

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 434**

5 (SENATOR BEACH, *original sponsor*)

6 _____
7 [Passed March 8, 2014; in effect ninety days from passage.]
8 _____

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10
11 AN ACT to amend and reenact §17C-5A-3a of the Code of West
12 Virginia, 1931, as amended, relating to the establishment of
13 and participation in the Motor Vehicle Alcohol Test and Lock
14 Program; allowing the deferral of the revocation period for
15 certain DUI offenses through participation in the program;
16 waiving the revocation period for certain DUI offenses upon
17 successful completion of the program for a period including
18 the applicable minimum period for the use of the ignition
19 interlock device plus an additional period equal to the
20 applicable minimum revocation period; providing that
21 acceptance into the program constitutes a waiver of the
22 administrative hearing and that the Office of Administrative
23 Hearings shall conduct no hearing on a matter on which a
24 person is actively participating in the program; and making

1 technical and descriptive corrections.

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

3 That §17C-5A-3a of the Code of West Virginia, 1931, as
4 amended, be amended and reenacted to read as follows:

5 **ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND**
6 **REVOCAION OF LICENSES FOR DRIVING UNDER THE**
7 **INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR**
8 **DRUGS.**

9 **§17C-5A-3a. Establishment of and participation in the Motor**
10 **Vehicle Alcohol Test and Lock Program.**

11 (a) (1) The Division of Motor Vehicles shall control and
12 regulate a Motor Vehicle Alcohol Test and Lock Program for persons
13 whose licenses have been revoked pursuant to this article or the
14 provisions of article five of this chapter or have been convicted
15 under section two, article five of this chapter, or who are serving
16 a term of a conditional probation pursuant to section two-b,
17 article five of this chapter.

18 (2) The program shall include the establishment of a user's
19 fee for persons participating in the program which shall be paid in
20 advance and deposited into the Driver's Rehabilitation Fund:
21 *Provided, That on and after July 1, 2007, any unexpended balance*
22 *remaining in the Driver's Rehabilitation Fund shall be transferred*
23 *to the Motor Vehicle Fees Fund created under the provisions of*
24 *section twenty-one, article two, chapter seventeen-a of this code*

1 and all further fees collected shall be deposited in that fund.

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

5 (B) The Commissioner of the Division of Motor Vehicles shall
6 propose legislative rules for promulgation in accordance with the
7 provisions of chapter twenty-nine-a of this code for the purpose of
8 implementing the provisions of this section. The rules shall also
9 prescribe those requirements which, in addition to the requirements
10 specified by this section for eligibility to participate in the
11 program, the commissioner determines must be met to obtain the
12 commissioner's approval to operate a motor vehicle equipped with a
13 motor vehicle alcohol test and lock system.

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

21 (4) For purposes of this section, a "motor vehicle alcohol
22 test and lock system" means a mechanical or computerized system
23 which, in the opinion of the commissioner, prevents the operation
24 of a motor vehicle when, through the system's assessment of the

1 blood alcohol content of the person operating or attempting to
2 operate the vehicle, the person is determined to be under the
3 influence of alcohol.

4 (5) The fee for installation and removal of ignition interlock
5 devices shall be waived for persons determined to be indigent by
6 the Department of Health and Human Resources pursuant to section
7 three, article five-a, chapter seventeen-c of this code. The
8 commissioner shall establish by legislative rule, proposed pursuant
9 to article three, chapter twenty-nine-a of this code, procedures to
10 be followed with regard to persons determined by the Department of
11 Health and Human Resources to be indigent. The rule shall include,
12 but is not limited to, promulgation of application forms;
13 establishment of procedures for the review of applications; and the
14 establishment of a mechanism for the payment of installations for
15 eligible offenders.

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

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

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

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

24 (D) The total cost of the program to the state during the

1 prior year.

2 (b) (1) Any person whose license is revoked for the first time
3 pursuant to this article or the provisions of article five of this
4 chapter is eligible to participate in the program when the person's
5 minimum revocation period as specified by subsection (c) of this
6 section has expired and the person is enrolled in or has
7 successfully completed the safety and treatment program or presents
8 proof to the commissioner within sixty days of receiving approval
9 to participate by the commissioner that he or she is enrolled in a
10 safety and treatment program: *Provided*, That anyone whose license
11 is revoked for the first time for driving with a blood alcohol
12 concentration of fifteen hundredths of one percent or more, by
13 weight, must participate in the program when the person's minimum
14 revocation period as specified by subsection (c) of this section
15 has expired and the person is enrolled in or has successfully
16 completed the safety and treatment program or presents proof to the
17 commissioner within sixty days of receiving approval to participate
18 by the commissioner that he or she is enrolled in a safety and
19 treatment program.

