

FILED

2005 MAY -3 P 4: 07

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2444

(By Delegates Amores, Palumbo, Pethel,
Stemple and Craig)



Passed April 9, 2005

In Effect Ninety Days from Passage

FILED

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COMMITTEE SUBSTITUTE

FOR

H. B. 2444

(BY DELEGATES AMORES, PALUMBO, PETHTEL,
STEMPLE AND CRAIG)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §17C-5-2 of the code of West Virginia, 1931, as amended; and to amend reenact §17C-5A-3a, all relating to compliance with federal funding requirements regarding driving under the influence offenders; limiting work release to convictions for a first offense; and the creation of mandatory periods of electronically monitored home confinement.

Be it enacted by the Legislature of West Virginia:

That section §17C-5-2 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §17C-5A-3a of said code be amended and reenacted, all to read as follows:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.

1 (a) Any person who:

2 (1) Drives a vehicle in this state while he or she:

3 (A) Is under the influence of alcohol; or

4 (B) Is under the influence of any controlled substance; or

5 (C) Is under the influence of any other drug; or

6 (D) Is under the combined influence of alcohol and any
7 controlled substance or any other drug; or

8 (E) Has an alcohol concentration in his or her blood of eight
9 hundredths of one percent or more, by weight; and

10 (2) When so driving does any act forbidden by law or fails
11 to perform any duty imposed by law in the driving of the
12 vehicle, which act or failure proximately causes the death of
13 any person within one year next following the act or failure;
14 and

15 (3) Commits the act or failure in reckless disregard of the
16 safety of others, and when the influence of alcohol, controlled
17 substances or drugs is shown to be a contributing cause to the
18 death, is guilty of a felony and, upon conviction thereof, shall
19 be imprisoned in a state correctional facility for not less than
20 one nor more than ten years and shall be fined not less than one
21 thousand dollars nor more than three thousand dollars.

22 (b) Any person who:

23 (1) Drives a vehicle in this state while he or she:

24 (A) Is under the influence of alcohol; or

25 (B) Is under the influence of any controlled substance; or

26 (C) Is under the influence of any other drug; or

27 (D) Is under the combined influence of alcohol and any
28 controlled substance or any other drug; or

29 (E) Has an alcohol concentration in his or her blood of eight
30 hundredths of one percent or more, by weight; and

31 (2) When so driving does any act forbidden by law or fails
32 to perform any duty imposed by law in the driving of the
33 vehicle, which act or failure proximately causes the death of
34 any person within one year next following the act or failure, is
35 guilty of a misdemeanor and, upon conviction thereof, shall be
36 confined in the county or regional jail for not less than ninety
37 days nor more than one year and shall be fined not less than
38 five hundred dollars nor more than one thousand dollars.

39 (c) Any person who:

40 (1) Drives a vehicle in this state while he or she:

41 (A) Is under the influence of alcohol; or

42 (B) Is under the influence of any controlled substance; or

43 (C) Is under the influence of any other drug; or

44 (D) Is under the combined influence of alcohol and any
45 controlled substance or any other drug; or

46 (E) Has an alcohol concentration in his or her blood of eight
47 hundredths of one percent or more, by weight; and

48 (2) When so driving does any act forbidden by law or fails
49 to perform any duty imposed by law in the driving of the
50 vehicle, which act or failure proximately causes bodily injury

51 to any person other than himself or herself, is guilty of a
52 misdemeanor and, upon conviction thereof, shall be confined in
53 the county or regional jail for not less than one day nor more
54 than one year, which jail term is to include actual confinement
55 of not less than twenty-four hours, and shall be fined not less
56 than two hundred dollars nor more than one thousand dollars.

57 (d) Any person who:

58 (1) Drives a vehicle in this state while he or she:

59 (A) Is under the influence of alcohol; or

60 (B) Is under the influence of any controlled substance; or

61 (C) Is under the influence of any other drug; or

62 (D) Is under the combined influence of alcohol and any
63 controlled substance or any other drug; or

64 (E) Has an alcohol concentration in his or her blood of eight
65 hundredths of one percent or more, by weight;

66 (2) Is guilty of a misdemeanor and, upon conviction
67 thereof, shall be confined in the county or regional jail for not
68 less than one day nor more than six months, which jail term is
69 to include actual confinement of not less than twenty-four
70 hours, and shall be fined not less than one hundred dollars nor
71 more than five hundred dollars.

