

**H. B. 4377**

(By Delegates Staggers, L. Phillips, Lynch,  
Stephens, Moye and Longstreth)

(By Request of the Department of Motor Vehicles)

[Introduced January 30, 2014; referred to the  
Committee on Roads and Transportation then the  
Judiciary.]

A BILL 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; defining offenses; and allowing the commissioner to  
defer revocation for DUI offenses if the offender completes  
the test and lock program and waives the right to  
administrative hearing.

*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**

1                                   **Vehicle Alcohol Test and Lock Program.**

2           (a) (1) The Division of Motor Vehicles shall control and  
3 regulate a Motor Vehicle Alcohol Test and Lock Program for persons  
4 whose licenses have been revoked pursuant to this article or the  
5 provisions of article five of this chapter or have been convicted  
6 under section two, article five of this chapter, or who are serving  
7 a term of a conditional probation pursuant to section two-b,  
8 article five of this chapter.

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

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

20           (B) The Commissioner of the Division of Motor Vehicles shall  
21 propose legislative rules for promulgation in accordance with the  
22 provisions of chapter twenty-nine-a of this code for the purpose of  
23 implementing the provisions of this section. The rules shall also  
24 prescribe those requirements which, in addition to the requirements

1 specified by this section for eligibility to participate in the  
2 program, the commissioner determines must be met to obtain the  
3 commissioner's approval to operate a motor vehicle equipped with a  
4 motor vehicle alcohol test and lock system.

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

12 (4) For purposes of this section, a "motor vehicle alcohol  
13 test and lock system" means a mechanical or computerized system  
14 which, in the opinion of the commissioner, prevents the operation  
15 of a motor vehicle when, through the system's assessment of the  
16 blood alcohol content of the person operating or attempting to  
17 operate the vehicle, the person is determined to be under the  
18 influence of alcohol.

19 (5) The fee for installation and removal of ~~ignition interlock~~  
20 ~~devices~~ the motor vehicle alcohol test and lock system shall be  
21 waived for persons determined to be indigent by the Department of  
22 Health and Human Resources pursuant to section three, article  
23 five-a, chapter seventeen-c of this code. The commissioner shall  
24 establish by legislative rule, proposed pursuant to article three,

1 chapter twenty-nine-a of this code, procedures to be followed with  
2 regard to persons determined by the Department of Health and Human  
3 Resources to be indigent. The rule shall include, but is not  
4 limited to, promulgation of application forms; establishment of  
5 procedures for the review of applications; and the establishment of  
6 a mechanism for the payment of installations for eligible  
7 offenders.

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

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

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

14 (C) The terms of any contracts with the providers of ~~ignition~~  
15 ~~interlock devices~~ motor vehicle alcohol test and lock systems; and

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

18 (b) (1) Any person whose license is revoked for the first time  
19 pursuant to this article or the provisions of article five of this  
20 chapter is eligible to participate in the program when the person's  
21 minimum revocation period as specified by subsection (c) of this  
22 section has expired and the person is enrolled in or has  
23 successfully completed the safety and treatment program or presents  
24 proof to the commissioner within sixty days of receiving approval

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

13 (2) Any person whose license has been suspended ~~pursuant to~~  
14 ~~the provisions of subsection (n), section two of this article~~ for  
15 driving a motor vehicle while under the age of twenty-one years  
16 with an alcohol concentration in his or her blood of two hundredths  
17 of one percent or more, by weight, but less than eight hundredths  
18 of one percent, by weight, is eligible to participate in the  
19 program after thirty days have elapsed from the date of the initial  
20 suspension, during which time the suspension was actually in  
21 effect: *Provided*, That in the case of a person under the age of  
22 eighteen, the person is eligible to participate in the program  
23 after thirty days have elapsed from the date of the initial  
24 suspension, during which time the suspension was actually in effect

1 or after the person's eighteenth birthday, whichever is later.  
2 Before the commissioner approves a person to operate a motor  
3 vehicle equipped with a motor vehicle alcohol test and lock system,  
4 the person must agree to comply with the following conditions:

5 (A) If not already enrolled, the person shall enroll in and  
6 complete the educational program provided in subsection (d),  
7 section three of this article at the earliest time that placement  
8 in the educational program is available, unless good cause is  
9 demonstrated to the commissioner as to why placement should be  
10 postponed;

11 (B) The person shall pay all costs of the educational program,  
12 any administrative costs and all costs assessed for any suspension  
13 hearing.