20 (2) Any person whose license has been suspended for driving
21 a motor vehicle while under the age of twenty-one years with an
22 alcohol concentration in his or her blood of two hundredths of one
23 percent or more, by weight, but less than eight hundredths of one
24 percent, by weight, is eligible to participate in the program

1 after thirty days have elapsed from the date of the initial
2 suspension, during which time the suspension was actually in
3 effect: *Provided*, That in the case of a person under the age of
4 eighteen, the person is eligible to participate in the program
5 after thirty days have elapsed from the date of the initial
6 suspension, during which time the suspension was actually in
7 effect or after the person's eighteenth birthday, whichever is
8 later. Before the commissioner approves a person to operate a
9 motor vehicle equipped with a motor vehicle alcohol test and lock
10 system, the person must agree to comply with the following
11 conditions:

12 (A) If not already enrolled, the person shall enroll in and
13 complete the educational program provided in subsection (d),
14 section three of this article at the earliest time that placement
15 in the educational program is available, unless good cause is
16 demonstrated to the commissioner as to why placement should be
17 postponed;

18 (B) The person shall pay all costs of the educational
19 program, any administrative costs and all costs assessed for any
20 suspension hearing.

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

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

5 (1) For a person whose license has been revoked for a first
6 offense for six months for driving under the influence of alcohol,
7 or a combination of alcohol and any controlled substance or other
8 drug, or with a blood alcohol concentration of eight hundredths
9 of one percent, by weight, but less than fifteen hundredths, by
10 weight, the minimum period of revocation for participation in the
11 test and lock program is fifteen days and the minimum period for
12 the use of the ignition interlock device is one hundred twenty-
13 five days;

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

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

1 (4) For a person whose license has been revoked for a first
2 offense for driving under the influence of alcohol, or a
3 combination of alcohol and any controlled substance or other drug,
4 or with a blood alcohol concentration of eight hundredths of one
5 percent or more, by weight, or did drive a motor vehicle while
6 under the age of twenty-one years with an alcohol concentration
7 in his or her blood of two hundredths of one percent or more, by
8 weight, but less than eight hundredths of one percent, by weight,
9 and while driving does any act forbidden by law or fails to
10 perform any duty imposed by law, which act or failure proximately
11 causes the death of any person within one year next following the
12 act or failure, and commits the act or failure in reckless
13 disregard of the safety of others and when the influence of
14 alcohol, controlled substances or drugs is shown to be a
15 contributing cause to the death, the minimum period of revocation
16 before the person is eligible for participation in the test and
17 lock program is twelve months and the minimum period for the use
18 of the ignition interlock device is two years;

19 (5) For a person whose license has been revoked for a first
20 offense for driving under the influence of alcohol, or a
21 combination of alcohol and any controlled substance or other drug,
22 or with a blood alcohol concentration of eight hundredths of one
23 percent or more, by weight, and while driving does any act
24 forbidden by law or fails to perform any duty imposed by law in

1 the driving of the vehicle, which act or failure proximately
2 causes the death of any person within one year next following the
3 act or failure, the minimum period of revocation is six months and
4 the minimum period for the use of the ignition interlock device
5 is two years;

6 (6) For a person whose license has been revoked for a first
7 offense for driving under the influence of alcohol, or a
8 combination of alcohol and any controlled substance or other drug,
9 or with a blood alcohol concentration of eight hundredths of one
10 percent or more, by weight, and while driving does any act
11 forbidden by law or fails to perform any duty imposed by law in
12 the driving of the vehicle, which act or failure proximately
13 causes bodily injury to any person other than himself or herself,
14 the minimum period of revocation for participation in the program
15 is two months and the minimum period for the use of the ignition
16 interlock device is one year;

17 (7) For a person whose license has been revoked for a first
18 offense for driving under the influence of alcohol, or a
19 combination of alcohol and any controlled substance or other drug,
20 or with a blood alcohol concentration of eight hundredths of one
21 percent or more, by weight, and while driving has on or within the
22 motor vehicle one or more other persons who are unemancipated
23 minors who have not reached their sixteenth birthday, the minimum
24 period of revocation for participation in the program is two

1 months and the minimum period for the use of the ignition
2 interlock device is ten months.

