

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 345

BY SENATORS WELD, ROBERTS, IHLENFELD, AND UNGER

[Passed March 5, 2021; in effect 90 days from passage (June 3, 2021)]

1 AN ACT 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; renaming the alcohol test and lock program to the Motor Vehicle Alcohol and
4 Drug Test and Lock Program; authorizing the commissioner to require drug testing;
5 authorizing deferral of the revocation period for a participant with a drug offense; and
6 authorizing an offender of driving while license suspended or revoked, driving while
7 license revoked for driving under the influence of alcohol, controlled substances, or drugs,
8 or while having alcoholic concentration in the blood of eight hundredths of one percent or
9 more, by weight, or for refusing to take secondary chemical test of blood alcohol contents,
10 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2 and Drug Test and Lock Program for persons whose licenses have been revoked pursuant to this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 Motor Vehicle Fees Fund
8 created under the provisions of §17A-2-21 of this code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

81 (1) For a person whose license has been revoked for a first offense for six months for
82 driving under the influence of alcohol, or a combination of alcohol and any controlled substance
83 or other drug, or with a blood alcohol concentration of 0.08 percent, by weight, but less 0.15

84 percent, by weight, the minimum period of revocation for participation in the test and lock program
85 is 15 days and the minimum period for the use of the ignition interlock device is 125 days;

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

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

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

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

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

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

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

124 (d) Notwithstanding any provision of the code to the contrary, a person shall participate in
125 the program if the person is convicted under §17C-5-2 of this code or the person's license is
126 revoked under §17C-5A-2 or §17C-5-7 of this code and the person was previously either
127 convicted or his or her license was revoked under any provision cited in this subsection within the
128 past 10 years. The minimum revocation period for a person required to participate in the program
129 under this subsection is one year and the minimum period for the use of the ignition interlock
130 device is two years, except that the minimum revocation period for a person required to participate
131 because of a violation for driving while under the age of 21 with a blood alcohol concentration of
132 0.02 percent, or more, by weight, but less than 0.08 percent, or more, by weight, is two months
133 and the minimum period of participation is one year. The division shall add an additional two
134 months to the minimum period for the use of the ignition interlock device if the offense was

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

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

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

161 (f) The Division of Motor Vehicles may reduce any revocation period required of a person
162 with a second or subsequent offense for driving under the influence of drugs to a minimum of one
163 year and thereafter issue a restricted license on the conditions that the person is in the treatment
164 and job program prescribed in §61-11-26a of this code, has satisfactorily performed in the
165 treatment component of the program and that the person submits to two years of monthly drug
166 testing. If the person is otherwise required to participate in the Alcohol and Drug Test and Lock
167 Program for another offense, he or she may do so while meeting the conditions described in this
168 subsection. If the person fails to submit to a drug test or submits to a test that reveals the presence
169 of controlled substances or drugs, then the full revocation period is reinstated, and the person is
170 only credited with revocation time actually served prior to receiving restricted privileges. The
171 Commissioner of the Division of Motor Vehicles is hereby authorized to promulgate emergency
172 rules to implement the provisions of this article.

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

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

182 (i) The commissioner may extend the minimum period of revocation and the minimum
183 period of participation in the program for a person who violates the terms and conditions of
184 participation in the program as found in this section, or legislative rule, or any agreement or
185 contract between the participant and the division or program service provider. If the commissioner
186 finds that any person participating in the program pursuant to §17C-5-2b of this code must be

187 removed therefrom for violation(s) of the terms and conditions thereof, he or she shall notify the
188 person, the court that imposed the term of participation in the program, and the prosecuting
189 attorney in the county wherein the order imposing participation in the program was entered.

190 (j) A person whose license has been suspended for a first offense of driving while under
191 the age of 21 with a blood alcohol concentration of 0.02 percent, or more, by weight, but less than
192 0.08 percent, or more, by weight, who has completed the educational program and who has not
193 violated the terms required by the commissioner of the person's participation in the program is
194 entitled to the reinstatement of his or her driver's license six months from the date the person is
195 permitted to operate a motor vehicle by the commissioner. When a license has been reinstated
196 pursuant to this subsection, the records ordering the suspension, records of any administrative
197 hearing, records of any blood alcohol test results, and all other records pertaining to the
198 suspension shall be expunged by operation of law: *Provided*, That a person is entitled to
199 expungement under the provisions of this subsection only once. The expungement shall be
200 accomplished by physically marking the records to show that the records have been expunged
201 and by securely sealing and filing the records. Expungement has the legal effect as if the
202 suspension never occurred. The records may not be disclosed or made available for inspection
203 and in response to a request for record information, the commissioner shall reply that no
204 information is available. Information from the file may be used by the commissioner for research
205 and statistical purposes so long as the use of the information does not divulge the identity of the
206 person.

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

213 misdemeanor and, upon conviction thereof, shall be confined in jail not more than six months and
214 fined not less than \$100 nor more than \$1,000: *Provided*, That notwithstanding any provision of
215 this code to the contrary, a person enrolled and participating in the test and lock program may
216 operate a motor vehicle solely at his or her job site if the operation is a condition of his or her
217 employment. For the purpose of this section, "job site" does not include any street or highway
218 open to the use of the public for purposes of vehicular traffic.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2021.

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Governor