

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 203

By Senator Trump

[Introduced January 13, 2023; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §17C-5A-3a of the Code of West Virginia, 1931, as amended,
 2 relating to modifying the minimum requirements for motor vehicle alcohol and drug test and
 3 lock systems.

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-3a. Establishment of and participation in the Motor Vehicle Alcohol and Drug Test
 and Lock Program.**

1 (a) (1) The Division of Motor Vehicles shall control and regulate a Motor Vehicle Alcohol
 2 and Drug Test and Lock Program for persons whose licenses have been revoked pursuant to this
 3 article or the provisions of §17C-5-1 *et seq.* of this code or have been convicted under §17C-5-2 of
 4 this 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 in
 6 the program which shall be paid in advance and deposited into the Motor Vehicle Fees Fund
 7 created under the provisions of §17A-2-21 of this code.

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

10 (B) The Commissioner of the Division of Motor Vehicles shall propose legislative rules for
 11 promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code for the purpose of
 12 implementing the provisions of this section. The rules shall also prescribe those requirements
 13 which, in addition to the requirements specified by this section for eligibility to participate in the
 14 program, the commissioner determines must be met to obtain the commissioner’s approval to
 15 operate a motor vehicle equipped with a motor vehicle alcohol and drug test and lock system.

16 (C) Nothing in this section may be construed to prohibit day report or community

17 corrections programs authorized pursuant to §62-11C-1 *et seq.* of this code, or a home
18 confinement program authorized pursuant to §62-11B-1 *et seq.* of this code, from being a provider
19 of motor vehicle alcohol and drug test and lock systems for eligible participants as authorized by
20 this section.

21 (4) For purposes of this section, a "motor vehicle alcohol and drug test and lock system"
22 means a mechanical or computerized system which, in the opinion of the commissioner, prevents
23 the operation of a motor vehicle when, through the system's assessment of the blood alcohol or
24 drug content of the person operating or attempting to operate the vehicle, the person is determined
25 to be under the influence of alcohol or drugs. A motor vehicle alcohol and drug test and lock
26 system may not have as a component of it any minimum time of driving requirement, any minimum
27 mileage of driving requirement, or daily, or other, driving frequency requirement, and no participant
28 in the motor vehicle alcohol and drug test and lock program may be removed from the program or
29 penalized as a result of failing to meet any minimum time of driving requirement, any minimum
30 mileage of driving requirement, or any daily, or other, driving frequency requirement.

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

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

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

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

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

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

45 (7) A person participating in the Motor Vehicle Alcohol and Drug Test and Lock Program
46 shall submit to drug testing in a manner and at intervals prescribed by the commissioner. The
47 commissioner shall give due consideration to a lawfully prescribed medication taken in
48 accordance with a valid prescription or order of a licensed medical practitioner who acted in the
49 course of the practitioner's professional practice and does not create an impairment to driving
50 safely when considering a positive drug test result.

51 (b) (1) Any person whose license is revoked for the first time pursuant to this article or the
52 provisions of §17C-5-1 *et seq.* of this code is eligible to participate in the program when the
53 person's minimum revocation period, as specified by subsection (c) of this section, has expired
54 and the person is enrolled in or has successfully completed the safety and treatment program or
55 presents proof to the commissioner within 60 days of receiving approval to participate by the
56 commissioner that he or she is enrolled in a safety and treatment program: *Provided*, That anyone
57 whose license is revoked for the first time for driving with a blood alcohol concentration of 0.15
58 percent or more, by weight, must participate in the program when the person's minimum
59 revocation period, as specified by subsection (c) of this section, has expired and the person is
60 enrolled in or has successfully completed the safety and treatment Program or presents proof to
61 the commissioner within 60 days of receiving approval to participate by the commissioner that he
62 or she is enrolled in a safety and treatment program.

63 (2) Any person whose license has been suspended for driving a motor vehicle while under
64 the age of 21 years with an alcohol concentration in his or her blood 0.02 percent or more, by
65 weight, but less than 0.08 percent, by weight, is eligible to participate in the program after 30 days
66 have elapsed from the date of the initial suspension, during which time the suspension was
67 actually in effect: *Provided*, That in the case of a person under the age of 18, the person is eligible
68 to participate in the program after 30 days have elapsed from the date of the initial suspension,

69 during which time the suspension was actually in effect or after the person's 18th birthday,
70 whichever is later. Before the commissioner approves a person to operate a motor vehicle
71 equipped with a motor vehicle alcohol and drug test and lock system, the person must agree to
72 comply with the following conditions:

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

77 (B) The person shall pay all costs of the educational program, any administrative costs,
78 and all costs assessed for any suspension hearing; and

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

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

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

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

93 (3) For a person whose license has been revoked for a first offense for driving with a blood
94 alcohol concentration of 0.15 percent or more, by weight, the minimum period of revocation for

95 participation in the test and lock program is 45 days and the minimum period for the use of the
96 ignition interlock device is 270 days;

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

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

115 (6) For a person whose license has been revoked for a first offense for driving under the
116 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or
117 with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving does any
118 act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which
119 act or failure proximately causes bodily injury to any person other than himself or herself, the
120 minimum period of revocation for participation in the program is two months and the minimum

121 period for the use of the ignition interlock device is one year;

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

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

147 (e)(1) If a person applies for and is accepted into the Motor Vehicle Alcohol and Drug Test
148 and Lock Program prior to the effective date of the revocation for an offense involving alcohol, the
149 commissioner shall defer the revocation period of such person under the provisions of this section.
150 Such deferral shall continue throughout the applicable minimum period for the use of the ignition
151 interlock device plus an additional period equal to the applicable minimum revocation period. If a
152 person successfully completes all terms of the Motor Vehicle Alcohol and Drug Test and Lock
153 Program for a period equal to the minimum period for the use of the ignition interlock device
154 pursuant to subsection (c) of this section, plus any applicable minimum revocation period, the
155 commissioner shall waive the revocation period.

