

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 90**

BY SENATOR RUCKER

[Originating in the Committee on Government  
Organization; Reported on January 30, 2019]

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 the Safety and Treatment Program; transferring the program from  
3 the Department of Health and Human Resources to the Division of Motor Vehicles; adding  
4 grievance and appellate procedures and judicial review for individuals participating in the  
5 Safety and Treatment Program; authorizing the Commissioner of the Division of Motor  
6 Vehicles to promulgate rules to add such procedures and judicial review for participants;  
7 and amending internal code references.

*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3 for persons whose licenses have been revoked under the provisions of this article, ~~or~~ §17C-5-7,  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 to the interlock provider as part of the application process provided in  
43 §17C-5A-3a of this code and/or the rules promulgated pursuant thereto.

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, a person whose  
75 license is revoked for refusing to take a chemical test as required by §17C-5-7 of this code for a  
76 first offense is not eligible to reduce the revocation period by completing the safety and treatment  
77 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, any mental health facilities, or  
84 other public agencies or private entities conducting the safety and treatment program when  
85 certifying that a person has successfully completed a safety and treatment program shall only  
86 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 (1) Economic losses suffered by victims or offenders;  
110 (2) Death or physical injuries suffered by victims or offenders;  
111 (3) Psychological injuries suffered by victims or offenders;  
112 (4) Changes in the personal welfare or familial relationships of victims or offenders; and  
113 (5) 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 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, ~~2019~~ 2019 an emergency rule to implement this section pursuant  
130 to the provisions of §29A-3-15 of this code.

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

134 (l) The Division of Motor Vehicles shall provide fair, impartial, and expeditious grievance  
135 and appellate procedures for participants of the safety and treatment program who wish to  
136 challenge an adverse decision by the agency conducting the program that negatively affects, or  
137 unnecessarily delays, the participants' outcome in that program. After all administrative remedies  
138 provided by this article or its related promulgated rules have been exhausted, participants who  
139 have been deemed unsuccessful in the program, rendering them ineligible for license  
140 reinstatement, or whose outcomes in the program have been unnecessarily delayed, are entitled  
141 to judicial review of the adverse decisions in the regular courts of this state, pursuant to § 29A-5-  
142 4 of this code. The Commissioner of the Division of Motor Vehicles is hereby authorized to  
143 promulgate rules related to the grievance and appellate procedures referenced in this subsection.

**§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-1-1 *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.* of this code is eligible to participate in the program when the  
44 person's minimum revocation period as specified by §17C-5A-3a(c) of this code has expired and  
45 the person is enrolled in or has successfully completed the safety and treatment program or  
46 presents proof to the commissioner within 60 days of receiving approval to participate by the  
47 commissioner that he or she is enrolled in a safety and treatment program: *Provided*, That anyone  
48 whose license is revoked for the first time for driving with a blood alcohol concentration of 0.15%  
49 or more, by weight, must participate in the program when the person's minimum revocation period  
50 as 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% or more, by weight,  
56 but less than 0.08%, by weight, is eligible to participate in the program after 30 days have elapsed  
57 from the date of the initial suspension, during which time the suspension was actually in effect:  
58 *Provided*, That in the case of a person under the age of 18, the person is eligible to participate in  
59 the program after 30 days have elapsed from the date of the initial suspension, during which time  
60 the suspension was actually in effect or after the person's 18th birthday, whichever is later. Before  
61 the commissioner approves a person to operate a motor vehicle equipped with a motor vehicle  
62 alcohol test and lock system, the person must agree to comply with the following conditions:

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

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

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

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

75 (1) For a person whose license has been revoked for a first offense for six months for  
76 driving under the influence of alcohol, or a combination of alcohol and any controlled substance

77 or other drug, or with a blood alcohol concentration of 0.08%, by weight, but less than 0.15%, by  
78 weight, the minimum period of revocation for participation in the test and lock program is 15 days  
79 and the minimum period for the use of the ignition interlock device is 125 days;

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

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

87 (4) For a person whose license has been revoked for a first offense for driving under the  
88 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or  
89 with a blood alcohol concentration of 0.08% or more, by weight, or did drive a motor vehicle while  
90 under the age of 21 years with an alcohol concentration in his or her blood of 0.02% or more, by  
91 weight, but less than 0.08%, by weight, and while driving does any act forbidden by law or fails to  
92 perform any duty imposed by law, which act or failure proximately causes the death of any person  
93 within one year next following the act or failure, and commits the act or failure in reckless disregard  
94 of the safety of others and when the influence of alcohol, controlled substances or drugs is shown  
95 to be a contributing cause to the death, the minimum period of revocation before the person is  
96 eligible for participation in the test and lock program is 12 months and the minimum period for the  
97 use of the ignition interlock device is two years;

