

# VWEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

### ENROLLED

### Committee Substitute

for

## House Bill 2665

(BY DELEGATES FOLK, SKINNER, ESPINOSA,  
HOUSEHOLDER, FAIRCLOTH, OVERINGTON, UPSON,  
BLAIR, PERDUE, SOBONYA AND WAXMAN)

[Passed March 12, 2016; in effect ninety days from  
passage.]

1 AN ACT to amend and reenact §17C-5-2b of the Code of West Virginia, 1931, as amended,  
2 relating to deferral of further proceedings for certain first offenses of driving under the  
3 influence; making ineligible for the deferral program persons who refused the secondary  
4 chemical test; and making technical corrections.

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

1 That §17C-5-2b of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

**ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

**§17C-5-2b. Deferral of further proceedings for certain first offenses upon condition of participation in motor vehicle alcohol test and lock program; procedure on charge of violation of conditions.**

1 (a) Except as provided in subsections (g) of this section, whenever any person who has  
2 not previously been convicted of any offense under this article or under any statute of the United  
3 States or of any state relating to driving under the influence alcohol, any controlled substance or  
4 any other drug:

5 (1) Notifies the court within thirty days of his or her arrest of his or her intention to  
6 participate in a deferral pursuant to this section; and

7 (2) Pleads guilty to or is found guilty of driving under the influence of alcohol under  
8 subsection (d), section two of this article, the court, without entering a judgment of guilt and with  
9 the consent of the accused, shall defer further proceedings and, notwithstanding any provisions  
10 of this code to the contrary, place him or her on probation, which conditions shall include that he  
11 or she successfully completes the Motor Vehicle Alcohol Test and Lock Program as provided in  
12 section three-a, article five-a of this chapter. Participation therein shall be for a period of at least  
13 one hundred and sixty five days after he or she has served the fifteen days of license suspension  
14 imposed pursuant to section two, article five-a of this chapter.

15 (b) A defendant's election to participate in deferral under this section shall constitute a  
16 waiver of his or her right to an administrative hearing as provided in section two, article five-a of  
17 this chapter.

18 (c) (1) If the prosecuting attorney files a motion alleging that the defendant during the  
19 period of the Motor Vehicle Alcohol Test and Lock program has been removed therefrom by the  
20 Division of Motor Vehicles, or has failed to successfully complete the program before making a  
21 motion for dismissal pursuant to subsection (d) of this section, the court may issue such process  
22 as is necessary to bring the defendant before the court.

23 (2) A motion alleging such violation filed pursuant to subdivision (1) of this subsection must

24 be filed during the period of the Motor Vehicle Alcohol Test and Lock Program or, if filed thereafter,  
25 must be filed within a reasonable time after the alleged violation was committed.

26 (3) When the defendant is brought before the court, the court shall afford the defendant  
27 an opportunity to be heard. If the court finds that the defendant has been rightfully removed from  
28 the Motor Vehicle Alcohol Test and Lock Program by the Division of Motor Vehicles, the court  
29 may order, when appropriate, that the deferral be terminated, and thereupon enter an adjudication  
30 of guilt and proceed as otherwise provided.

31 (4) Should the defendant fail to complete or be removed from the Motor Vehicle Alcohol  
32 Test and Lock Program, the defendant waives the appropriate statute of limitations and the  
33 defendant's right to a speedy trial under any applicable federal or state constitutional provisions,  
34 statutes or rules of court during the period of enrollment in the program.

35 (d) When the defendant shall have completed satisfactorily the Motor Vehicle Alcohol Test  
36 and Lock Program and complied with its conditions, the defendant may move the court for an  
37 order dismissing the charges. This motion shall be supported by affidavit of the defendant and by  
38 certification of the Division of Motor Vehicles that the defendant has successfully completed the  
39 Motor Vehicle Alcohol Test and Lock Program. A copy of the motion shall be served on the  
40 prosecuting attorney who shall within thirty days after service advise the judge of any objections  
41 to the motion, serving a copy of such objections on the defendant or the defendant's attorney. If  
42 there are no objections filed within the thirty-day period, the court shall thereafter dismiss the  
43 charges against the defendant. If there are objections filed with regard to the dismissal of charges,  
44 the court shall proceed as set forth in subsection (c) of this section.

45 (e) Except as provided herein, unless a defendant adjudicated pursuant to this subsection  
46 be convicted of a subsequent violation of this article, discharge and dismissal under this section  
47 shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or  
48 disabilities imposed by law upon conviction of a crime except for those provided in article five-a  
49 of this chapter. Except as provided in subsection (k), (l) and (m), section two of this article

50 regarding subsequent offenses, the effect of the dismissal and discharge shall be to restore the  
51 person in contemplation of law to the status he or she occupied prior to arrest and trial. No person  
52 as to whom a dismissal and discharge have been effected shall be thereafter held to be guilty of  
53 perjury, false swearing, or otherwise giving a false statement by reason of his or her failure to  
54 disclose or acknowledge his or her arrest or trial in response to any inquiry made of him or her for  
55 any purpose other than any inquiry made in connection with any subsequent offense as that term  
56 is defined in subsection (m), section two of this article.

57 (f) There may be only one discharge and dismissal under this section with respect to any  
58 person.

59 (g) No person shall be eligible for dismissal and discharge under this section: (1) In any  
60 prosecution in which any violation of any other provision of this article has been charged; (2) if  
61 the person holds a commercial driver's license or operates commercial motor vehicle(s); ~~or~~ (3) if  
62 the person has previously had his or her driver's license revoked under section two-a of this article  
63 or under any statute of the United States or of any state relating to driving under the influence  
64 alcohol, any controlled substance or any other drug; or (4) if the person refused the secondary  
65 chemical test pursuant to section seven of this article.

66 (h) (1) After a period of not less than one year which shall begin to run immediately upon  
67 the expiration of a term of probation imposed upon any person under this section, the person may  
68 apply to the court for an order to expunge from all official records all recordations of his or her  
69 arrest, trial, and conviction, pursuant to this section except for those maintained by the Division  
70 of Motor Vehicles: *Provided*, That any person who has previously been convicted of a felony may  
71 not make a motion for expungement pursuant to this section.

72 (2) If the prosecuting attorney objects to the expungement, the objections shall be filed  
73 with the court within thirty days after service of a motion for expungement and copies of the  
74 objections shall be served on the defendant or the defendant's attorney.

75 (3) If the objections are filed, the court shall hold a hearing on the objections, affording all

76 parties an opportunity to be heard. If the court determines after a hearing that the person during  
77 the period of his or her probation and during the period of time prior to his or her application to  
78 the court under this subsection has not been guilty of any serious or repeated violation of the  
79 conditions of his or her probation, it shall order the expungement.

80 (i) Notwithstanding any provision of this code to the contrary, any person prosecuted for a  
81 violation of subsection ~~(d)~~(e), section two, article five of this chapter whose case is disposed of  
82 pursuant to the provisions of this section shall be liable for any court costs assessable against a  
83 person convicted of a violation of subsection~~(j)~~ (k), section two, article five of this chapter.  
84 Payment of such costs may be made a condition of probation. The costs assessed pursuant to  
85 this subsection, whether as a term of probation or not, shall be distributed as other court costs in  
86 accordance with section two, article three, chapter fifty; section four, article two-a, chapter  
87 fourteen; section four, article twenty-nine, chapter thirty; and sections two, seven and ten, article  
88 five, chapter sixty-two of this code.