156 (2) If a person applies for and is accepted into the Motor Vehicle Alcohol and Drug Test and
157 Lock Program prior to the effective date of the revocation for an offense solely involving drugs, the
158 commissioner may defer the revocation period of such person under the provisions of this section.
159 Such deferral shall continue throughout the applicable minimum period for the use of the ignition
160 interlock device plus an additional period equal to the applicable minimum revocation period. If a
161 person successfully completes all terms of the Motor Vehicle Alcohol and Drug Test and Lock
162 Program for a period equal to the minimum period for the use of the ignition interlock device
163 pursuant to subsection (c) of this section, plus any applicable minimum revocation period, the
164 commissioner shall waive the revocation period.

165 (f) The Division of Motor Vehicles may reduce any revocation period required of a person
166 with a second or subsequent offense for driving under the influence of drugs to a minimum of one
167 year and thereafter issue a restricted license on the conditions that the person is in the treatment
168 and job program prescribed in §61-11-26a of this code, has satisfactorily performed in the
169 treatment component of the program and that the person submits to two years of monthly drug
170 testing. If the person is otherwise required to participate in the Alcohol and Drug Test and Lock
171 Program for another offense, he or she may do so while meeting the conditions described in this
172 subsection. If the person fails to submit to a drug test or submits to a test that reveals the presence

173 of controlled substances or drugs, then the full revocation period is reinstated, and the person is
174 only credited with revocation time actually served prior to receiving restricted privileges. The
175 Commissioner of the Division of Motor Vehicles is hereby authorized to promulgate emergency
176 rules to implement the provisions of this article.

177 (g) An applicant for the test and lock program convicted of any violation of §17B-4-3 of this
178 code for driving while the applicant's driver's license was suspended or revoked within the six-
179 month period preceding the date of application for admission to the test and lock program may still
180 participate in the program by serving the revocation or suspension required by §17B-4-3 of this
181 code as additional participation time in the program.

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

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

194 (j) A person whose license has been suspended for a first offense of driving while under the
195 age of 21 with a blood alcohol concentration of 0.02 percent, or more, by weight, but less than 0.08
196 percent, or more, by weight, who has completed the educational program and who has not
197 violated the terms required by the commissioner of the person's participation in the program is
198 entitled to the reinstatement of his or her driver's license six months from the date the person is

199 permitted to operate a motor vehicle by the commissioner. When a license has been reinstated
200 pursuant to this subsection, the records ordering the suspension, records of any administrative
201 hearing, records of any blood alcohol test results, and all other records pertaining to the
202 suspension shall be expunged by operation of law: *Provided*, That a person is entitled to
203 expungement under the provisions of this subsection only once. The expungement shall be
204 accomplished by physically marking the records to show that the records have been expunged
205 and by securely sealing and filing the records. Expungement has the legal effect as if the
206 suspension never occurred. The records may not be disclosed or made available for inspection
207 and in response to a request for record information, the commissioner shall reply that no
208 information is available. Information from the file may be used by the commissioner for research
209 and statistical purposes so long as the use of the information does not divulge the identity of the
210 person.

211 (k) In addition to any other penalty imposed by this code, any person who operates a motor
212 vehicle not equipped with an approved motor vehicle alcohol and drug test and lock system during
213 that person's participation in the Motor Vehicle Alcohol and Drug Test and Lock Program is guilty of
214 a misdemeanor and, upon conviction thereof, shall be confined in jail for a period not less than one
215 month nor more than six months and fined not less than \$100 nor more than \$500. Any person
216 who attempts to bypass the alcohol and drug test and lock system is guilty of a misdemeanor and,
217 upon conviction thereof, shall be confined in jail not more than six months and fined not less than
218 \$100 nor more than \$1,000: *Provided*, That notwithstanding any provision of this code to the
219 contrary, a person enrolled and participating in the test and lock program may operate a motor
220 vehicle solely at his or her job site if the operation is a condition of his or her employment. For the
221 purpose of this section, "job site" does not include any street or highway open to the use of the
222 public for purposes of vehicular traffic.

223 (l) Upon the effective date of the reenactment of this section in the year 2023, the
224 commissioner shall reinstate to the motor vehicle alcohol and drug test and lock program any

225 former participant in the motor vehicle alcohol and drug test and lock program who requests in
226 writing to the commissioner to be reinstated, where the former participant was removed from the
227 program solely as a result of failing to meet a minimum time of driving requirement, a minimum
228 mileage of driving requirement, or a daily, or other, driving frequency requirement when
229 participating in the program. Reinstatement under these circumstances will be without cost to the
230 participant, and the participant shall be provided retroactive credit by the commissioner for
231 participation in the program during the time period that: (1) the participant was participating in the
232 program but was denied credit because the participant failed to meet a minimum time of driving
233 requirement, a minimum mileage of driving requirement, or a daily, or other, driving frequency
234 requirement; and, (2) the participant was removed from the program for failure to meet a minimum
235 time of driving requirement, a minimum mileage of driving requirement, or a daily, or other, driving
236 frequency requirement.

NOTE: The purpose of this bill is to modify the minimum requirements for motor vehicle alcohol and drug test and lock systems.

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