

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 420

BY SENATORS RUCKER, KARNES, SMITH, SYPOLT,

TRUMP, CLINE, AND BOSO

[Originating in the Committee on the Judiciary;

Reported on February 21, 2018]

1 A BILL to amend and reenact §17C-5A-3 and §17C-5A-3a of the Code of West Virginia, 1931, as
2 amended, all relating to transferring the safety and treatment program, which treats and
3 educates people whose licenses were revoked due to concerns of alcohol and/or drug use
4 while operating a motor vehicle, from the Department of Health and Human Resources to
5 the Division of Motor Vehicles and amending references thereto in said code; transferring
6 moneys from the Department of Health and Human Resources Safety and Treatment
7 Fund to the Division of Motor Vehicles Safety and Treatment Fund; providing that a portion
8 of program provider fees be deposited in Division of Motor Vehicles Safety and Treatment
9 Fund; and transferring rule-making authority.

Be it enacted by the Legislature of West Virginia:

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

§17C-5A-3. Safety and treatment program; reissuance of license.

1 (a) ~~The Department of Health and Human Resources, Division of Alcoholism and Drug~~
2 ~~Abuse~~ Division of Motor Vehicles shall administer a comprehensive safety and treatment program
3 for persons whose licenses have been revoked under the provisions of this article, ~~or~~ §17C-5-7,
4 or §17B-3-5(6) of this code and shall also establish the minimum qualifications for mental health
5 facilities, day report centers, community correction centers, or other public agencies or private
6 entities conducting the safety and treatment program: *Provided*, That the ~~Department of Health~~
7 ~~and Human Resources, Division of Alcoholism and Drug Abuse~~ Division of Motor Vehicles may
8 establish standards whereby the division will accept or approve participation by violators in
9 another treatment program which provides the same or substantially similar benefits as the safety
10 and treatment program established pursuant to this section.

11 (b) The program shall include, but not be limited to, treatment of alcoholism, alcohol and
12 drug abuse, psychological counseling, educational courses on the dangers of alcohol and drugs
13 as they relate to driving, defensive driving or other safety driving instruction, and other programs
14 designed to properly educate, train, and rehabilitate the offender.

15 (c) The ~~Department of Health and Human Resources, Division of Alcoholism and Drug~~
16 ~~Abuse~~ Division of Motor Vehicles shall provide for the preparation of an educational and treatment
17 program for each person whose license has been revoked under the provisions of this article, or
18 §17C-5-7, or §17B-3-5(6) of this code which shall contain the following: (1) A listing and evaluation
19 of the offender's prior traffic record; (2) the characteristics and history of alcohol or drug use, if
20 any; (3) his or her amenability to rehabilitation through the alcohol safety program; and (4) a
21 recommendation as to treatment or rehabilitation and the terms and conditions of the treatment
22 or rehabilitation. The program shall be prepared by persons knowledgeable in the diagnosis of
23 alcohol or drug abuse and treatment.

24 (d) There is hereby created a special revenue account within the State Treasury known
25 as the ~~Department of Health and Human Resources~~ Division of Motor Vehicles Safety and
26 Treatment Fund. The account shall be administered by the ~~Secretary~~ Commissioner of the
27 ~~Department of Health and Human Resources~~ Division of Motor Vehicles for the purpose of
28 administering the comprehensive safety and treatment program established by §17C-5A-3(a) of
29 this code. The account may be invested, and all earnings and interest accruing shall be retained
30 in the account. The Auditor shall conduct an audit of the fund at least every three fiscal years.

31 ~~Effective July 1, 2010, the State Treasurer shall make a one-time transfer of \$250,000~~
32 ~~from the Motor Vehicle Fees Fund into the Department of Health and Human Resources Safety~~
33 ~~and Treatment Fund~~ Effective on July 1, 2018, all moneys held in the Department of Health and
34 Human Resources Safety and Treatment Fund shall be transferred to the Division of Motor
35 Vehicles Safety and Treatment Fund.

36 (e)(1) The program provider shall collect the established fee from each participant upon
37 enrollment unless the ~~department~~ division has determined that the participant is an indigent,
38 based upon criteria established pursuant to legislative rule authorized in this section.