98 (5) For a person whose license has been revoked for a first offense for driving under the  
99 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or  
100 with a blood alcohol concentration of 0.08% or more, by weight, and while driving does any act  
101 forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which  
102 act or failure proximately causes the death of any person within one year next following the act or

103 failure, the minimum period of revocation is six months and the minimum period for the use of the  
104 ignition interlock device is two years;

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

112 (7) For a person whose license has been revoked for a first offense for driving under the  
113 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or  
114 with a blood alcohol concentration of 0.08% or more, by weight, and while driving has on or within  
115 the motor vehicle one or more other persons who are unemancipated minors who have not  
116 reached their 16th birthday, the minimum period of revocation for participation in the program is  
117 two months and the minimum period for the use of the ignition interlock device is 10 months.

118 (d) Notwithstanding any provision of the code to the contrary, a person shall participate in  
119 the program if the person is convicted under §17C-5-2 of this code or the person's license is  
120 revoked under §17C-5A-2 or §17C-5-7 of this code and the person was previously either  
121 convicted or his or her license was revoked under any provision cited in this subsection within the  
122 past 10 years. The minimum revocation period for a person required to participate in the program  
123 under this subsection is one year and the minimum period for the use of the ignition interlock  
124 device is two years, except that the minimum revocation period for a person required to participate  
125 because of a violation for driving while under the age of 21 with a blood alcohol concentration of  
126 0.02%, or more, by weight, but less than 0.08%, or more, by weight, is two months and the  
127 minimum period of participation is one year. The division shall add an additional two months to  
128 the minimum period for the use of the ignition interlock device if the offense was committed while

129 a minor was in the vehicle. The division shall add an additional six months to the minimum period  
130 for the use of the ignition interlock device if a person other than the driver received injuries. The  
131 division shall add an additional two years to the minimum period for the use of the ignition interlock  
132 device if a person other than the driver is injured and the injuries result in that person's death. The  
133 division shall add one year to the minimum period for the use of the ignition interlock device for  
134 each additional previous conviction or revocation within the past 10 years. Any person required  
135 to participate under this subsection must have an ignition interlock device installed on every  
136 vehicle he or she owns or operates.

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

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

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

153 (g) An applicant for the test and lock program may not have been convicted of any violation  
154 of §17B-4-3 of this code for driving while the applicant's driver's license was suspended or revoked

155 within the six-month period preceding the date of application for admission to the test and lock  
156 program unless such is necessary for employment purposes.

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

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

169 (j) A person whose license has been suspended for a first offense of driving while under  
170 the age of 21 with a blood alcohol concentration of 0.02%, or more, by weight, but less than  
171 0.08%, or more, by weight, who has completed the educational program and who has not violated  
172 the terms required by the commissioner of the person's participation in the program is entitled to  
173 the reinstatement of his or her driver's license six months from the date the person is permitted  
174 to operate a motor vehicle by the commissioner. When a license has been reinstated pursuant to  
175 this subsection, the records ordering the suspension, records of any administrative hearing,  
176 records of any blood alcohol test results and all other records pertaining to the suspension shall  
177 be expunged by operation of law: *Provided*, That a person is entitled to expungement under the  
178 provisions of this subsection only once. The expungement shall be accomplished by physically  
179 marking the records to show that the records have been expunged and by securely sealing and  
180 filing the records. Expungement has the legal effect as if the suspension never occurred. The

181 records may not be disclosed or made available for inspection and in response to a request for  
182 record information, the commissioner shall reply that no information is available. Information from  
183 the file may be used by the commissioner for research and statistical purposes so long as the use  
184 of the information does not divulge the identity of the person.

185 (k) In addition to any other penalty imposed by this code, any person who operates a motor  
186 vehicle not equipped with an approved motor vehicle alcohol test and lock system during that  
187 person's participation in the Motor Vehicle Alcohol Test and Lock Program is guilty of a  
188 misdemeanor and, upon conviction thereof, shall be confined in jail for a period not less than one  
189 month nor more than six months and fined not less than \$100 nor more than \$500. Any person  
190 who attempts to bypass the alcohol test and lock system is guilty of a misdemeanor and, upon  
191 conviction thereof, shall be confined in jail not more than six months and fined not less than \$100  
192 nor more than \$1,000: *Provided*, That notwithstanding any provision of this code to the contrary,  
193 a person enrolled and participating in the test and lock program may operate a motor vehicle  
194 solely at his or her job site if the operation is a condition of his or her employment. For the purpose  
195 of this section, "job site" does not include any street or highway open to the use of the public for  
196 purposes of vehicular traffic.