

1 **H. B. 2803**

2
3 (By Delegates T Campbell, Canterbury and Crosier)
4 [Introduced January 24, 2011; referred to the
5 Committee on Roads and Transportation then the
6 Judiciary.]
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10 A BILL to amend and reenact §17C-5-2 of the Code of West Virginia,
11 1931, as amended, relating to making it a felony to drive a
12 vehicle while under the influence of alcohol, controlled
13 substance or other drug that causes serious bodily injury to
14 another person; and establishing penalties for first and
15 subsequent violations of certain provisions.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §17C-5-2 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted to read as follows:

19 **ARTICLE 5. SERIOUS TRAFFIC OFFENSES.**

20 **§17C-5-2. Driving under influence of alcohol, controlled**
21 **substances or drugs; penalties.**

22 (a) Any person who:

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

24 (A) Is under the influence of alcohol;

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

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

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

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

7 (2) While driving does any act forbidden by law or fails to
8 perform any duty imposed by law in the driving of the vehicle,
9 which act or failure proximately causes the death of bodily injury
10 to bodily injury to any person within one year next following the
11 act or failure; and

12 ~~(3) Commits the act or failure in reckless disregard of the~~
13 ~~safety of others and when the influence of alcohol, controlled~~
14 ~~substances or drugs is shown to be a contributing cause to the~~
15 ~~death, other than himself or failure herself is guilty of a felony~~
16 ~~misdemeanor~~ and, upon conviction thereof, shall be ~~imprisoned~~
17 ~~confined in a state correctional facility jail~~ for not less than ~~two~~
18 ~~years nor more than ten years~~ ninety days one day nor more than one
19 year, which jail term is to include actual confinement of not less
20 than twenty-four hours, and shall be fined not less than ~~\$1,000~~ \$500
21 \$200 nor more than \$1,000.

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;

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

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

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

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

7 (2) While driving does any act forbidden by law or fails to
8 perform any duty imposed by law in the driving of the vehicle, which
9 act or failure proximately causes bodily injury to any person
10 within one year next following the act other than himself or failure
11 herself, is guilty of a misdemeanor and, upon conviction thereof,
12 shall be confined in jail for not less than ninety days one day nor
13 more than one year, which jail term is to include actual confinement
14 of not less than twenty-four hours, and shall be fined not less than
15 \$200 nor more than \$1,000.

16 (c) Any person who:

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

18 (A) Is under the influence of alcohol;

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

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

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

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

1 (2) While driving does any act forbidden by law or fails to
2 perform any duty imposed by law in the driving of the vehicle, which
3 act or failure proximately causes bodily injury to any person other
4 than himself or herself, is guilty of a misdemeanor and, upon
5 conviction thereof, shall be confined in jail for not less than one
6 day nor more than one year, which jail term is to include actual
7 confinement of not less than twenty-four hours, and shall be fined
8 not less than \$200 nor more than \$1,000.

9 (d) Any person who:

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

11 (A) Is under the influence of alcohol;

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

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

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

16 (E) Has an alcohol concentration in his or her blood of eight
17 hundredths of one percent or more, by weight, but less than fifteen
18 hundredths of one percent, by weight;

19 (2) Is guilty of a misdemeanor and, upon conviction thereof,
20 except as provided in section two-b of this article, shall be
21 confined in jail for up to six months and shall be fined not less
22 than \$100 nor more than \$500. A person sentenced pursuant to this
23 subdivision shall receive credit for any period of actual
24 confinement he or she served upon arrest for the subject offense.

1 (e) Any person who drives a vehicle in this state while he or
2 she has an alcohol concentration in his or her blood of fifteen
3 hundredths of one percent or more, by weight, is guilty of a
4 misdemeanor and, upon conviction thereof, shall be confined in jail
5 for not less than two days nor more than six months, which jail term
6 is to include actual confinement of not less than twenty-four hours,
7 and shall be fined not less than \$200 nor more than \$1,000. A
8 person sentenced pursuant to this subdivision shall receive credit
9 for any period of actual confinement he or she served upon arrest
10 for the subject offense.