39 (2) If the ~~department~~ division determined that a participant is an indigent based upon
40 criteria established pursuant to the legislative rule authorized by this section, the ~~department~~
41 division shall provide the applicant with proof of its determination regarding indigency. ~~which proof~~
42 The applicant shall present the proof to the interlock provider as part of the application process
43 provided in §17C-5A-3a of this code and/or the rules promulgated pursuant ~~thereto~~ to the code.

44 (3) Program providers shall remit to the ~~Department of Health and Human Resources~~
45 Division of Motor Vehicles a portion of the fee collected, which shall be deposited by the ~~Secretary~~
46 ~~of the Department of Health and Human Resources~~ Commissioner of the Division of Motor
47 Vehicles into the ~~Department of Health and Human Resources~~ Division of Motor Vehicles Safety
48 and Treatment Fund. The ~~Department of Health and Human Resources~~ Division of Motor Vehicles
49 shall reimburse enrollment fees to program providers for each eligible indigent offender.

50 (f) On or before January 15 of each year, the ~~Secretary of the Department of Health and~~
51 ~~Human Resources~~ Commissioner of the Division of Motor Vehicles shall report to the Legislature
52 on:

53 (1) The total number of offenders participating in the safety and treatment program during
54 the prior year;

55 (2) The total number of indigent offenders participating in the safety and treatment
56 program during the prior year;

57 (3) The total number of program providers during the prior year; and

58 (4) The total amount of reimbursements paid to program provider during the prior year.

59 (g) The Commissioner of the Division of Motor Vehicles, after giving due consideration to
60 the program developed for the offender, shall prescribe the necessary terms and conditions for
61 the reissuance of the license to operate a motor vehicle in this state revoked under this article, or

62 §17C-5-7, or §17B-3-5(6) of this code which shall include successful completion of the
63 educational, treatment, or rehabilitation program, subject to the following:

64 (1) When the period of revocation is six months, the license to operate a motor vehicle in
65 this state may not be reissued until: (A) At least 90 days have elapsed from the date of the initial
66 revocation, during which time the revocation was actually in effect; (B) the offender has
67 successfully completed the program; (C) all costs of the program and administration have been
68 paid; and (D) all costs assessed as a result of a revocation hearing have been paid.

69 (2) When the period of revocation is for a period of one year or for more than a year, the
70 license to operate a motor vehicle in this state may not be reissued until: (A) At least one-half of
71 the time period has elapsed from the date of the initial revocation, during which time the revocation
72 was actually in effect; (B) the offender has successfully completed the program; (C) all costs of
73 the program and administration have been paid; and (D) all costs assessed as a result of a
74 revocation hearing have been paid. Notwithstanding any provision in this code to the contrary, a
75 person whose license is revoked for refusing to take a chemical test as required by §17C-5-7 of
76 this code, for a first offense is not eligible to reduce the revocation period by completing the safety
77 and treatment program.

78 (3) When the period of revocation is for life, the license to operate a motor vehicle in this
79 state may not be reissued until: (A) At least 10 years have elapsed from the date of the initial
80 revocation, during which time the revocation was actually in effect; (B) the offender has
81 successfully completed the program; (C) all costs of the program and administration have been
82 paid; and (D) all costs assessed as a result of a revocation hearing have been paid.

83 (4) Notwithstanding any provision of this code or any rule to the contrary, any mental health
84 facilities, or other public agencies or private entities conducting the safety and treatment program
85 when certifying that a person has successfully completed a safety and treatment program shall
86 only have to certify that the person has successfully completed the program.

87 (h)(1) ~~The Department of Health and Human Resources, Division of Alcoholism and Drug~~
88 ~~Abuse~~ Division of Motor Vehicles shall provide for the preparation of an educational program for
89 each person whose license has been suspended for 60 days pursuant to the provisions of §17C-
90 5A-2(n) of this code. The educational program shall consist of not less than 12 nor more than 18
91 hours of actual classroom time.

92 (2) When a 60-day period of suspension has been ordered, the license to operate a motor
93 vehicle may not be reinstated until: (A) At least 60 days have elapsed from the date of the initial
94 suspension, during which time the suspension was actually in effect; (B) the offender has
95 successfully completed the educational program; (C) all costs of the program and administration
96 have been paid; and (D) all costs assessed as a result of a suspension hearing have been paid.