72 (e) Any person who, being an habitual user of narcotic
73 drugs or amphetamine or any derivative thereof, drives a
74 vehicle in this state, is guilty of a misdemeanor and, upon
75 conviction thereof, shall be confined in the county or regional
76 jail for not less than one day nor more than six months, which
77 jail term is to include actual confinement of not less than
78 twenty-four hours, and shall be fined not less than one hundred
79 dollars nor more than five hundred dollars.

80 (f) Any person who:

81 (1) Knowingly permits his or her vehicle to be driven in this
82 state by any other person who:

83 (A) Is under the influence of alcohol; or

84 (B) Is under the influence of any controlled substance; or

85 (C) Is under the influence of any other drug; or

86 (D) Is under the combined influence of alcohol and any
87 controlled substance or any other drug; or

88 (E) Has an alcohol concentration in his or her blood of eight
89 hundredths of one percent or more, by weight;

90 (2) Is guilty of a misdemeanor and, upon conviction
91 thereof, shall be confined in the county or regional jail for not
92 more than six months and shall be fined not less than one
93 hundred dollars nor more than five hundred dollars.

94 (g) Any person who knowingly permits his or her vehicle
95 to be driven in this state by any other person who is an habitual
96 user of narcotic drugs or amphetamine or any derivative
97 thereof, is guilty of a misdemeanor and, upon conviction
98 thereof, shall be confined in the county or regional jail for not
99 more than six months and shall be fined not less than one
100 hundred dollars nor more than five hundred dollars.

101 (h) Any person under the age of twenty-one years who
102 drives a vehicle in this state while he or she has an alcohol
103 concentration in his or her blood of two hundredths of one
104 percent or more, by weight, but less than eight hundredths of
105 one percent, by weight, for a first offense under this subsection,
106 is guilty of a misdemeanor and, upon conviction thereof, shall
107 be fined not less than twenty-five dollars nor more than one

108 hundred dollars. For a second or subsequent offense under this
109 subsection, the person is guilty of a misdemeanor and, upon
110 conviction thereof, shall be confined in the county or regional
111 jail for twenty-four hours, and shall be fined not less than one
112 hundred dollars nor more than five hundred dollars. A person
113 who is charged with a first offense under the provisions of this
114 subsection may move for a continuance of the proceedings,
115 from time to time, to allow the person to participate in the
116 vehicle alcohol test and lock program as provided for in section
117 three-a, article five-a of this chapter. Upon successful comple-
118 tion of the program, the court shall dismiss the charge against
119 the person and expunge the person's record as it relates to the
120 alleged offense. In the event the person fails to successfully
121 complete the program, the court shall proceed to an adjudica-
122 tion of the alleged offense. A motion for a continuance under
123 this subsection may not be construed as an admission or be used
124 as evidence.

125 A person arrested and charged with an offense under the
126 provisions of subsection (a), (b), (c), (d), (e), (f), (g) or (i) of
127 this section may not also be charged with an offense under this
128 subsection arising out of the same transaction or occurrence.

129 (i) Any person who:

130 (1) Drives a vehicle in this state while he or she:

131 (A) Is under the influence of alcohol; or

132 (B) Is under the influence of any controlled substance; or

133 (C) Is under the influence of any other drug; or

134 (D) Is under the combined influence of alcohol and any
135 controlled substance or any other drug; or

136 (E) Has an alcohol concentration in his or her blood of eight
137 hundredths of one percent or more, by weight; and

138 (2) The person when so driving has on or within the motor
139 vehicle one or more other persons who are unemancipated
140 minors who have not reached their sixteenth birthday, is guilty
141 of a misdemeanor and, upon conviction thereof, shall be
142 confined in the county or regional jail for not less than two days
143 nor more than twelve months, which jail term is to include
144 actual confinement of not less than forty-eight hours, and shall
145 be fined not less than two hundred dollars nor more than one
146 thousand dollars.

147 (j) A person violating any provision of subsection (b), (c),
148 (d), (e), (f), (g) or (i) of this section, for the second offense
149 under this section, is guilty of a misdemeanor and, upon
150 conviction thereof, shall be confined in the county or regional
151 jail for not less than six months nor more than one year, and the
152 court may, in its discretion, impose a fine of not less than one
153 thousand dollars nor more than three thousand dollars.