11 (f) Any person who, being an habitual user of narcotic drugs or
12 amphetamine or any derivative thereof, drives a vehicle in this
13 state is guilty of a misdemeanor and, upon conviction thereof, shall
14 be confined in jail for not less than one day nor more than six
15 months, which jail term is to include actual confinement of not less
16 than twenty-four hours, and shall be fined not less than \$100 nor
17 more than \$500. A person sentenced pursuant to this subdivision
18 shall receive credit for any period of actual confinement he or she
19 served upon arrest for the subject offense.

20 (g) Any person who:

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

23 (A) Is under the influence of alcohol;

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

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

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

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

6 (2) Is guilty of a misdemeanor and, upon conviction thereof,
7 shall be confined in jail for not more than six months and shall be
8 fined not less than \$100 nor more than \$500.

9 (h) Any person who knowingly permits his or her vehicle to be
10 driven in this state by any other person who is an habitual user of
11 narcotic drugs or amphetamine or any derivative thereof is guilty of
12 a misdemeanor and, upon conviction thereof, shall be confined in
13 jail for not more than six months and shall be fined not less than
14 \$100 nor more than \$500.

15 (⊕) (i) Any person under the age of twenty-one years who drives
16 a vehicle in this state while he or she has an alcohol concentration
17 in his or her blood of two hundredths of one percent or more, by
18 weight, but less than eight hundredths of one percent, by weight,
19 for a first offense under this subsection is guilty of a misdemeanor
20 and, upon conviction thereof, shall be fined not less than \$25 nor
21 more than \$100. For a second or subsequent offense under this
22 subsection, the person is guilty of a misdemeanor and, upon
23 conviction thereof, shall be confined in jail for twenty-four hours
24 and shall be fined not less than \$100 nor more than \$500. A person

1 who is charged with a first offense under the provisions of this
2 subsection may move for a continuance of the proceedings, from time
3 to time, to allow the person to participate in the Motor Vehicle
4 Alcohol Test and Lock Program as provided in section three-a,
5 article five-a of this chapter. Upon successful completion of the
6 program, the court shall dismiss the charge against the person and
7 expunge the person's record as it relates to the alleged offense.
8 In the event the person fails to successfully complete the program,
9 the court shall proceed to an adjudication of the alleged offense.
10 A motion for a continuance under this subsection may not be
11 construed as an admission or be used as evidence. A person arrested
12 and charged with an offense under the provisions of this subsection
13 or subsection (a), (b), (c), (d), (e), (f), (g) or (h) of this
14 section may not also be charged with an offense under this
15 subsection arising out of the same transaction or occurrence.

16 (j) Any person who:

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

18 (A) Is under the influence of alcohol;

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

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

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

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

1 (2) The person while driving has on or within the motor vehicle
2 one or more other persons who are unemancipated minors who have not
3 reached their sixteenth birthday is guilty of a misdemeanor and,
4 upon conviction thereof, shall be confined in jail for not less than
5 two days nor more than twelve months, which jail term is to include
6 actual confinement of not less than forty-eight hours and shall be
7 fined not less than \$200 nor more than \$1,000.

8 (k) A person violating any provision of subsection (b), (c),
9 (d), (e), (f), (g) or (I) of this section, for the second offense
10 under this section, is guilty of a misdemeanor and, upon conviction
11 thereof, shall be confined in jail for not less than six months nor
12 more than one year and the court may, in its discretion, impose a
13 fine of not less than \$1,000 nor more than \$3,000.

14 (l) A person violating any provision of subsection (b), (c),
15 (d), (e), (f), (g) or (I) of this section, for the third or any
16 subsequent offense under this section, is guilty of a felony and,
17 upon conviction thereof, shall be imprisoned in a state correctional
18 facility for not less than one nor more than three years and the
19 court may, in its discretion, impose a fine of not less than \$3,000
20 nor more than \$5,000.

