

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 345

BY SENATORS WELD, ROBERTS, IHLENFELD, AND UNGER

[Introduced February 18, 2021; referred
to the Committee on the Judiciary]

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1 A BILL to amend and reenact §17C-5A-3a of the Code of West Virginia, 1931, as amended,
 2 relating to expansion of the alcohol test and lock program to offenders with a drug related
 3 offense; authorizing the commissioner to require drug testing; authorizing deferral of the
 4 revocation period for a participant with a drug offense; and authorizing an offender of
 5 §17B-4-3 to participate in the motor vehicle alcohol and drug test and lock program.

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 2 and Drug Test and Lock Program for persons whose licenses have been revoked pursuant to this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
 4 of this code, or who are serving a term of a conditional probation pursuant to §17C-5-2b of this
 5 code.

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

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

13 (B) The commissioner of the Division of Motor Vehicles shall propose legislative rules for
 14 promulgation in accordance with the provisions of ~~§29A-4-4~~ §29A-3-1 *et seq.* of this code for the

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15 purpose of implementing the provisions of this section. The rules shall also prescribe those
16 requirements which, in addition to the requirements specified by this section for eligibility to
17 participate in the program, the commissioner determines must be met to obtain the
18 commissioner's approval to operate a motor vehicle equipped with a motor vehicle alcohol and
19 drug test and lock system.

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

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

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

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

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

40 (B) The total number of indigent offenders participating in the program during the prior

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41 year;

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

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

44 (7) (C) A person participating in the Motor Vehicle Alcohol and Drug Test and Lock
45 Program shall submit to drug testing in a manner and at intervals prescribed by the commissioner.

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

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

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67 comply with the following conditions:

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

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

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

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

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

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

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

92 (4) For a person whose license has been revoked for a first offense for driving under the

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

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

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

117 (7) For a person whose license has been revoked for a first offense for driving under the
118 influence of alcohol, or a combination of alcohol and any controlled substance or other drug, or

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119 with a blood alcohol concentration of 0.08 percent or more, by weight, and while driving has on
120 or within the motor vehicle one or more other persons who are unemancipated minors who have
121 not reached their 16th birthday, the minimum period of revocation for participation in the program
122 is two months and the minimum period for the use of the ignition interlock device is 10 months.

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

142 (e)(1) If a person applies for and is accepted into the Motor Vehicle Alcohol and Drug Test
143 and Lock Program prior to the effective date of the revocation for an offense involving alcohol, the
144 commissioner shall defer the revocation period of such person under the provisions of this section.

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145 Such deferral shall continue throughout the applicable minimum period for the use of the ignition
146 interlock device plus an additional period equal to the applicable minimum revocation period. If a
147 person successfully completes all terms of the Motor Vehicle Alcohol and Drug Test and Lock
148 Program for a period equal to the minimum period for the use of the ignition interlock device
149 pursuant to §17C-5A-3a(c) of this code, plus any applicable minimum revocation period, the
150 commissioner shall waive the revocation period.

151 ~~(2) The application and acceptance of a person into the Motor Vehicle Alcohol Test and~~
152 ~~Lock Program pursuant to §17C-5A-3(e)(1) of this code constitutes an automatic waiver of their~~
153 ~~right to an administrative hearing. The Office of Administrative Hearings may not conduct a~~
154 ~~hearing on a matter which is the basis for a person actively participating in the Motor Vehicle~~
155 ~~Alcohol Test and Lock Program. If a person applies for and is accepted into the Motor Vehicle~~
156 ~~Alcohol and Drug Test and Lock Program prior to the effective date of the revocation for an offense~~
157 ~~solely involving drugs, the commissioner may defer the revocation period of such person under~~
158 ~~the provisions of this section. Such deferral shall continue throughout the applicable minimum~~
159 ~~period for the use of the ignition interlock device plus an additional period equal to the applicable~~
160 ~~minimum revocation period. If a person successfully completes all terms of the Motor Vehicle~~
161 ~~Alcohol and Drug Test and Lock Program for a period equal to the minimum period for the use of~~
162 ~~the ignition interlock device pursuant to §17C-5A-3a(c) of this code, plus any applicable minimum~~
163 ~~revocation period, the commissioner shall waive the revocation period.~~

164 ~~(f) Notwithstanding any other provision in this code, a person whose license is revoked for~~
165 ~~driving under the influence of drugs is not eligible to participate in the Motor Vehicle Alcohol Test~~
166 ~~and Lock Program: *Provided*, That The Division of Motor Vehicles may reduce any revocation~~
167 ~~period required of a person with a second or subsequent offense for driving under the influence~~
168 ~~of drugs to a minimum of one year and thereafter issue a restricted license on the conditions that~~
169 ~~the person is in the treatment and job program prescribed in §61-11-26a of this code, has~~
170 ~~satisfactorily performed in the treatment component of the program and that the person submits~~

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171 to two years of monthly drug testing. If the person is otherwise required to participate in the Alcohol
172 Test and Lock Program for another offense, he or she may do so while meeting the conditions
173 described in this subsection. If the person fails to submit to a drug test or submits to a test that
174 reveals the presence of controlled substances or drugs, then the full revocation period is
175 reinstated, and the person is only credited with revocation time actually served prior to receiving
176 restricted privileges. The commissioner of the Division of Motor Vehicles is hereby authorized to
177 promulgate emergency rules to implement the provisions of this article.

178 (g) An applicant for the test and lock program ~~may not have been~~ convicted of any violation
179 of §17B-4-3 of this code for driving while the applicant's driver's license was suspended or
180 revoked within the six-month period preceding the date of application for admission to the test
181 and lock program ~~unless such is necessary for employment purposes~~ may still participate in the
182 program by serving the revocation or suspension required by §17B-4-3 as additional participation
183 time in the program.

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

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

196 (j) A person whose license has been suspended for a first offense of driving while under

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197 the age of 21 with a blood alcohol concentration of 0.02 percent, or more, by weight, but less than
198 0.08 percent, or more, by weight, who has completed the educational program and who has not
199 violated the terms required by the commissioner of the person's participation in the program is
200 entitled to the reinstatement of his or her driver's license six months from the date the person is
201 permitted to operate a motor vehicle by the commissioner. When a license has been reinstated
202 pursuant to this subsection, the records ordering the suspension, records of any administrative
203 hearing, records of any blood alcohol test results, and all other records pertaining to the
204 suspension shall be expunged by operation of law: *Provided*, That a person is entitled to
205 expungement under the provisions of this subsection only once. The expungement shall be
206 accomplished by physically marking the records to show that the records have been expunged
207 and by securely sealing and filing the records. Expungement has the legal effect as if the
208 suspension never occurred. The records may not be disclosed or made available for inspection
209 and in response to a request for record information, the commissioner shall reply that no
210 information is available. Information from the file may be used by the commissioner for research
211 and statistical purposes so long as the use of the information does not divulge the identity of the
212 person.

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

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223 purpose of this section, "job site" does not include any street or highway open to the use of the
224 public for purposes of vehicular traffic.

NOTE: The purpose of this bill is to expand the alcohol test and lock program to offenders with a drug related offense, to authorize the commissioner to require drug testing, to authorize the deferral of the revocation period for a participant with a drug offense, and to authorize an offender of §17B-4-3 to participate in the motor vehicle alcohol and drug test and lock program.

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