154 (k) A person violating any provision of subsection (b), (c),
155 (d), (e), (f), (g) or (i) of this section, for the third or any
156 subsequent offense under this section, is guilty of a felony and,
157 upon conviction thereof, shall be imprisoned in a state correc-
158 tional facility for not less than one nor more than three years,
159 and the court may, in its discretion, impose a fine of not less
160 than three thousand dollars nor more than five thousand dollars.

161 (l) For purposes of subsections (j) and (k) of this section
162 relating to second, third and subsequent offenses, the following
163 types of convictions are to be regarded as convictions under this
164 section:

165 (1) Any conviction under the provisions of subsection (a),
166 (b), (c), (d), (e) or (f) of this section or under a prior enactment
167 of this section for an offense which occurred within the ten-year
168 period immediately preceding the date of arrest in the current
169 proceeding;

170 (2) Any conviction under a municipal ordinance of this
171 state or any other state or a statute of the United States or of any
172 other state of an offense which has the same elements as an
173 offense described in subsection (a), (b), (c), (d), (e), (f) or (g) of
174 this section, which offense occurred within the ten-year period
175 immediately preceding the date of arrest in the current proceed-
176 ing.

177 (m) A person may be charged in a warrant or indictment or
178 information for a second or subsequent offense under this
179 section if the person has been previously arrested for or charged
180 with a violation of this section which is alleged to have oc-
181 curred within the applicable time period for prior offenses,
182 notwithstanding the fact that there has not been a final adjudica-
183 tion of the charges for the alleged previous offense. In that case,
184 the warrant or indictment or information must set forth the date,
185 location and particulars of the previous offense or offenses. No
186 person may be convicted of a second or subsequent offense
187 under this section unless the conviction for the previous offense
188 has become final.

189 (n) The fact that any person charged with a violation of
190 subsection (a), (b), (c), (d) or (e) of this section, or any person
191 permitted to drive as described under subsection (f) or (g) of
192 this section, is or has been legally entitled to use alcohol, a
193 controlled substance or a drug does not constitute a defense
194 against any charge of violating subsection (a), (b), (c), (d), (e),
195 (f) or (g) of this section.

196 (o) For purposes of this section, the term “controlled
197 substance” has the meaning ascribed to it in chapter sixty-a of
198 this code.

199 (p) The sentences provided herein upon conviction for a
200 violation of this article are mandatory and may not be subject
201 to suspension or probation: *Provided*, That the court may apply

202 the provisions of article eleven-a, chapter sixty-two of this code
203 to a person sentenced or committed to a term of one year or less
204 for a first offense under this section. An order for home
205 detention by the court pursuant to the provisions of article
206 eleven-b of said chapter may be used as an alternative sentence
207 to any period of incarceration required by this section for a first
208 or subsequent offense: *Provided, however,* That for any period
209 of home incarceration ordered for a person convicted of second
210 offense under this section, electronic monitoring shall be
211 required for no fewer than five days of the total period of home
212 confinement ordered and the offender may not leave home for
213 those five days notwithstanding the provisions of section five,
214 article eleven-b, chapter sixty-two of this code: *Provided*
215 *further,* That for any period of home incarceration ordered for
216 a person convicted of a third or subsequent violation of this
217 section, electronic monitoring shall be included for no fewer
218 than ten days of the total period of home confinement ordered
219 and the offender may not leave home for those ten days
220 notwithstanding section five, article eleven-b, chapter sixty-two
221 of this code.

**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 test and lock program.**

1 (a) The division of motor vehicles shall control and regulate
2 a motor vehicle alcohol test and lock program for persons
3 whose licenses have been revoked pursuant to this article or the
4 provisions of article five of this chapter, or have been convicted
5 under section two, article five of this chapter. The program shall
6 include the establishment of a users fee for persons participat-
7 ing in the program which shall be paid in advance and deposited
8 into the driver's rehabilitation fund. Except where specified

9 otherwise, the use of the term “program” in this section refers
10 to the motor vehicle alcohol test and lock program. The
11 commissioner of the division of motor vehicles shall propose
12 legislative rules for promulgation in accordance with the
13 provisions of chapter twenty-nine-a of this code for the purpose
14 of implementing the provisions of this section. The rules shall
15 also prescribe those requirements which, in addition to the
16 requirements specified by this section for eligibility to partici-
17 pate in the program, the commissioner determines must be met
18 to obtain the commissioner’s approval to operate a motor
19 vehicle equipped with a motor vehicle alcohol test and lock
20 system. For purposes of this section, a “motor vehicle alcohol
21 test and lock system” means a mechanical or computerized
22 system which, in the opinion of the commissioner, prevents the
23 operation of a motor vehicle when, through the system’s
24 assessment of the blood alcohol content of the person operating
25 or attempting to operate the vehicle, the person is determined to
26 be under the influence of alcohol.