21 (m) For purposes of subsections (k) and (l) of this section
22 relating to second, third and subsequent offenses, the following
23 events shall be regarded as offenses under this section:

24 (1) Any conviction under the provisions of subsection (a), (b),

1 (c), (d), (e), (f) or (g) of this section or under a prior enactment
2 of this section for an offense which occurred within the ten-year
3 period immediately preceding the date of arrest in the current
4 proceeding;

5 (2) Any conviction under a municipal ordinance of this state or
6 any other state or a statute of the United States or of any other
7 state of an offense which has the same elements as an offense
8 described in subsection (a), (b), (c), (d), (e), (f), (g) or (h) of
9 this section, which offense occurred within the ten-year period
10 immediately preceding the date of arrest in the current proceeding;
11 and,

12 (3) Any period of conditional probation imposed pursuant
13 section two-b of this article for violation of subsection (d) of
14 this article, which violation occurred within the ten-year period
15 immediately preceding the date of arrest in the current proceeding.

16 (n) A person may be charged in a warrant or indictment or
17 information for a second or subsequent offense under this section if
18 the person has been previously arrested for or charged with a
19 violation of this section which is alleged to have occurred within
20 the applicable time period for prior offenses, notwithstanding the
21 fact that there has not been a final adjudication of the charges for
22 the alleged previous offense. In that case, the warrant or
23 indictment or information must set forth the date, location and
24 particulars of the previous offense or offenses. No person may be

1 convicted of a second or subsequent offense under this section
2 unless the conviction for the previous offense has become final, or
3 the person has previously had a period of conditional probation
4 imposed pursuant to section two-b of this article.

5 (o) The fact that any person charged with a violation of
6 subsection (a), (b), (c), (d), (e) or (f) of this section, or any
7 person permitted to drive as described under subsection (g) or (h)
8 of this section, is or has been legally entitled to use alcohol, a
9 controlled substance or a drug does not constitute a defense against
10 any charge of violating subsection (a), (b), (c), (d), (e), (f), (g)
11 or (h) of this section.

12 (p) For purposes of this section, the term "controlled
13 substance" has the meaning ascribed to it in chapter sixty-a of this
14 code.

15 (q) The sentences provided in this section upon conviction for
16 a violation of this article are mandatory and are not subject to
17 suspension or probation: *Provided*, That the court may apply the
18 provisions of article eleven-a, chapter sixty-two of this code to a
19 person sentenced or committed to a term of one year or less for a
20 first offense under this section: *Provided ~~further~~ however*, That
21 the court may impose a term of conditional probation pursuant to
22 section two-b of this article to persons adjudicated thereunder. An
23 order for home detention by the court pursuant to the provisions of
24 article eleven-b of said chapter may be used as an alternative

1 sentence to any period of incarceration required by this section for
 2 a first or subsequent offense: *Provided further,* That for any
 3 period of home incarceration ordered for a person convicted of
 4 second offense under this section, electronic monitoring shall be
 5 required for no fewer than five days of the total period of home
 6 confinement ordered and the offender may not leave home for those
 7 five days notwithstanding the provisions of section five, article
 8 eleven-b, chapter sixty-two of this code: *And provided further,* That
 9 for any period of home incarceration ordered for a person convicted
 10 of a third or subsequent violation of this section, electronic
 11 monitoring shall be included for no fewer than ten days of the total
 12 period of home confinement ordered and the offender may not leave
 13 home for those ten days notwithstanding section five, article
 14 eleven-b, chapter sixty-two of this code.