97 (i) A required component of the treatment program provided in §17C-5A-3(b) of this code
98 and the education program provided for in §17C-5A-3(c) of this code shall be participation by the
99 violator with a victim impact panel program providing a forum for victims of alcohol and drug-
100 related offenses and offenders to share first-hand experiences on the impact of alcohol and drug-
101 related offenses in their lives. ~~The Department of Health and Human Resources, Division of~~
102 ~~Alcoholism and Drug Abuse~~ Division of Motor Vehicles shall propose and implement a plan for
103 victim impact panels where appropriate numbers of victims are available and willing to participate
104 and shall establish guidelines for other innovative programs which may be substituted where the
105 victims are not available to assist persons whose licenses have been suspended or revoked for
106 alcohol and drug-related offenses to gain a full understanding of the severity of their offenses in
107 terms of the impact of the offenses on victims and offenders. The plan shall require, at a minimum,
108 discussion and consideration of the following:

- 109 (A) Economic losses suffered by victims or offenders;
- 110 (B) Death or physical injuries suffered by victims or offenders;
- 111 (C) Psychological injuries suffered by victims or offenders;
- 112 (D) Changes in the personal welfare or familial relationships of victims or offenders; and

113 (E) Other information relating to the impact of alcohol and drug-related offenses upon
114 victims or offenders.

115 The ~~Department of Health and Human Resources, Division of Alcoholism and Drug Abuse~~
116 Division of Motor Vehicles shall ensure that any meetings between victims and offenders ~~shall be~~
117 are nonconfrontational and ensure the physical safety of the persons involved.

118 (j)(1) The ~~Secretary of the Department of Health and Human Resources~~ Commissioner of
119 the Division of Motor Vehicles shall promulgate a rule for legislative approval in accordance with
120 §29A-3-1 *et seq.* of this code to administer the provisions of this section and establish a fee to be
121 collected from each offender enrolled in the safety and treatment program. The rule shall include:
122 (A) A reimbursement mechanism to program providers of required fees for the safety and
123 treatment program for indigent offenders, criteria for determining eligibility of indigent offenders,
124 and any necessary application forms; and (B) program standards that encompass provider criteria
125 including minimum professional training requirements for providers, curriculum approval,
126 minimum course length requirements, and other items that may be necessary to properly
127 implement the provisions of this section.

128 (2) The Legislature finds that an emergency exists and, therefore, the ~~Secretary~~
129 commissioner shall file by July 1, ~~2010~~ 2018, an emergency rule to implement this section
130 pursuant to the provisions of §29A-3-15 of this code.

131 (k) (1) The Division of Motor Vehicles shall provide fair, impartial, and expeditious
132 grievance and appellate procedures for participants of the safety and treatment program to
133 challenge an adverse decision or decisions by the division or other entity with whom the division
134 has contracted to operate the program. The purpose of these procedures would be to allow a
135 person to challenge decisions which negatively affect, or unnecessarily delay, the participant's
136 outcome in the program.

137 (2) After all administrative remedies provided by this section or any rules promulgated
138 under this section have been exhausted, participants who have been determined unsuccessful in

139 the program, rendering them ineligible for license reinstatement, or whose outcomes in the
140 program have been unnecessarily delayed, are entitled to judicial review of the adverse decision
141 or decisions, pursuant to § 29A-5-4 of this code.

142 (3) The Commissioner of the Division of Motor Vehicles shall promulgate rules pursuant
143 to the provisions of §29A-3-1 et seq. of this code, related to the grievance and appellate
144 procedures referenced in this section.

145 ~~(k)~~ (l) Nothing in this section may be construed to prohibit day report or community
146 correction programs, authorized pursuant to §62-11C-1 et seq. of this code, from administering a
147 comprehensive safety and treatment program pursuant to this section.

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

1 (a) (1) The Division of Motor Vehicles shall control and regulate a Motor Vehicle Alcohol
2 Test and Lock Program for persons whose licenses have been revoked pursuant to this article or
3 the provisions of §17C-5-1 et seq. of this code or have been convicted under §17C-5-2 of this
4 code, or who are serving a term of a conditional probation pursuant to §17C-5-2b of this code.