3 (d) Notwithstanding any provision of the code to the
4 contrary, a person shall participate in the program if the person
5 is convicted under section two, article five of this chapter or
6 the person's license is revoked under section two of this article
7 or section seven, article five of this chapter and the person was
8 previously either convicted or his or her license was revoked
9 under any provision cited in this subsection within the past ten
10 years. The minimum revocation period for a person required to
11 participate in the program under this subsection is one year and
12 the minimum period for the use of the ignition interlock device
13 is two years, except that the minimum revocation period for a
14 person required to participate because of a violation for driving
15 while under the age of twenty-one with a blood alcohol
16 concentration of two hundredths of one percent, or more, by
17 weight, but less than eight hundredths of one percent, or more,
18 by weight, is two months and the minimum period of participation
19 is one year. The division shall add an additional two months to
20 the minimum period for the use of the ignition interlock device
21 if the offense was committed while a minor was in the vehicle.
22 The division shall add an additional six months to the minimum
23 period for the use of the ignition interlock device if a person
24 other than the driver received injuries. The division shall add

1 an additional two years to the minimum period for the use of the
2 ignition interlock device if a person other than the driver is
3 injured and the injuries result in that person's death. The
4 division shall add one year to the minimum period for the use of
5 the ignition interlock device for each additional previous
6 conviction or revocation within the past ten years. Any person
7 required to participate under this subsection must have an
8 ignition interlock device installed on every vehicle he or she
9 owns or operates.

10 (e) (1) If a person applies for and is accepted into the Motor
11 Vehicle Alcohol Test and Lock Program prior to the effective date
12 of the revocation, the commissioner shall defer the revocation
13 period of such person under the provisions of this section. Such
14 deferral shall continue throughout the applicable minimum period
15 for the use of the ignition interlock device plus an additional
16 period equal to the applicable minimum revocation period. If a
17 person successfully completes all terms of the Motor Vehicle
18 Alcohol Test and Lock Program for a period equal to the minimum
19 period for the use of the ignition interlock device pursuant to
20 subsection (c) of this section, plus any applicable minimum
21 revocation period, the commissioner shall waive the revocation
22 period.

23 (2) The application and acceptance of a person into the Motor
24 Vehicle Alcohol Test and Lock Program pursuant to this subdivision

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

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

10 (g) An applicant for the test and lock program may not have
11 been convicted of any violation of section three, article four,
12 chapter seventeen-b of this code for driving while the applicant's
13 driver's license was suspended or revoked within the six-month
14 period preceding the date of application for admission to the test
15 and lock program unless such is necessary for employment purposes.

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

22 (i) The commissioner may extend the minimum period of
23 revocation and the minimum period of participation in the program
24 for a person who violates the terms and conditions of

1 participation in the program as found in this section, or
2 legislative rule, or any agreement or contract between the
3 participant and the division or program service provider. If the
4 commissioner finds that any person participating in the program
5 pursuant to section two-b, article five of this chapter must be
6 removed therefrom for violation(s) of the terms and conditions
7 thereof, he or she shall notify the person, the court that imposed
8 the term of participation in the program and the prosecuting
9 attorney in the county wherein the order imposing participation
10 in the program was entered.

11 (j) A person whose license has been suspended for a first
12 offense of driving while under the age of twenty-one with a blood
13 alcohol concentration of two hundredths of one percent, or more,
14 by weight, but less than eight hundredths of one percent, or more,
15 by weight, who has completed the educational program and who has
16 not violated the terms required by the commissioner of the
17 person's participation in the program is entitled to the
18 reinstatement of his or her driver's license six months from the
19 date the person is permitted to operate a motor vehicle by the
20 commissioner. When a license has been reinstated pursuant to this
21 subsection, the records ordering the suspension, records of any
22 administrative hearing, records of any blood alcohol test results
23 and all other records pertaining to the suspension shall be
24 expunged by operation of law: *Provided*, That a person is entitled

1 to expungement under the provisions of this subsection only once.
2 The expungement shall be accomplished by physically marking the
3 records to show that the records have been expunged and by
4 securely sealing and filing the records. Expungement has the
5 legal effect as if the suspension never occurred. The records may
6 not be disclosed or made available for inspection and in response
7 to a request for record information, the commissioner shall reply
8 that no information is available. Information from the file may
9 be used by the commissioner for research and statistical purposes
10 so long as the use of the information does not divulge the
11 identity of the person.

12 (k) In addition to any other penalty imposed by this code,
13 any person who operates a motor vehicle not equipped with an
14 approved motor vehicle alcohol test and lock system during that
15 person's participation in the Motor Vehicle Alcohol Test and Lock
16 Program is guilty of a misdemeanor and, upon conviction thereof,
17 shall be confined in jail for a period not less than one month nor
18 more than six months and fined not less than \$100 nor more than
19 \$500. Any person who attempts to bypass the alcohol test and lock
20 system is guilty of a misdemeanor and, upon conviction thereof,
21 shall be confined in jail not more than six months and fined not
22 less than \$100 nor more than \$1,000: *Provided,* That
23 notwithstanding any provision of this code to the contrary, a
24 person enrolled and participating in the test and lock program may

1 operate a motor vehicle solely at his or her job site if the
2 operation is a condition of his or her employment. For the
3 purpose of this section, "job site" does not include any street
4 or highway open to the use of the public for purposes of vehicular
5 traffic.