15 **§17C-5-2. Driving under influence of alcohol, controlled substances**
 16 **or drugs; penalties.**

17 (a) Any person who:

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

19 (A) Is under the influence of alcohol;

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

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

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

24 (E) Has an alcohol concentration in his or her blood of eight

1 hundredths of one percent or more, by weight; and

2 (2) While driving does any act forbidden by law or fails to
3 perform any duty imposed by law in the driving of the vehicle, which
4 act or failure proximately causes the death of any person within one
5 year next following the act or failure; and

6 (3) Commits the act or failure in reckless disregard of the
7 safety of others and when the influence of alcohol, controlled
8 substances or drugs is shown to be a contributing cause to the
9 death, is guilty of a felony and, upon conviction thereof, shall be
10 imprisoned in a state correctional facility for not less than two
11 years nor more than ten years and shall be fined not less than
12 \$1,000 nor more than \$3,000.

13 (b) Any person who:

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

15 (A) Is under the influence of alcohol;

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

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

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

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

22 (2) While driving does any act forbidden by law or fails to
23 perform any duty imposed by law in the driving of the vehicle, which
24 act or failure proximately causes the death of any person within one

1 year next following the act or failure, is guilty of a misdemeanor
2 and, upon conviction thereof, shall be confined in jail for not less
3 than ninety days nor more than one year and shall be fined not less
4 than \$500 nor more than \$1,000.

5 (c) Any person who:

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

7 (A) Is under the influence of alcohol;

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

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

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

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

14 (2) While driving does any act forbidden by law or fails to
15 perform any duty imposed by law in the driving of the vehicle, which
16 act or failure proximately causes bodily injury to any person other
17 than himself or herself, is guilty of a misdemeanor and, upon
18 conviction thereof, shall be confined in jail for not less than one
19 day nor more than one year, which jail term is to include actual
20 confinement of not less than twenty-four hours, and shall be fined
21 not less than \$200 nor more than \$1,000.

22 (d) Any person who:

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

24 (A) Is under the influence of alcohol;

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

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

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

5 (E) Has an alcohol concentration in his or her blood of eight
6 hundredths of one percent or more, by weight, but less than fifteen
7 hundredths of one percent, by weight;

8 (2) Is guilty of a misdemeanor and, upon conviction thereof,
9 except as provided in section two-b of this article, shall be
10 confined in jail for up to six months and shall be fined not less
11 than \$100 nor more than \$500. A person sentenced pursuant to this
12 subdivision shall receive credit for any period of actual
13 confinement he or she served upon arrest for the subject offense.

14 (e) Any person who drives a vehicle in this state while he or
15 she has an alcohol concentration in his or her blood of fifteen
16 hundredths of one percent or more, by weight, is guilty of a
17 misdemeanor and, upon conviction thereof, shall be confined in jail
18 for not less than two days nor more than six months, which jail term
19 is to include actual confinement of not less than twenty-four hours,
20 and shall be fined not less than \$200 nor more than \$1,000. A
21 person sentenced pursuant to this subdivision shall receive credit
22 for any period of actual confinement he or she served upon arrest
23 for the subject offense.

24 (f) Any person who, being an habitual user of narcotic drugs or

1 amphetamine or any derivative thereof, drives a vehicle in this
2 state is guilty of a misdemeanor and, upon conviction thereof, shall
3 be confined in jail for not less than one day nor more than six
4 months, which jail term is to include actual confinement of not less
5 than twenty-four hours, and shall be fined not less than \$100 nor
6 more than \$500. A person sentenced pursuant to this subdivision
7 shall receive credit for any period of actual confinement he or she
8 served upon arrest for the subject offense.

9 (g) Any person who:

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

12 (A) Is under the influence of alcohol;

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

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

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

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

19 (2) Is guilty of a misdemeanor and, upon conviction thereof,
20 shall be confined in jail for not more than six months and shall be
21 fined not less than \$100 nor more than \$500.