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

18 (c) A person who participates in the program under subdivision  
19 (1), subsection (b) of this section is subject to a minimum  
20 revocation period and minimum period for the use of the ~~ignition~~  
21 ~~interlock device~~ motor vehicle alcohol test and lock system as  
22 follows:

23 (1) For a person whose license has been revoked for a first  
24 offense for driving under the influence of alcohol or the combined

1 influence of alcohol, controlled substances, or drugs, or driving  
2 with a blood alcohol concentration of eight hundredths of one  
3 percent, by weight, but less than fifteen hundredths, by weight for  
4 a period of six months pursuant to the provisions of section one-a  
5 of this article for conviction of an offense defined in subsection  
6 (d) or (g), section two, article five of this chapter or pursuant  
7 to subsection (j), section two of this article, the minimum period  
8 of revocation for participation in the test and lock program is  
9 fifteen days and the minimum period for the use of the ~~ignition~~  
10 ~~interlock device~~ motor vehicle alcohol test and lock system is one  
11 hundred and twenty-five days;

12 (2) For a person whose license has been revoked for a first  
13 offense ~~pursuant to section seven, article five of this chapter~~ for  
14 refusing a secondary chemical test, the minimum period of  
15 revocation for participation in the test and lock program is  
16 forty-five days and the minimum period for the use of the ~~ignition~~  
17 ~~interlock device~~ motor vehicle test and lock system is one year;

18 (3) For a person whose license has been revoked for a first  
19 offense ~~pursuant to section one-a of this article for conviction of~~  
20 ~~an offense defined in subsection (e), section two, article five of~~  
21 ~~this chapter or pursuant to subsection (j), section two of this~~  
22 ~~article~~ for driving with a blood alcohol concentration of fifteen  
23 hundredths of one percent or more, by weight, the minimum period of  
24 revocation for participation in the test and lock program is

1 forty-five days and the minimum period for the use of the ~~ignition~~  
2 ~~interlock device~~ motor vehicle alcohol test and lock system is two  
3 hundred seventy days;

4 (4) For a person whose license has been revoked for a first  
5 offense ~~pursuant to the provisions of section one-a of this article~~  
6 ~~for conviction of an offense defined in subsection (a), section~~  
7 ~~two, article five of this chapter or pursuant to subsection (f),~~  
8 ~~section two of this article~~ for driving under the influence of  
9 alcohol, or the combined influence of alcohol and controlled  
10 substances or drugs, or with a blood alcohol concentration of eight  
11 hundredths of one percent or more by weight and proximately causing  
12 the death of another while committing an act forbidden by law or  
13 failing to perform a duty imposed by law in reckless disregard of  
14 the safety of others and the influence of alcohol, controlled  
15 substances or drugs or the alcohol concentration in the blood was  
16 a contributing cause to death, the minimum period of revocation  
17 before the person is eligible for participation in the test and  
18 lock program is twelve months and the minimum period for the use of  
19 the ~~ignition interlock device~~ motor vehicle alcohol test and lock  
20 system is two years;

21 (5) For a person whose license has been revoked for a first  
22 offense ~~pursuant to the provisions of section one-a of this article~~  
23 ~~for conviction of an offense defined in subsection (b), section~~  
24 ~~two, article five of this chapter or pursuant to subsection (g),~~

1 ~~section two of this article~~ for driving under the influence of  
2 alcohol, or the combined influence of alcohol and controlled  
3 substances or drugs, or with a blood alcohol concentration of eight  
4 hundredths of one percent or more by weight and proximately causing  
5 the death of another while committing an act forbidden by law or  
6 failing to perform a duty imposed by law, the minimum period of  
7 revocation is six months and the minimum period for the use of the  
8 ~~ignition interlock device~~ motor vehicle alcohol test and lock  
9 system is two years;