5 (2) The program shall include the establishment of a user's fee for persons participating
6 in the program which shall be paid in advance and deposited into the ~~Driver's Rehabilitation Fund:~~
7 ~~Provided, That on and after July 1, 2007, any unexpended balance remaining in the Driver's~~
8 ~~Rehabilitation Fund shall be transferred to the Motor Vehicle Fees Fund created under the~~
9 provisions of §17A-2-21 of this code ~~and all further fees collected shall be deposited in that fund.~~

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

12 (B) The Commissioner of the Division of Motor Vehicles shall propose legislative rules for
13 promulgation in accordance with the provisions of §29A-3-1 et seq. of this code, for the purpose
14 of implementing the provisions of this section. The rules shall also prescribe those requirements
15 which, in addition to the requirements specified by this section for eligibility to participate in the

16 program, the commissioner determines must be met to obtain the commissioner's approval to
17 operate a motor vehicle equipped with a motor vehicle alcohol test and lock system.

18 (C) Nothing in this section may be construed to prohibit day report or community correction
19 programs authorized pursuant to §62-11C-1 *et seq.* of this code, or a home incarceration program
20 authorized pursuant to §62-11B-1 *et seq.* of this code, from being a provider of motor vehicle
21 alcohol test and lock systems for eligible participants as authorized by this section.

22 (4) For purposes of this section, a "motor vehicle alcohol test and lock system" means a
23 mechanical or computerized system which, in the opinion of the commissioner, prevents the
24 operation of a motor vehicle when, through the system's assessment of the blood alcohol content
25 of the person operating or attempting to operate the vehicle, the person is determined to be under
26 the influence of alcohol.

27 (5) The fee for installation and removal of ignition interlock devices shall be waived for
28 persons determined to be indigent by the ~~Department of Health and Human Resources~~ Division
29 of Motor Vehicles pursuant to §17C-5A-3 of this code. The commissioner shall establish by
30 legislative rule, proposed pursuant to §29A-3-1 *et seq.* of this code, procedures to be followed
31 with regard to persons determined by the ~~Department of Health and Human Resources~~ Division
32 of Motor Vehicles to be indigent. The rule shall include, but is not limited to, promulgation of
33 application forms; establishment of procedures for the review of applications; and the
34 establishment of a mechanism for the payment of installations for eligible offenders.

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

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

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

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

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

42 (b) (1) Any person whose license is revoked for the first time pursuant to this article or the
43 provisions of §17C-5-1 *et seq.* is eligible to participate in the program when the person's minimum
44 revocation period as specified by §17C-5A-3a(c) of this code has expired and the person is
45 enrolled in or has successfully completed the safety and treatment program or presents proof to
46 the commissioner within 60 days of receiving approval to participate by the commissioner that he
47 or she is enrolled in a safety and treatment program: *Provided*, That anyone whose license is
48 revoked for the first time for driving with a blood alcohol concentration of 0.15 percent or more,
49 by weight, must participate in the program when the person's minimum revocation period as
50 specified by §17C-5A-3a(c) of this code has expired and the person is enrolled in or has
51 successfully completed the safety and treatment program or presents proof to the commissioner
52 within 60 days of receiving approval to participate by the commissioner that he or she is enrolled
53 in a safety and treatment program.

54 (2) Any person whose license has been suspended for driving a motor vehicle while under
55 the age of 21 years with an alcohol concentration in his or her blood of 0.02 percent or more, by
56 weight, but less than 0.08 percent, by weight, is eligible to participate in the program after 30 days
57 have elapsed from the date of the initial suspension, during which time the suspension was
58 actually in effect: *Provided*, That in the case of a person under the age of 18, the person is eligible
59 to participate in the program after 30 days have elapsed from the date of the initial suspension,
60 during which time the suspension was actually in effect or after the person's eighteenth birthday,
61 whichever is later. Before the commissioner approves a person to operate a motor vehicle
62 equipped with a motor vehicle alcohol test and lock system, the person must agree to comply with
63 the following conditions:

64 (A) If not already enrolled, the person shall enroll in and complete the educational program
65 provided in §17C-5A-3(d) of this code at the earliest time that placement in the educational
66 program is available, unless good cause is demonstrated to the commissioner as to why
67 placement should be postponed.