22 (h) Any person who knowingly permits his or her vehicle to be
23 driven in this state by any other person who is an habitual user of
24 narcotic drugs or amphetamine or any derivative thereof is guilty of

1 a misdemeanor and, upon conviction thereof, shall be confined in
2 jail for not more than six months and shall be fined not less than
3 \$100 nor more than \$500.

4 (i) Any person under the age of twenty-one years who drives a
5 vehicle in this state while he or she has an alcohol concentration
6 in his or her blood of two hundredths of one percent or more, by
7 weight, but less than eight hundredths of one percent, by weight,
8 for a first offense under this subsection is guilty of a misdemeanor
9 and, upon conviction thereof, shall be fined not less than \$25 nor
10 more than \$100. For a second or subsequent offense under this
11 subsection, the person is guilty of a misdemeanor and, upon
12 conviction thereof, shall be confined in jail for twenty-four hours
13 and shall be fined not less than \$100 nor more than \$500. A person
14 who is charged with a first offense under the provisions of this
15 subsection may move for a continuance of the proceedings, from time
16 to time, to allow the person to participate in the Motor Vehicle
17 Alcohol Test and Lock Program as provided in section three-a,
18 article five-a of this chapter. Upon successful completion of the
19 program, the court shall dismiss the charge against the person and
20 expunge the person's record as it relates to the alleged offense.
21 In the event the person fails to successfully complete the program,
22 the court shall proceed to an adjudication of the alleged offense.
23 A motion for a continuance under this subsection may not be
24 construed as an admission or be used as evidence. A person arrested

1 and charged with an offense under the provisions of this subsection
2 or subsection (a), (b), (c), (d), (e), (f), (g) or (h) of this
3 section may not also be charged with an offense under this
4 subsection arising out of the same transaction or occurrence.

5 (j) Any person who:

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

7 (A) Is under the influence of alcohol;

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

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

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

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

14 (2) The person while driving has on or within the motor vehicle
15 one or more other persons who are unemancipated minors who have not
16 reached their sixteenth birthday is guilty of a misdemeanor and,
17 upon conviction thereof, shall be confined in jail for not less than
18 two days nor more than twelve months, which jail term is to include
19 actual confinement of not less than forty-eight hours and shall be
20 fined not less than \$200 nor more than \$1,000.

21 (k) A person violating any provision of subsection (b), (c),
22 (d), (e), (f), (g) or (i) of this section, for the second offense
23 under this section, is guilty of a misdemeanor and, upon conviction
24 thereof, shall be confined in jail for not less than six months nor

1 more than one year and the court may, in its discretion, impose a
2 fine of not less than \$1,000 nor more than \$3,000.

3 (l) A person violating any provision of subsection (b), (c),
4 (d), (e), (f), (g) or (i) of this section, for the third or any
5 subsequent offense under this section, is guilty of a felony and,
6 upon conviction thereof, shall be imprisoned in a state correctional
7 facility for not less than one nor more than three years and the
8 court may, in its discretion, impose a fine of not less than \$3,000
9 nor more than \$5,000.

10 (m) For purposes of subsections (k) and (l) of this section
11 relating to second, third and subsequent offenses, the following
12 events shall be regarded as offenses under this section:

13 (1) Any conviction under the provisions of subsection (a), (b),
14 (c), (d), (e), (f) or (g) of this section or under a prior enactment
15 of this section for an offense which occurred within the ten-year
16 period immediately preceding the date of arrest in the current
17 proceeding;

18 (2) Any conviction under a municipal ordinance of this state or
19 any other state or a statute of the United States or of any other
20 state of an offense which has the same elements as an offense
21 described in subsection (a), (b), (c), (d), (e), (f), (g) or (h) of
22 this section, which offense occurred within the ten-year period
23 immediately preceding the date of arrest in the current proceeding;
24 and,

1 (3) Any period of conditional probation imposed pursuant
2 section two-b of this article for violation of subsection (d) of
3 this article, which violation occurred within the ten-year period
4 immediately preceding the date of arrest in the current proceeding.

