period equal to the
applicable minimum revocation period. If a person
successfully completes all terms of the Motor Vehicle
Alcohol Test and Lock Program for a period equal to the
minimum period for the use of the ignition interlock device
pursuant to subsection (c) of this section, plus any applicable
minimum revocation period, the commissioner shall waive
the revocation period.

(2) The application and acceptance of a person into the
Motor Vehicle Alcohol Test and Lock Program pursuant to
this subdivision (1) constitutes an automatic waiver of their
right to an administrative hearing. The Office of
Administrative Hearings may not conduct a hearing on a
matter which is the basis for a person actively participating in
the Motor Vehicle Alcohol Test and Lock Program.

(f) Notwithstanding any other provision in this code, a
person whose license is revoked for driving under the
influence of drugs is not eligible to participate in the Motor Vehicle Alcohol Test and Lock Program.

(g) 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 unless such is necessary for employment purposes.

(h) 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.

(i) 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. If the commissioner finds that any person participating in the program pursuant to section two-b, article five of this chapter must be removed therefrom for violation(s) of the terms and conditions thereof, he or she shall notify the person, the court that imposed the term of participation in the program and the prosecuting attorney in the county wherein the order imposing participation in the program was entered.

(j) A person whose license has been suspended for a first offense of driving while under the age of twenty-one with a blood alcohol concentration of two hundredths of one percent, or more, by weight, but less than eight hundredths of
one percent, or more, by weight, 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.

(k) 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 that 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 jail for a period not less than one month nor more than six months and fined not less than $100 nor more than $500. 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 jail not more than six months and fined not less than $100 nor more than $1,000: 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 the operation 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Member—Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

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 bill is approved this 28th Day of March, 2014.

Governor
PRESENTED TO THE GOVERNOR

MAR 21 2014

Time 2:50 pm