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

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

73 (c) A person who participates in the program under §17C-5A-3a(b)(1) of this code is
74 subject to a minimum revocation period and minimum period for the use of the ignition interlock
75 device as follows:

76 (1) For a person whose license has been revoked for a first offense for six months for
77 driving under the influence of alcohol, or a combination of alcohol and any controlled substance
78 or other drug, or with a blood alcohol concentration of 0.08 percent, by weight, but less than 0.15
79 percent, by weight, the minimum period of revocation for participation in the test and lock program
80 is 15 days and the minimum period for the use of the ignition interlock device is 125 days;

81 (2) For a person whose license has been revoked for a first offense for refusing a
82 secondary chemical test, the minimum period of revocation for participation in the test and lock
83 program is 45 days and the minimum period for the use of the ignition interlock device is one year;

84 (3) For a person whose license has been revoked for a first offense for driving with a blood
85 alcohol concentration of 0.15 percent or more, by weight, the minimum period of revocation for
86 participation in the test and lock program is 45 days and the minimum period for the use of the
87 ignition interlock device is 270 days;

88 (4) For a person whose license has been revoked for a first offense for driving under the
89 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or
90 with a blood alcohol concentration of 0.08 percent or more, by weight, or did drive a motor vehicle
91 while under the age of 21 years with an alcohol concentration in his or her blood of 0.02 percent
92 or more, by weight, but less than 0.08 percent, by weight, and while driving does any act forbidden
93 by law or fails to perform any duty imposed by law, which act or failure proximately causes the

94 death of any person within one year next following the act or failure, and commits the act or failure
95 in reckless disregard of the safety of others and when the influence of alcohol, controlled
96 substances or drugs is shown to be a contributing cause to the death, the minimum period of
97 revocation before the person is eligible for participation in the test and lock program is 12 months
98 and the minimum period for the use of the ignition interlock device is two years;

99 (5) For a person whose license has been revoked for a first offense for driving under the
100 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or
101 with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving does any
102 act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which
103 act or failure proximately causes the death of any person within one year next following the act or
104 failure, the minimum period of revocation is six months and the minimum period for the use of the
105 ignition interlock device is two years;

106 (6) For a person whose license has been revoked for a first offense for driving under the
107 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or
108 with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving does any
109 act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which
110 act or failure proximately causes bodily injury to any person other than himself or herself, the
111 minimum period of revocation for participation in the program is two months and the minimum
112 period for the use of the ignition interlock device is one year;

113 (7) For a person whose license has been revoked for a first offense for driving under the
114 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or
115 with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving has on
116 or within the motor vehicle one or more other persons who are unemancipated minors who have
117 not reached their sixteenth birthday, the minimum period of revocation for participation in the
118 program is two months and the minimum period for the use of the ignition interlock device is 10
119 months.

120 (d) Notwithstanding any provision of the code to the contrary, a person shall participate in
121 the program if the person is convicted under §17C-5-2 of this code, or the person's license is
122 revoked under §17C-5A-2, or §17C-5-7 of this code, and the person was previously either
123 convicted or his or her license was revoked under any provision cited in this subsection within the
124 past 10 years. The minimum revocation period for a person required to participate in the program
125 under this subsection is one year and the minimum period for the use of the ignition interlock
126 device is two years, except that the minimum revocation period for a person required to participate
127 because of a violation for driving while under the age of 21 with a blood alcohol concentration of
128 0.02 percent, or more, by weight, but less than 0.08 percent, or more, by weight, is two months
129 and the minimum period of participation is one year. The division shall add an additional two
130 months to the minimum period for the use of the ignition interlock device if the offense was
131 committed while a minor was in the vehicle. The division shall add an additional six months to the
132 minimum period for the use of the ignition interlock device if a person other than the driver
133 received injuries. The division shall add an additional two years to the minimum period for the use
134 of the ignition interlock device if a person other than the driver is injured and the injuries result in
135 that person's death. The division shall add one year to the minimum period for the use of the
136 ignition interlock device for each additional previous conviction or revocation within the past 10
137 years. Any person required to participate under this subsection must have an ignition interlock
138 device installed on every vehicle he or she owns or operates.