5 (n) A person may be charged in a warrant or indictment or
6 information for a second or subsequent offense under this section if
7 the person has been previously arrested for or charged with a
8 violation of this section which is alleged to have occurred within
9 the applicable time period for prior offenses, notwithstanding the
10 fact that there has not been a final adjudication of the charges for
11 the alleged previous offense. In that case, the warrant or
12 indictment or information must set forth the date, location and
13 particulars of the previous offense or offenses. No person may be
14 convicted of a second or subsequent offense under this section
15 unless the conviction for the previous offense has become final, or
16 the person has previously had a period of conditional probation
17 imposed pursuant to section two-b of this article.

18 (o) The fact that any person charged with a violation of
19 subsection (a), (b), (c), (d), (e) or (f) of this section, or any
20 person permitted to drive as described under subsection (g) or (h)
21 of this section, is or has been legally entitled to use alcohol, a
22 controlled substance or a drug does not constitute a defense against
23 any charge of violating subsection (a), (b), (c), (d), (e), (f), (g)
24 or (h) of this section.

1 (p) For purposes of this section, the term "controlled
2 substance" has the meaning ascribed to it in chapter sixty-a of this
3 code.

4 (q) The sentences provided in this section upon conviction for
5 a violation of this article are mandatory and are not subject to
6 suspension or probation: *Provided*, That the court may apply the
7 provisions of article eleven-a, chapter sixty-two of this code to a
8 person sentenced or committed to a term of one year or less for a
9 first offense under this section: *Provided, however*, That the court
10 may impose a term of conditional probation pursuant to section two-b
11 of this article to persons adjudicated thereunder. An order for
12 home detention by the court pursuant to the provisions of article
13 eleven-b of said chapter may be used as an alternative sentence to
14 any period of incarceration required by this section for a first or
15 subsequent offense: *Provided further*, That for any period of home
16 incarceration ordered for a person convicted of second offense under
17 this section, electronic monitoring shall be required for no fewer
18 than five days of the total period of home confinement ordered and
19 the offender may not leave home for those five days notwithstanding
20 the provisions of section five, article eleven-b, chapter sixty-two
21 of this code: *And provided further*, That for any period of home
22 incarceration ordered for a person convicted of a third or
23 subsequent violation of this section, electronic monitoring shall be
24 included for no fewer than ten days of the total period of home

1 confinement ordered and the offender may not leave home for those
2 ten days notwithstanding section five, article eleven-b, chapter
3 sixty-two of this code.

4 (r) Any person who:

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

6 (A) Is under the influence of alcohol;

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

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

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

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

13 (2) While driving does any act forbidden by law or fails to
14 perform any duty imposed by law in the driving of the vehicle, which
15 act or failure proximately causes serious bodily injury to any
16 person other than himself or herself, is guilty of a felony and,
17 upon conviction thereof, shall be imprisoned in a state correctional
18 facility for not less than one nor more than three years and the
19 court may, in its discretion, impose a fine of not less than \$3,000
20 nor more than \$5,000.

21 (3) For purposes of this subsection, "serious bodily injury"
22 means bodily injury which creates a substantial risk of death, which
23 causes serious or prolonged disfigurement, prolonged impairment of
24 health or prolonged loss or impairment of the function of any bodily

1 organ.

2 (s) A person violating any provision of subsection (b), (c),
3 (d), (e), (f), (g), (i) or (r) of this section, for the second or
4 any subsequent offense under this section, is guilty of a felony
5 and, upon conviction thereof, shall be imprisoned in a state
6 correctional facility for not less than three nor more than five
7 years and the court may, in its discretion, impose a fine of not
8 less than \$3,000 nor more than \$5,000.

NOTE: The purpose of this bill is to make it a felony to drive a vehicle while under the influence of alcohol, controlled substance or other drug and cause serious bodily harm to another person. The bill also establishes penalties for first and subsequent violations of specific provisions of the article.

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