10 (6) For a person whose license has been revoked for a first  
11 offense ~~pursuant to the provisions of section one-a of this article~~  
12 ~~for conviction of an offense defined in subsection (c), section~~  
13 ~~two, article five of this chapter or pursuant to subsection (h),~~  
14 ~~section two of this article~~ for driving under the influence of  
15 alcohol, or the combined influence of alcohol and controlled  
16 substances or drugs, or with a blood alcohol concentration of eight  
17 hundredths of one percent or more by weight and proximately causing  
18 bodily injury to another while committing an act forbidden by law  
19 or failing to perform a duty imposed by law, the minimum period of  
20 revocation for participation in the program is two months and the  
21 minimum period for the use of the ~~ignition interlock device~~ motor  
22 vehicle alcohol test and lock system is one year;

23 (7) For a person whose license has been revoked for a first  
24 offense ~~pursuant to the provisions of section one-a of this article~~

1 ~~for conviction of an offense defined in subsection (j), section~~  
2 ~~two, article five of this chapter or pursuant to subsection (m),~~  
3 ~~section two of this article~~ for driving under the influence of  
4 alcohol, or the combined influence of alcohol and controlled  
5 substances or drugs, or with a blood alcohol concentration of eight  
6 hundredths of one percent or more by weight while having a  
7 passengers under the age of sixteen, the minimum period of  
8 revocation for participation in the program is two months and the  
9 minimum period for the use of the ~~ignition interlock device~~ motor  
10 vehicle alcohol test and lock system is ten months;

11 (d) Notwithstanding any provision of the code to the contrary  
12 including, but not limited to, subsection (e), section one-a of  
13 this article, a person shall participate in the program if the  
14 person is convicted under section two, article five of this chapter  
15 without regard to plea or the person's license is revoked under  
16 section ~~two~~ one-b of this article or section seven, article five of  
17 this chapter and the person was previously either convicted without  
18 regard to plea or his or her license was revoked under any  
19 provision cited in this subsection within the past ten years. The  
20 minimum revocation period for a person required to participate in  
21 the program under this subsection is one year and the minimum  
22 period for the use of the ~~ignition interlock device~~ motor vehicle  
23 alcohol test and lock system is two years, except that the minimum  
24 revocation period for a person required to participate because of

1 a violation of ~~subsection (n), section two of this article or~~  
2 ~~subsection (i), section two, article five of this chapter~~ driving  
3 while under the age of twenty-one with a blood alcohol  
4 concentration of two hundredths of one percent, or more, by weight,  
5 but less than eight hundredths of one percent, or more, by weight  
6 is two months and the minimum period of participation is one year.  
7 The division shall add an additional two months to the minimum  
8 period for the use of the ~~ignition interlock device~~ motor vehicle  
9 alcohol test and lock system if the offense was committed while a  
10 minor was in the vehicle. The division shall add an additional six  
11 months to the minimum period for the use of the ~~ignition interlock~~  
12 ~~device~~ motor vehicle alcohol test and lock system if a person other  
13 than the driver received injuries. The division shall add an  
14 additional two years to the minimum period for the use of the  
15 ~~ignition interlock device~~ motor vehicle alcohol test and lock  
16 system if a person other than the driver is injured and the  
17 injuries result in that person's death. The division shall add one  
18 year to the minimum period for the use of the ~~ignition interlock~~  
19 ~~device~~ motor vehicle alcohol test and lock system for each  
20 additional previous conviction or revocation within the past ten  
21 years. Any person required to participate under this subsection  
22 must have an ~~ignition interlock device~~ motor vehicle alcohol test  
23 and lock system installed on every vehicle he or she owns or  
24 operates.

1        (e) The commissioner may defer the revocation period of any  
2 person eligible to participate in the Motor Vehicle Alcohol Test  
3 and Lock Program under the provisions of subsections (c) or (d) of  
4 this section, if the person applies for the program prior to the  
5 effective date of the revocation, and agrees to the minimum period  
6 for the use of the motor vehicle alcohol test and lock system.  
7 Upon successful completion of the period for the use of the motor  
8 vehicle alcohol test and lock system and all other terms of the  
9 program, the commissioner may waive the revocation period. An  
10 election to participate in the Motor Vehicle Alcohol Test and Lock  
11 Program under this subsection constitutes a waiver of the  
12 administrative right provided in section two of this article.