27 (b) (1) Any person whose license is revoked for the first
28 time pursuant to this article or the provisions of article five of
29 this chapter is eligible to participate in the program when the
30 person’s minimum revocation period as specified by subsection
31 (c) of this section has expired and the person is enrolled in or
32 has successfully completed the safety and treatment program or
33 presents proof to the commissioner within sixty days of
34 receiving approval to participate by the commissioner that he or
35 she is enrolled in a safety and treatment program.

36 (2) Any person whose license has been suspended pursuant
37 to the provisions of subsection (1), section two of this article for
38 driving a motor vehicle while under the age of twenty-one years
39 with an alcohol concentration in his or her blood of two
40 hundredths of one percent or more, by weight, but less than
41 eight hundredths of one percent, by weight, is eligible to
42 participate in the program after thirty days have elapsed from

43 the date of the initial suspension, during which time the
44 suspension was actually in effect: *Provided*, That in the case of
45 a person under the age of eighteen, the person is eligible to
46 participate in the program after thirty days have elapsed from
47 the date of the initial suspension, during which time the
48 suspension was actually in effect or after the person's eigh-
49 teenth birthday, whichever is later. Before the commissioner
50 approves a person to operate a motor vehicle equipped with a
51 motor vehicle alcohol test and lock system, the person must
52 agree to comply with the following conditions:

53 (A) If not already enrolled, the person will enroll in and
54 complete the educational program provided for in subsection
55 (c), section three of this article at the earliest time that place-
56 ment in the educational program is available, unless good cause
57 is demonstrated to the commissioner as to why placement
58 should be postponed;

59 (B) The person will pay all costs of the educational pro-
60 gram, any administrative costs and all costs assessed for any
61 suspension hearing.

62 (3) Notwithstanding the provisions of this section to the
63 contrary, no person eligible to participate in the program under
64 this subsection may operate a motor vehicle unless approved to
65 do so by the commissioner.

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

70 (1) For a person whose license has been revoked for a first
71 offense for six months pursuant to the provisions of section
72 one-a of this article for conviction of an offense defined in
73 subsection (d) or (f), section two, article five of this chapter or
74 pursuant to subsection (i), section two of this article, the

75 minimum period of revocation for participation in the test and
76 lock program is thirty days and the minimum period for the use
77 of the ignition interlock device is five months;

78 (2) For a person whose license has been revoked for a first
79 offense pursuant to section seven, article five of this chapter,
80 refusal to submit to a designated secondary chemical test, the
81 minimum period of revocation for participation in the test and
82 lock program is thirty days and the minimum period for the use
83 of the ignition interlock device is nine months;

84 (3) For a person whose license has been revoked for a first
85 offense pursuant to the provisions of section one-a of this
86 article for conviction of an offense defined in subsection (a),
87 section two, article five of this chapter or pursuant to subsection
88 (f), section two of this article, the minimum period of revoca-
89 tion before the person is eligible for participation in the test and
90 lock program is twelve months and the minimum period for the
91 use of the ignition interlock device is two years;

92 (4) For a person whose license has been revoked for a first
93 offense pursuant to the provisions of section one-a of this
94 article for conviction of an offense defined in subsection (b),
95 section two, article five of this chapter or pursuant to subsection
96 (g), section two of this article, the minimum period of revoca-
97 tion is six months and the minimum period for the use of the
98 ignition interlock device is two years;

99 (5) For a person whose license has been revoked for a first
100 offense pursuant to the provisions of section one-a of this
101 article for conviction of an offense defined in subsection (c),
102 section two, article five of this chapter or pursuant to subsection
103 (h), section two of this article, the minimum period of revoca-
104 tion for participation in the program is two months and the
105 minimum period for the use of the ignition interlock device is
106 one year;

107 (6) For a person whose license has been revoked for a first
108 offense pursuant to the provisions of section one-a of this
109 article for conviction of an offense defined in subsection (i),
110 section two, article five of this chapter or pursuant to subsection
111 (m), section two of this article, the minimum period of revoca-
112 tion for participation in the program is two months and the
113 minimum period for the use of the ignition interlock device is
114 ten months;