139 (e)(1) If a person applies for and is accepted into the Motor Vehicle Alcohol Test and Lock
140 Program prior to the effective date of the revocation, the commissioner shall defer the revocation
141 period of ~~such~~ that person under the provisions of this section. ~~Such~~ The deferral shall continue
142 throughout the applicable minimum period for the use of the ignition interlock device plus an
143 additional period equal to the applicable minimum revocation period. If a person successfully
144 completes all terms of the Motor Vehicle Alcohol Test and Lock Program for a period equal to the
145 minimum period for the use of the ignition interlock device pursuant to §17C-5A-3a(c) of this code,

146 plus any applicable minimum revocation period, the commissioner shall waive the revocation
147 period.

148 (2) The application and acceptance of a person into the Motor Vehicle Alcohol Test and
149 Lock Program pursuant to §17C-5A-3a(e)(1) of this code constitutes an automatic waiver of ~~their~~
150 his or her right to an administrative hearing. The Office of Administrative Hearings may not
151 conduct a hearing on a matter which is the basis for a person actively participating in the Motor
152 Vehicle Alcohol Test and Lock Program.

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

156 (g) An applicant for the test and lock program may not have been convicted of any violation
157 of §17B-4-3 of this code, for driving while the applicant's driver's license was suspended or
158 revoked within the six-month period preceding the date of application for admission to the test
159 and lock program unless ~~such~~ participation in the program is necessary for employment purposes.

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

164 (i) The commissioner may extend the minimum period of revocation and the minimum
165 period of participation in the program for a person who violates the terms and conditions of
166 participation in the program as found in this section, or legislative rule, or any agreement or
167 contract between the participant and the division or program service provider. If the commissioner
168 finds that any person participating in the program pursuant to §17C-5-2b of this code, must be
169 removed ~~therefrom for violation(s)~~ from the program for violations of the terms and conditions
170 ~~thereof~~ of the program, he or she shall notify the person, the court that imposed the term of

171 participation in the program and the prosecuting attorney in the county ~~wherein~~ in which the order
172 imposing participation in the program was entered.

173 (j) A person whose license has been suspended for a first offense of driving while under
174 the age of 21 with a blood alcohol concentration of 0.02 percent, or more, by weight, but less than
175 0.08 percent, or more, by weight, who has completed the educational program and who has not
176 violated the terms required by the commissioner of the person's participation in the program is
177 entitled to the reinstatement of his or her driver's license six months from the date the person is
178 permitted to operate a motor vehicle by the commissioner. When a license has been reinstated
179 pursuant to this subsection, the records ordering the suspension, records of any administrative
180 hearing, records of any blood alcohol test results, and all other records pertaining to the
181 suspension shall be expunged by operation of law: *Provided*, That a person is entitled to
182 expungement under the provisions of this subsection only once. The expungement shall be
183 accomplished by physically marking the records to show that the records have been expunged
184 and by securely sealing and filing the records. Expungement has the legal effect as if the
185 suspension never occurred. The records may not be disclosed or made available for inspection
186 and in response to a request for record information, the commissioner shall reply that no
187 information is available. Information from the file may be used by the commissioner for research
188 and statistical purposes so long as the use of the information does not divulge the identity of the
189 person.

190 (k) In addition to any other penalty imposed by this code, any person who operates a motor
191 vehicle not equipped with an approved motor vehicle alcohol test and lock system during that
192 person's participation in the Motor Vehicle Alcohol Test and Lock Program is guilty of a
193 misdemeanor and, upon conviction thereof, shall be confined in jail for a period not less than one
194 month nor more than six months, and fined not less than \$100 nor more than \$500. Any person
195 who attempts to bypass the alcohol test and lock system is guilty of a misdemeanor and, upon
196 conviction thereof, shall be confined in jail not more than six months, and fined not less than \$100

197 nor more than \$1,000: *Provided*, That notwithstanding any provision of this code to the contrary,
198 a person enrolled and participating in the test and lock program may operate a motor vehicle
199 solely at his or her job site if the operation is a condition of his or her employment. For the purpose
200 of this section, "job site" does not include any street or highway open to the use of the public for
201 purposes of vehicular traffic.