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

17        ~~(f)~~ (g) An applicant for the test and lock program may not  
18 have been convicted of any violation of section three, article  
19 four, chapter seventeen-b of this code for driving while the  
20 applicant's driver's license was suspended or revoked within the  
21 six-month period preceding the date of application for admission to  
22 the test and lock program unless such is necessary for employment  
23 purposes.

24        ~~(g)~~ (h) Upon permitting an eligible person to participate in

1 the program, the commissioner shall issue to the person, and the  
2 person is required to exhibit on demand, a driver's license which  
3 shall reflect that the person is restricted to the operation of a  
4 motor vehicle which is equipped with an approved motor vehicle  
5 alcohol test and lock system.

6 ~~(h)~~ (i) The commissioner may extend the minimum period of  
7 revocation and the minimum period of participation in the program  
8 for a person who violates the terms and conditions of participation  
9 in the program as found in this section, or legislative rule, or  
10 any agreement or contract between the participant and the division  
11 or program service provider. If the commissioner finds that any  
12 person participating in the program pursuant to section two-b,  
13 article five of this chapter must be removed therefrom for  
14 violation(s) of the terms and conditions thereof, he or she shall  
15 notify the person, the court that imposed the term of participation  
16 in the program, and the prosecuting attorney in the county wherein  
17 the order imposing participation in the program was entered.

18 ~~(i)~~ (j) A person whose license has been suspended ~~pursuant to~~  
19 ~~the provisions of subsection (n), section two of this article for~~  
20 a first offense of driving while under the age of twenty-one with  
21 a blood alcohol concentration of two hundredths of one percent, or  
22 more, by weight, but less than eight hundredths of one percent, or  
23 more, by weight who has completed the educational program and who  
24 has not violated the terms required by the commissioner of the

1 person's participation in the program is entitled to the  
2 reinstatement of his or her driver's license six months from the  
3 date the person is permitted to operate a motor vehicle by the  
4 commissioner. When a license has been reinstated pursuant to this  
5 subsection, the records ordering the suspension, records of any  
6 administrative hearing, records of any blood alcohol test results  
7 and all other records pertaining to the suspension shall be  
8 expunged by operation of law: *Provided*, That a person is entitled  
9 to expungement under the provisions of this subsection only once.  
10 The expungement shall be accomplished by physically marking the  
11 records to show that the records have been expunged and by securely  
12 sealing and filing the records. Expungement has the legal effect  
13 as if the suspension never occurred. The records may not be  
14 disclosed or made available for inspection and in response to a  
15 request for record information, the commissioner shall reply that  
16 no information is available. Information from the file may be used  
17 by the commissioner for research and statistical purposes so long  
18 as the use of the information does not divulge the identity of the  
19 person.

20 ~~(j)~~ (k) In addition to any other penalty imposed by this code,  
21 any person who operates a motor vehicle not equipped with an  
22 approved motor vehicle alcohol test and lock system during that  
23 person's participation in the Motor Vehicle Alcohol Test and Lock  
24 Program is guilty of a misdemeanor and, upon conviction thereof,

1 shall be confined in jail for a period not less than one month nor  
2 more than six months and fined not less than \$100 nor more than  
3 \$500. Any person who attempts to bypass the alcohol test and lock  
4 system is guilty of a misdemeanor and, upon conviction thereof,  
5 shall be confined in jail not more than six months and fined not  
6 less than \$100 nor more than \$1,000: *Provided, That*  
7 notwithstanding any provision of this code to the contrary, a  
8 person enrolled and participating in the test and lock program may  
9 operate a motor vehicle solely at his or her job site if the  
10 operation is a condition of his or her employment. For the purpose  
11 of this section, job site does not include any street or highway  
12 open to the use of the public for purposes of vehicular traffic.

NOTE: The purpose of this bill is to allow the commissioner to waive the revocation period in exchange for the DUI offender's immediate installation of the Alcohol Test and Lock device and participation in the Alcohol Test and Lock Program when the offender waives the request for hearing.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.