115 (d) Notwithstanding any provision of the code to the
116 contrary, a person shall participate in the program if the person
117 is convicted under section two, article five of this chapter or the
118 person's license is revoked under section two of this article or
119 section seven, article five of this chapter and the person was
120 previously either convicted or license was revoked under any
121 provision cited in this subsection within the past ten years. The
122 minimum revocation period for a person required to participate
123 in the program under this subsection is one year and the
124 minimum period for the use of the ignition interlock device is
125 two years, except that the minimum revocation period for a
126 person required to participate because of a violation of subsec-
127 tion (l), section two of this article or subsection (h), section two,
128 article five of this chapter is two months and the minimum
129 period of participation is one year. The division will add one
130 year to the minimum period for the use of the ignition interlock
131 device for each additional previous conviction or revocation
132 within the past ten years. Any person required to participate
133 under this subsection must have an ignition interlock device
134 installed on every vehicle he or she owns or operates.

135 (e) An applicant for the test and lock program may not have
136 been convicted of any violation of section three, article four,
137 chapter seventeen-b of this code for driving while the appli-
138 cant's driver's license was suspended or revoked within the six-
139 month period preceding the date of application for admission to

140 the test and lock program; such is necessary for employment
141 purposes.

142 (f) Upon permitting an eligible person to participate in the
143 program, the commissioner shall issue to the person, and the
144 person is required to exhibit on demand, a driver's license
145 which shall reflect that the person is restricted to the operation
146 of a motor vehicle which is equipped with an approved motor
147 vehicle alcohol test and lock system.

148 (g) The commissioner may extend the minimum period of
149 revocation and the minimum period of participation in the
150 program for a person who violates the terms and conditions of
151 participation in the program as found in this section, or legisla-
152 tive rule, or any agreement or contract between the participant
153 and the division or program service provider.

154 (h) A person whose license has been suspended pursuant to
155 the provisions of subsection (l), section two of this article who
156 has completed the educational program, and who has not
157 violated the terms required by the commissioner of the person's
158 participation in the program, is entitled to the reinstatement of
159 his or her driver's license six months from the date the person
160 is permitted to operate a motor vehicle by the commissioner.
161 When a license has been reinstated pursuant to this subsection,
162 the records ordering the suspension, records of any administra-
163 tive hearing, records of any blood alcohol test results and all
164 other records pertaining to the suspension shall be expunged by
165 operation of law: *Provided*, That a person is entitled to
166 expungement under the provisions of this subsection only once.
167 The expungement shall be accomplished by physically marking
168 the records to show that the records have been expunged and by
169 securely sealing and filing the records. Expungement has the
170 legal effect as if the suspension never occurred. The records
171 may not be disclosed or made available for inspection and in
172 response to a request for record information, the commissioner

173 shall reply that no information is available. Information from
174 the file may be used by the commissioner for research and
175 statistical purposes so long as the use of the information does
176 not divulge the identity of the person.

177 (i) In addition to any other penalty imposed by this code,
178 any person who operates a motor vehicle not equipped with an
179 approved motor vehicle alcohol test and lock system during
180 such person's participation in the motor vehicle alcohol test and
181 lock program is guilty of a misdemeanor and, upon conviction
182 thereof, shall be confined in the county or regional jail for a
183 period not less than one month nor more than six months and
184 fined not less than one hundred dollars nor more than five
185 hundred dollars. Any person who attempts to bypass the alcohol
186 test and lock system is guilty of a misdemeanor and, upon
187 conviction thereof, shall be confined in the county or regional
188 jail not more than six months and fined not less than one
189 hundred dollars nor more than one thousand dollars: *Provided,*
190 That notwithstanding any provision of this code to the contrary,
191 a person enrolled and participating in the test and lock program
192 may operate a motor vehicle solely at his or her job site, if such
193 is a condition of his or her employment. For the purpose of this
194 section, job site does not include any street or highway open to
195 the use of the public for purposes of vehicular traffic.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



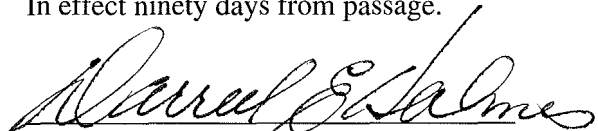
Chairman Senate Committee



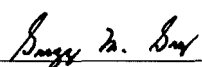
Chairman House Committee

Originating in the House.


In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 3rd
day of May, 2005.



Governor

PRESENTED TO THE
GOVERNOR

MAY 2 2005

Time 4:00 pm